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BAR HUMAN RIGHTS
COMMITTEE OF
ENGLAND & WALES

TRIAL OBSERVATION REPORT

Public Prosecution v Aya Hegazy and others

Case no 4252/2014, Abdeen Criminal Court, Cairo Egypt
entered as Case no 1106/2014, Central Cairo Plenary Prosecution

Report prepared for EuroMed Rights by

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Executive Summary

Between 11 February 2016 and the 16 April 2017, the Bar Human Rights Committee of England and Wales (BHRC) monitored six hearings in the Abdeen District Court, Cairo, Egypt in the criminal proceedings against Aya Hegazy and seven others. EuroMed Rights commissioned the observations.

The observers assessed the trial of Ms Hegazy to determine whether the criminal proceedings against her complied with Egypt's international human rights obligations.

Ms Hegazy, together with Mohammed Hassanein, her husband and co-founder of the Belady Foundation and 6 friends and volunteers were arrested in May 2014. They were subsequently charged with allegedly organising a group for the purposes of human trafficking, holding children for the purposes of sexual exploitation, sexually exploiting the children, using the children to disturb the peace in protests against security forces, and operating an unregistered civil society organisation (CSO).

The defendants have always denied the charges, maintaining that the statements are false, the charges fabricated and that there is no evidence to support the case against them. The focus of the report is on Ms Hegazy's case but, where relevant, mentions the case against the others. Since her arrest on 2 May 2014, Ms Hegazy remained in pre-trial detention until her release on 20 April 2017. Her release came 4 days after her acquittal on 16 April 2017. At the time of writing this report, the reasoned written judgment of the Court is still awaited.

Ms Hegazy's pre-trial detention lasted 1,081 days (2 years and 11 months) at which point she was acquitted. The observers conclude that very grave concerns arise from the substantial length of detention. Her lawyers requested at every available opportunity for her to be conditionally released on bail, however this was never granted and no formal reasoning provided by the Court. Upon enquiring, the lawyers were merely told by the court clerks that she would remain in detention. As far as the observers could ascertain, no assessment was conducted to determine whether continued detention was justified under the provisions of Egyptian law or by international standards. The observers therefore conclude that the pre-trial detention of Ms Hegazy violated her inherent right to liberty, in breach of Egypt's international legal obligations to use pre-trial detention as an instrument of last resort and only by reason of necessity. Additionally, international law provides that defendants held in pre-trial detention should be released if a trial cannot be achieved in a reasonable timeframe unless their continued detention is necessary and proportionate.

Moreover, the observers note that pre-trial detention has been and is being used flagrantly and in a punitive way in Egypt. There are very high numbers of individuals who remain in pre-trial detention for excessive periods with conditional release being routinely refused.

The case of Aya Hegazy raises a number of issues:

1. Unreasonable length of the pre-trial detention and failure to give reasons for the delay;
2. Significant lengthy adjournments between hearings, set without any notable or reasoned consideration of impact upon Ms Hegazy or upon the consequences for the fairness of the trial;
3. Unreasoned refusals to grant conditional release on bail;
4. Inability to meet with her lawyer in private;
5. Repeated failures of the prosecution to produce evidence before the court after such a lengthy detention, coupled by the tolerance of the first Judge of their failures to produce that evidence at a scheduled hearing;
6. Failure of the first Judge to permit international observers into that closed session, the lack of public hearing without reasons being provided as well as the failure to list this matter for trial in an expeditious manner.

The use of extensive pre-trial detention, the failure to grant proper access to counsel, and the delay in releasing the defendants following acquittal are of particular concern in this case.

First, the excessively long pre-trial detention of Ms Hegazy was unjustified and arguably punitive. Aya Hegazy was denied her liberty arbitrarily in violation of Egypt's obligations under international and constitutional law. Moreover, the failure to deal with the issue of pre-trial detention in a prompt and rational manner, particularly by the first presiding judge, substantially prejudiced Ms Hegazy's presumption of innocence, guaranteed by domestic and international law. This undermined the fairness of the trial.

Second, Ms Hegazy was not granted sufficient access to her counsel during the proceedings. No private consultation areas were available. Almost all conversations between her and her lawyer took place through the bars of the caged holding cell in the court room. This undermined her ability to receive advice, provide instructions, and prepare a defence, in breach of her right to a fair trial under Article 14(3)(b) of the ICCPR. The conditions of confinement in the court room also demeans the defendants and runs contrary to the presumption of innocence.

Third, it is unacceptable that after acquittal Ms Hegazy remained in detention for a number of days. While this procedure may comply with Egyptian law and practice, it contravenes international standards and Egypt's obligations under Article 9 of the ICCPR. Of particular concern is that many of the issues identified in Ms Hegazy's trial are not unique to her case but are systemic within the Egyptian criminal justice system.

The observers therefore recommend that in addition to the individual measures relating to Aya Hegazy's case, the Egyptian authorities must urgently address these fundamental concerns within the wider criminal justice system.

The observers make the following recommendations in relation to the Egyptian Criminal Justice system:

1. Defendants must be provided with the opportunity to communicate confidentially with their lawyers to enable them to prepare their defence;
2. All hearings should be held in public, unless proper and justifiable reasons are provided for them to be held in private;
3. Evidence which the Prosecutor relies upon must be disclosed to the defendants, as well as presented to the court, to enable a proper defence.
4. The use of cramped cages to hold defendants in the courtroom must be abolished in all courts;
5. Case management procedures should be put in place to assist the Court in efficiently managing its case load and avoiding lengthy adjournments;
6. The rules and practice relating to pre-trial detention and the application procedure for conditional release must be reformed to ensure compliance with human rights and international standards;
7. Procedures to release defendants following an acquittal should be modified to ensure the immediate release of acquitted persons, unless clear reasoning is provided for not doing so, and without reliance on procedural steps by prosecutors.

Part I: The Mission and the Report

Composition of the Delegation

EuroMed Rights invited members of the Bar Human Rights Committee of England and Wales (“BHRC”) to undertake this trial observation mission.

BHRC is the international human rights arm of the Bar of England and Wales. It is an independent body, distinct from the Bar Council of England and Wales, dedicated to promoting principles of justice and respect for fundamental human rights through the rule of law. It comprises of barristers practising at the Bar of England and Wales, legal academic and law students. BHRC’s eighteen Executive Committee members and general members offer their services *pro bono*, alongside their independent legal practices, teaching commitments and/or legal studies. BHRC employs one full time executive officer.

BHRC aims to:

- Uphold the rule of law and internationally recognised human rights norms and standards;
- Support and protect practising lawyers, judges and human rights defenders who are threatened or oppressed in their work;
- To further interest in and knowledge of human rights and the laws relating to human rights both within and outside the legal profession;
- To advise, support and cooperate with other organisations and individuals working for the promotion and protection of human rights; and
- To advise the Bar Council of England and Wales in connection with international human rights issues.

As part of its mandate, BHRC undertakes legal observation missions to monitor proceedings where there are reasons to believe that the judiciary may not be independent, impartial and/or that the defendant might otherwise be denied the right to a fair trial.

The remit of BHRC extends to all countries of the world except for its own jurisdiction of England and Wales. This reflects the Committee’s need to maintain its role as an independent but legally qualified observer, critic and advisor.

The report is written by Dr Theodora A Christou, Grainne Mellon and Rupert Wheeler, drawing from the reports written up by all the observers following their attendance at hearings.

There have been several hearings in Aya Hegazy’s case. The following BHRC observers attended the respective hearings

| Date of Hearing | Observers |
|----------------------------|---|
| 13 February 2016 | Dr Theodora A Christou and Schona Jolly |
| 21 May 2016 | Dr Theodora A Christou and Schona Jolly |
| 17-18 December 2016 | Dr Theodora A Christou and Rupert Wheeler |
| 15-16 January 2017 | Professor Matthew Happold and Dr Paul Mason |
| 19-22 February 2017 | Dr Theodora A Christou and Grainne Mellon |
| 16 April 2017 | Caoilfhionn Gallagher QC and Megan Hirst |

Our interpreter attended some of the hearings where BHRC observers were unable to attend and reported back to Dr Christou.

The Report follows the trial observation guidelines set out in the following publications:

- Trial Observation Manual for Criminal Proceedings – Practitioners Guide of the International Commission of Jurists, 2009.
- Guidelines for Human Rights Fact-Finding Missions - A joint publication of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law of the Lund University and International Bar Association, September 2009.
- Amnesty International's Fair Trial Manual, Second Edition, 2014.
- Front Line Defenders' trial observation handbook for human rights defenders, 2012.

Acknowledgments

The Mission was greatly assisted locally by representatives from the Cairo Institute for Human Rights who at the first visit facilitated access to the court proceedings and throughout the observations provided Arabic/English interpretation at court hearings and other meetings. They also provided translations of some documents in this case and facilitated meetings with the families of both Ms Hegazy and Mr Fathallah, as well as Ms Hegazy's lawyer. EuroMed Rights assisted with the logistics and security measures. The report is also assisted by information provided in private meetings and publicly available news reports and statements.

Funding

The Mission was funded by the EuroMed Rights to cover the costs of transportation, accommodation and other necessary expenses of the observations. None of the observers were paid.

The Mission's Meetings

During the country visits to monitor the trial, the observers met with the following people in Cairo:

- Members of Aya Hegazy's family
- Members of Mohammed Fathallah's family
- Members of Aya Hegazy's legal team
- Civil society representatives from different NGOs in Cairo
- Human rights and criminal defence lawyers in Cairo.

The observers also had the opportunity to discuss the present case and the situation in Egypt more generally with members of international delegations following Aya Hegazy's trial, including representatives of the British Embassy in Cairo, the European Union Delegation to Egypt, the French Embassy and the USA Embassy.

The observers also met with other human rights lawyers and defenders in Cairo. In recognition of the current climate in Egypt where lawyers and human rights defenders in particular appear to be targeted and intimidated¹, the names of the individuals with whom the observers have discussed both the specifics of this case and the wider judicial climate in Egypt have been anonymised.

¹ See, for example, the BHRC Statement on Lawyers in Egypt dated 19 September 2016, *available at* <http://www.barhumanrights.org.uk/bhrc-leads-international-outcry-over-treatment-of-egyptian-lawyers-and-human-rights-defenders/>

The observers were unable to meet with the Prosecution team. The practice in Egypt is that the Prosecutor of the case can request another prosecutor to attend court in their place, although the Prosecutor did himself make the closing statement. During the hearings that took place under the first Judge, the observers were not able to access either the Judges or the Prosecutor, as the proceedings were held in private in the Judges' chambers rather than in open court. On 22 February, the observers were able to meet once with the Chief Prosecutor, but access was difficult due to the unpredictable start times of the hearings. No official request was made to meet the Prosecutor.

Part II: General Background

Recent Political and Historical Background²

In October 1981 Hosni Mubarak became President of Egypt and ruled the country for thirty years. In early 2011 a popular uprising led to his removal on 11 February, when he passed on executive powers to Egypt's top military body, the Supreme Council of the Armed Forces (SCAF), for a transitional period. The latter took control of government, dissolved the Parliament and suspended the Constitution, then had it amended by referendum on 19 March. SCAF promised a transition to democracy. However, the “transition” that followed has been long and bloody, with many setbacks, and the struggle for democracy and fundamental rights in Egypt is ongoing.

Between November 2011 and January 2012, in legislative elections to Egypt's lower house of Parliament, the People's Assembly, the Muslim Brotherhood's Freedom and Justice Party won the greatest share of the vote, with Salafi parties winning a large minority as well; elections to the Shura Council, the upper house, followed. In June 2012, the Supreme Constitutional Court declared the electoral law unconstitutional and called for fresh elections for the People's Assembly; the recently elected Shura Council assumed legislative power temporarily. In the run-up to the presidential election, when the Freedom and Justice Party candidate Mohammed Morsi appeared to stand a good chance of winning, the SCAF passed some last-minute decrees that effectively diminished presidential powers.

Following the highly contested two-round election, Mohammed Morsi was sworn in as President of Egypt on 30 June 2012, and promised inclusive government. However, discontent against his rule grew rapidly as the Executive focused on power struggles with other institutions, particularly the judiciary, and on the contentious composition of a constituent assembly. Opposition to President Morsi crystallised after he passed a constitutional decree stating his decisions were *"final and unchallengeable by any individual or body until a new constitution has been ratified and new parliament has been elected,"* on 22 November 2012. Masses of Egyptians took to the streets in protest. Egypt's most senior judges condemned President Morsi's decision, saying that the new powers amounted to an "unprecedented assault" on the independence of the judiciary.

In December 2012, President Morsi agreed to rescind most of his contested decrees, but went ahead with the referendum on the new draft Constitution—written by the contested constituent assembly—which was successful. In April 2013, the Tamarrod (“rebellion” or “revolt”) movement was founded, and called for mass protests against President Morsi's rule on 30 June 2013; by 29 June 2013, Tamarrod claimed to have gathered twenty-two million signatures on a petition calling for early presidential elections. The petition drive and call to protest had considerable support from security bodies and the military apparatus. Millions of Egyptians took to the streets on 30 June 2013. The next day, Defence Minister and Commander of the armed forces Abdelfattah Al-Sisi announced an ultimatum to President Morsi, giving “all political forces” 48 hours to “respond to the people's demands”, or else the army “would have to implement a road map” for transition.

President Morsi refused to make concessions or step down, and on 3 July 2013, the military removed him from office and announced a "road map" for a post-Morsi era, including new parliamentary and presidential elections. SCAF declared the 2013 Constitution suspended, and appointed Adly Mansour, head of Egypt's Supreme Constitutional Court, as Egypt's interim President. In July 2013, a committee of ten legal experts was appointed to amend the Constitution.

² BHRC trial observers are grateful for the provision of this political and legal background by EuroMed Rights.

Their proposed text was sent to a larger group of fifty, made up of politicians and representatives from various groups. A final draft was sent by this Committee to the President in December 2013. A referendum on this draft constitution took place on 14-15 January 2014. It passed but against a backdrop of fear.

Since July 2013, the repression of political dissent and opposition has been significant. Thousands of Morsi supporters were arrested following his removal from power, and in August 2013, hundreds of people were killed when the authorities stormed and dispersed two protest sit-in camps, at Rab'aa al-'Adawiya Square and al-Nahda Square. It did not take long for State repression to extend beyond Morsi supporters *per se*, to various dissenters and peaceful opponents, including human rights activists, journalists and citizens who dared to criticise the authorities' decisions and how they ruled. From this period on, widespread insecurity was manipulated to induce the mainstream media and the public to unanimously back the government, embodied by Al-Sisi who figured prominently all over the political scene, far more than nominal Head of State Adly Mansour, whose name was often forgotten. Fear of terrorism, anger against the Muslim Brotherhood for their poor record in power, and pro-military nationalism were frequently stirred up in support of Al-Sisi personally as well as the military, and to undermine any kind of protest, criticism or even contradiction of the State narrative.

On 26-28 May 2014, Egypt's second presidential election since the revolution took place and on 3 June, Al-Sisi was confirmed as the new President of Egypt. The country's electoral commission announced he had won by 96.1% against his one rival, Nasserist Hamdeen Sabbahi and estimated that 47% of eligible voters had cast their ballots. The turnout was considered the main political stake in this contest for Al-Sisi; this official figure was deemed a disappointment, compared to the high figures he had called for, even extending polling for a third day.³

After many postponements, legislative elections to the People's Assembly were held in October and December 2015. Since 2013, organised opposition parties and movements had been slowly pushed out of the political field, due to repression and the gradual closure of the public sphere; throughout 2015, different State bodies apparently became involved in the formation of compliant electoral lists supportive of the government and its policies.⁴ President Al-Sisi appealed to candidates to form a united movement in support of the State. In preparation for the elections, security was tightened across the country. The President made public appeals for Egyptians to vote, and in mid-October, public sector employees were given half a day's holiday to encourage them to take part. But most of the electorate was already too disillusioned with this electoral protest and knew the political choices available were very few. Again, the turnout was the only unknown and the only stake. Though the authorities announced a figure of 28%, most polling places had remained conspicuously empty, particularly of youth. The real turnout would likely have been a fraction of that—a public disavowal of President Al-Sisi's mode of rule, policies and record which was widely regarded as a setback for the regime.

President Al-Sisi (and Adly Mansour's government) issued many draconian laws which directly threaten the freedoms of assembly, association and expression. Law 107/2013, known as the Protest Law, was issued by presidential decree in November 2013, despite a chorus of objections of rights groups, various political forces, six ministers and the UN High Commissioner for Human Rights. 16 Egyptian rights NGOs underlined that *“Joining a peaceful demonstration carries numerous risks, from the arbitrary killing to arrest and sentencing of up to five years in prison in some cases, or prolonged pre-trial detention. [...] The law requires organizers of assemblies to meet several unreasonable, impractical conditions while giving the Ministry of Interior the right to object to any “notice” of an*

³ See <https://www.theguardian.com/world/2014/jun/03/abdel-fatah-al-sisi-presidential-election-vote-egypt>

⁴ See <http://www.madamasr.com/en/2016/03/14/feature/politics/anatomy-of-an-election/>

impending demonstration on vague grounds..." in violation of the constitutionally guaranteed right of peaceful assembly.⁵

On 27 October 2014, President Al-Sisi issued a decree extending the jurisdiction of military courts to civilians who attack or obstruct "vital" public facilities. In February and August 2015, Al-Sisi issued the Terrorist Entities Law (Law 8/2015) and the Counter-terrorism Law (Law 94/2015), which give a vague and expansive definition of terrorism to include various peaceful activities by students, labour activists, civil society, political parties, journalists "by any means", in the name of preserving "social peace" or "national unity".⁶ These decrees criminalise many peaceful actions in violation of the constitutionally protected freedoms of association, peaceful assembly and strike, as well as the freedoms of opinion and expression, and the freedom to circulate information online and in the press. Law 94/2015 also reinforces impunity, encouraging law-enforcement personnel to use lethal force, and allows for citizens to be sentenced to death for non-violent, non-lethal acts.⁷

According to the 2014 Constitution, the People's Assembly was entrusted with reviewing the hundreds of laws that had been passed by the Executive in the previous 30 months without a parliament. They did so in less than a month, reinforcing the widespread impression they would act as a rubber stamp for the Executive.

In 2017, independent civil society, and in particular the human rights movement, is under threat of total disappearance in Egypt. In May 2017, President Al-Sisi's ratification of a draconian law regulating civic associations led to an international outcry denouncing the violation of the constitutionally-guaranteed right to freedom of association and Egypt's international legal commitments. The new NGO law (Law 70/2017), ratified over six months after it was approved by the Parliament, imposes an onerous process for NGOs to register with the Ministry of Social Solidarity (MoSS) and bans the registration of entities conducting human rights work under any other relevant legal framework (as law firms or companies, for instance). It sets a very narrow definition of acceptable NGO activity, limited to development or social objectives. It adds new obstacles to the establishment of NGOs and makes registration of international NGOs to work in Egypt very difficult. In addition, the law hinders the activity of registered NGOs in many ways, requiring prior approval to cooperate with international entities, to receive foreign funding, to open new offices in Egypt or abroad, among other restrictions.⁸ This adds to the fact that in 2014, Article 78 of the Penal Code was amended to penalise the receipt of foreign funding for the purpose of "harming national security" and imposed a sentence of up to life imprisonment.⁹

In April 2017, President Al-Sisi declared a state of emergency in the country, announcing that the infamous Emergency Law 162/1958 would be reactivated for three months, leading to the suspension of constitutional rights. This law, used for decades by the Mubarak regime to shut down the public sphere and silence peaceful opposition, was in place until the breakout of the 2011 revolution and was followed by martial law, established after the ousting of President Morsi in 2013. The state of emergency has been renewed by the Parliament in July 2017.

Human rights defenders are constantly harassed and prosecuted¹⁰ for peacefully exercising their activities in Egypt. One of the most prominent measures towards the eradication of the independent

⁵ See <http://www.cihrs.org/?p=17651&lang=en> . The right is guaranteed both under the 2014 constitution (Articles 73) and the constitutional declaration of July 8, 2013 (Article 10), which was in force when Adly Mansour decreed the Protest Law.

⁶ See <http://www.cihrs.org/?p=11031&lang=en>

⁷ See CIHRS and EIPR's legal briefing on the Counterterrorism Law at <http://www.cihrs.org/?p=17219&lang=en>

⁸ See <http://www.euomedrights.org/publication/egypt-new-law-harshly-restricts-ngos-activities/>

⁹ See <http://www.euomedrights.org/publication/egypt-court-to-freeze-human-rights-defenders-assets-a-finishing-blow-for-civil-society/>

¹⁰ <http://us2.campaign-archive1.com/?u=9ec44691d1d1c1f12ca6b1d02&id=8ad9e98f20&e=004f8c219b>

civil society has been the “foreign funding case” no 173. The first set of investigations, launched in 2011, targeted international human rights NGOs,¹¹ while a second phase was initiated against Egyptian NGOs in 2016, especially those most noted for exposing the national security apparatus’ crimes against Egyptian citizens, and for opposing unjust laws.¹² Several employees of local human rights NGOs, including two staff members of the Cairo Institute for Human Rights Studies’ (CIHRS) and three from Nazra for Feminist Studies, received summons to appear before the investigating judge¹³. At least seven leading human rights defenders have been charged, 24 banned from travelling outside of Egypt, and seven rights groups and 10 HRDs are subject to asset freezes.

In June 2017, 60 opposition activists were detained in an attempt to silence dissent and protest over the transfer of two islands in the Red Sea to Saudi Arabia. Rights lawyer Tareq Hussein spent 40 days in detention, and was subject to enforced disappearance for 12 days. Seven prominent Alexandria lawyers have been sentenced for protesting the deal. Repression is expected to be severe ahead of Egypt’s presidential election scheduled for June 2018. Khaled Ali, a human rights lawyer and former presidential candidate, has been charged for “offending public decency”. If he is found guilty, he will not be able to run for president in 2018.

The continuous violations against the freedoms of association and expression make women human rights defenders particularly vulnerable¹⁴. In February 2017, the Al-Nadeem Center for the rehabilitation of torture victims, a prominent organisation providing support to victims of torture and violence in Cairo, was shut down following an administrative order¹⁵, and its director, Aida Seif al-Dawla, is subjected to a travel ban.

Security arguments are extensively used to prevent any form of dissent. Human rights lawyer Mohammed Ramadan, currently in jail, was sentenced in absentia to 10 years in prison after he allegedly created a Facebook account expressing opinions against President Al-Sisi that could potentially “disrupt public order” and “harm national unity”. The decision was based on violations of the Counter-terrorism Law 94/2015, known for its wide definition of terrorist acts.

More than 100 news outlets and websites have been blocked in Egypt since May 2017, without any legal process or judicial oversight. The government accuses them of spreading “terrorism and extremism” and “publishing lies”.

The Egyptian Judiciary and Prosecution

The general principle of judicial independence has been constitutionally guaranteed in Egypt for many decades. Article 184 of the 2014 Constitution provides that “[t]he judiciary is independent” and makes interference in judicial affairs a criminal offence subject to no statute of limitations.

However, this principle of judicial independence has been severely undermined in many ways. In 2017, President Al-Sisi passed a controversial judicial authority law that allows the president to appoint judiciary council heads from three vice-chairs nominated by each judicial council. It applies to the state lawsuits authority, administrative prosecution, the Court of Cassation, and the State Council.¹⁶

The Ministry of Justice has wide powers over judges, which provide scope for abuse. These include the right to assign judges to particular courts, to decide which judges are seconded to work in

¹¹ <http://pomed.org/regional-news-digests/egypt-daily-update-case-against-foreign-funded-ngos-reopened-court-to-review-freezing-of-ngo-workers-assets/>

¹² On the case, see <http://www.cihrs.org/?p=18362&lang=en>

¹³ See <http://www.euromedrights.org/publication/egypt-stop-the-crackdown-on-civil-society/>

¹⁴ See <http://www.euromedrights.org/publication/in-their-own-words-egypt-report/>

¹⁵ See <http://www.euromedrights.org/publication/alert-egypt-el-nadeem-shut-egyptian-authorities/>

¹⁶ See <https://www.amnesty.org/en/latest/news/2017/04/new-legislation-threatens-judicial-independence-in-egypt/>

government ministries, and to initiate disciplinary action against judges. These powers threaten the judiciary's independence as they allow a government minister to reward or punish serving judges, and provide an incentive for judges to please the executive.

The legal framework also gives a role to the executive branch in the judicial appointment system, particularly at the higher levels, allowing for politicised decision-making. In 2016, a number of disciplinary actions were taken against judges seen as supportive of the Muslim Brotherhood. At the same time, a blind eye has been turned to the highly questionable (or even illegal) rulings of judges who openly and enthusiastically support President Al-Sisi, and who are often selected to try political dissidents.¹⁷ Thus, the principles of judicial impartiality and of judicial accountability to the law and constitution are severely undermined in Egypt as well.

According to the IBA Minimum Standards of Judicial Independence, "[t]he power to transfer a judge from one court to another shall be vested in a judicial authority and preferably shall be subject to the judge's consent". The current system does not comply with this recommendation.

A similar "on paper" independence can be found regarding Egypt's Prosecution. The 2014 Constitution states that the Prosecutor-General in Egypt must be appointed by the judge-led Supreme Judicial Council (SJC). However, the 2014 Constitution also allows the Minister of Justice to have a role in the appointment of investigating judges, and in transferring prosecutors to other posts. Graduates of Egypt's Police Academy are automatically granted a law degree and can move easily from police station to the Prosecutor's Offices. Thus, Egypt's powerful prosecutorial authority is highly politicised and is not autonomous, in practice, from the security bodies or the Executive.¹⁸

The Public Prosecution Office

The Public Prosecution Office, headed by the Prosecutor General, is an independent arm of the judicial branch of government. Article 189 Constitution 2014 states, "The public prosecution is an integral part of the judiciary."

The Prosecutor General is a senior judge, selected by the Supreme Judicial Council. Since the 2012 Constitutional reform, the President of the Republic no longer has the authority to select the Prosecutor General, only the authority to appoint. However Article 173 in the 2012 reformed Constitution (preserved in Article 189 of the 2014 Constitution), removed the tenure (once appointed, the Prosecutor General served until he either stepped down or reached mandatory judicial retirement age) so that the Prosecutor General now serves a single term of four years.¹⁹

The Public Prosecution Office is modelled on the French Office of the Prosecutor. Public prosecutors act as both investigators and courtroom prosecutors. In Egypt, public prosecutors are distinguished from the initial inquiry conducted by police agencies which produces intelligence information and the investigation conducted by public prosecutors, the written report of which is admissible in court as substantive evidence without the need for any supporting live testimony.

The role of the public prosecutor is to conduct a neutral, unbiased investigation into the truth. Criminal investigations are generally initiated based on complaints filed by citizens or government officials, but may also be initiated by the Public Prosecutor's Office on its own initiative based on information.

¹⁷ See <http://www.cihrs.org/?p=18415&lang=en>

¹⁸ See POMED's report 'The Role of the Public Prosecution in Egypt's Repression', <http://pomed.org/wp-content/uploads/2016/11/POMEDAnsaryEgyptReport.pdf>

¹⁹ The following paragraphs describing the Public Prosecution Office are taken from the Egyptian Justice Project: <http://egyptjustice.com/public-prosecution-office/>

It is considered mandatory to investigate criminal complaints, which means that no inference as to the merits of a complaint can reasonably be drawn from the mere opening of an investigation.

In conducting investigations, public prosecutors acting in their capacity as judicial officers receive the sworn testimony of witnesses, which is reduced to a written statement and signed by both the witness and the prosecutor, much like a deposition or affidavit. Such a sworn statement constitutes substantive evidence without the need to call the witness to testify at trial.

If the public prosecution finds that the evidence justifies a trial, charges are filed with the trial court in the form of a referral, which consists of a statement of the charges and a summary of the evidence supporting each charge as to each defendant. The referral and public prosecution file constitute substantive trial evidence without the need to call live witnesses.

Human Rights Standards

The international legal standards applicable to Egypt are set out under the International Covenant on Civil and Political Rights 1966 (“ICCPR”) that Egypt ratified in 1982. The report assesses whether the trial of Aya Hegazy complied with the standards set by the ICCPR and, where appropriate, makes reference to the relevant provisions of the Egyptian Constitution of 2014, which came into effect on 18 January 2014.

In particular, the report assesses compliance with the standards set out in the ICCPR as follows:

- The Right to Liberty and Security of Person (Article 9 ICCPR)
- The Right to a Fair Trial (Article 14 ICCPR)

The Defendant: Aya Hegazy and the Belady Foundation

Aya Mohammed Nabil Ahmed Hegazy (also spelt Higazi and Hijazy), aged 27 at the time of her arrest in 2014, is a founder and director of the Belady Foundation (*Belady*), a civil society organisation (CSO).

Aya Hegazy and her husband Mohamed Hassanein founded Belady in 2013, working with a number of other volunteers, with the intention of assisting street children. Its office is located in downtown Cairo. According to its stated aims, the association seeks to work with children to achieve a number of objectives: to educate; improve behaviour; help overcome addiction; develop skills; reintegrate back into society; and ultimately to reunite them with their families, where possible.

The authors of this report understand that an official application was lodged with the Ministry of Social Solidarity (MoSS) to form *Belady* as a registered association over sixty days before the arrests took place. In addition, *Belady* filed all required paperwork, which allows *Belady* to legally operate as an organisation under formation until procedures are finalised. *Belady* was indeed operational, and the foundation opened a bank account in its name, which requires the MoSS' agreement in principle. It had started work with a group of street children and was holding events in its effort to rehabilitate them.

In early May 2014, security forces from Abdeen Police Station entered *Belady* headquarters on the basis of an allegation from a private individual who claimed that the foundation was holding his son without his consent – a charge that was contested by other children who stated that the boy sought to escape his father. The police arrested Mohamed Hassanein, Aya Hegazy, Sherif Talaat (a visual artist), Amira Farag (a volunteer) and a group of resident children.

Part II: The Trial

The Court and Judges

All the hearings in Aya Hegazy's case took place at Abdeen Court in Cairo (the Court).

It is important to note that there were two presiding judges in this case. The first presiding Judge was Yahia Rafat, who presided over the case from the start until the hearing on the 19 November 2016 when, as part of the normal rotation of judges, Judge Mohamed Al Fikky was allocated the case. Court security controls the entrances into the Court building and into the courtrooms. For the first two hearings observed, presided over by the first Judge, permission to attend the hearings was requested in writing by the Mission. This was handed to the judge in his chambers by the Court clerk. At neither hearing did the judge enter the courtroom, instead conducting all cases from his chambers. The judge extended no communication to the observers before, during or after either hearing. However, for the subsequent hearings where the second judge, Judge Mohamed Al Fikky presided, the observers were permitted to enter the judge's chambers and observe the hearing in its entirety. The observers were also addressed by the Judge who enquired about their names, occupation and interest in the case. He also granted the interpreter access and permitted her to use her laptop to type out the interpretation of what was being said. In addition, on the days that no observer could attend, the judge gave permission to the interpreter to attend on the Mission's behalf.

The layout of the court is as follows: there is an elevated bench at the back of the room, where the court clerks sit and where the judge is supposed to sit. To the left is the metal holding cell, which is effectively a metal cage. The defendants are held here, along with any other defendants who are due before the court on that day. The observers noted that a large number of defendants were kept in the cage during the course of the sitting day (which would frequently last for more than 8 hours). The size of the cage meant that conditions were cramped, with many of the defendants unable to even sit on the floor.

During the observers' visits, the defendants were taken out of the cage by security forces into the judge's chambers. Whilst in the cages, their lawyers were not permitted to talk to them and were routinely ushered away by the security guards and asked to sit on one of the benches.

The court has approximately 10 rows of benches where lawyers, family members, the general public, observers and other interested parties sit. The defence lawyers enter from the same entrance as the general public and the defendants. There is no provision made at all for private consultations between the lawyers and their clients.

The Charges against Aya Hegazy

On 8 September 2014, the Referral Order in *Case no. 4252/2014/Abdin*, entered as *Case no. 1106/2014/Central Cairo Plenary* was ordered by Judge Mahmoud Wael Shibl, Public Solicitor, Central Cairo Plenary Prosecution.

The charges are brought against:

1. Mohammed Hassanein Mustafa Fathallah (was in custody);
2. Aya Hegazy (was in custody);
3. Sherif Talaat Mohammed Mohammed (was in custody)
4. Amira Farag Mohammed Qassem (was in custody until December 2016 when she was placed on conditional release on medical grounds)
5. Ibrahim Abd Rabbih Abu al-Magd al-Salehi, aka Ashad (was in custody)

6. Karim Magdi Mahmoud Fathi (was in custody)
7. Mohammed al-Sayyed Mohammed al-Sayyed (was in custody)
8. Zeinab Ramadan Abd al-Muti (not held in custody).

The charges, as unofficially translated, read as follows:

1. Founded, organised, and administered, with other unknown persons, a criminal group organised for the purposes of human trafficking. Namely, they exploited, gave shelter to, and met with natural persons, the victims—[children's names removed for their safety]—and this with the use of force, violence and the threat thereof, abduction, fraud, and deception, exploiting their vulnerability and their need, and this with intent to exploit them sexually and in obscene materials and to use them to participate in demonstrations and collect donations while the victims were under the age of 18, as demonstrated in the interrogations.
2. Sexually assaulted [*hatk al-'ird*], with other unknown persons, victims [children's names removed for their safety], and this with the use of force and threat. Namely, they forced them to remove their clothing thereby exposing and revealing their genitals, took photographs of them, and forced them to engage in indecency and sex, while the victims were under the age of 18, as demonstrated in the interrogations.
3. Sexually exploited, with other unknown persons, all the aforementioned child victims, they committed the acts described in the first two counts, as demonstrated in the interrogations.
4. Abducted, with other unknown persons, using deception and coercion, male children under the age of 18, the victims named above. Namely, they seized on their poverty, need, and vulnerability with promises of refuge, food, and clothing, thereby luring them to an unexposed place, and they detained them against their will in an apartment prepared for this purpose, as demonstrated in the interrogations.
5. Detained, with other unknown persons, all the aforementioned victims without an order from a competent judge and in conditions not legally authorised. Namely, they lured them to an apartment prepared for this purpose and they tortured some of them physically by beating them to prevent them from fleeing and forcing them to engage in indecency and sex, as demonstrated in the interrogations.
6. Prepared, with other unknown persons, and possessed obscene materials involving children related to sexual exploitation, using the computer to incite them to depravity and compel them to commit crimes and unlawful acts, as demonstrated in the interrogations.
7. Established, with other unknown persons, an entity titled the Belady Association, which operated as an association without following proper legal procedures, as demonstrated in the interrogations.

There are 2 additional charges for defendants 5-8, relating to allegations that they compelled witnesses to give false statements in connection with the crime of human trafficking.

The defendants are charged under the following laws:

- Articles 1(1), 2, 3, 4, 5, 6(1), (6) and 7 of Law 64/2010 on the suppression of human trafficking;
- Articles 268(1) and 2, 280, 282, 288, and 291(1) and (2) of the Penal Code;
- Articles 2(1), 116(bis), and 116(bis)(a) of Law 12/1996, amended by Law 126/2008 on the child;

- Article 76(2)(a) of Law 84/2002 on civic associations²⁰.

The Nature of the Prosecution Case

The prosecution alleged that the defendants were a criminal group who had established the Belady Association with the intention to exploit street children in Cairo. The group would identify vulnerable street children, many of whom had run away from their parents, and lure them into staying at the Belady Association. This would be done with promises of shelter, food, clothing and improved life prospects. Once lured into the property, the children were forcibly detained. If they attempted to leave, they would either be stopped and beaten or forced to repay the costs of their keeping. If unable to pay, they would be forcibly kept to pay off the debt. If children escaped, they would be pursued by the defendants and returned to the address.

The prosecution alleged that Mohammed Fathallah and Aya Hegazy were the “ringleaders” and that the other defendants assisted them in the criminal enterprise.

The prosecution alleged that children were kept at the address and unable to leave, kept in various rooms within the building and sometimes bound at the hands. They were forced to participate in sexual acts, individually and with other children. They were shown video footage of an obscene nature. It was suggested that some children were forced into prostitution. The defendants were alleged to have filmed children performing sex acts, and later uploaded the videos to the internet.

The prosecution also claimed that children were forced to participate in films that depicted the plight of street children in order to maintain a front for the organisation. They would have to act out, for example, begging, stealing, drug use and violence. These films were used to encourage donations for the association. The children were also sent out to solicit donations, but little if any was given to the children. The prosecution put forward evidence of donations being made by foreign and domestic donors.

Some of the children were allegedly forced to participate in anti-state political rallies. They were forced to memorise anti-state chants, to throw stones and otherwise attack police and to encourage others to do so. Some of the children were given financial rewards for participating, in furtherance of a political agenda held by the defendants.

In addition to charges of exploitation, the prosecution alleged that, after the children had given statements to the police, the defendants were involved in pressuring or inducing the children to retract their statements.

The evidence in the prosecution case came from only two witnesses, the father and a policeman and exhibits:

- The complaint came to the attention of the police after a man claimed that his son had been detained by the association. He said that a child, claiming to have escaped recently, told him that his son was being forcibly kept at the address. The man then attended Belady's address. He was initially prevented from entering by two of the defendants but was eventually admitted. The man described seeing around 20 children in a large room, with some being completely naked. When the man left the address, he claimed one child asked him to save him from the cruelty he had suffered at the hands of the defendants. The man took that child and contacted police.

²⁰ There may be further Articles pursuant to which the charges have been laid but it has not been possible to clarify them with certainty at the point of finalising this report.

- The prosecution relied on 10 child witnesses, with ages ranging from 14 to 16. Those children, on questioning, alleged mistreatment in the ways described above. The elder children claimed that they were forced to pressure the younger ones.
- In addition, the prosecution relied on forensic evidence from doctors who had examined many of the children. The doctors concluding that the children had been anally penetrated.
- There was further evidence from a computer seized from the third defendant, which the prosecution claimed contained a photo of one defendant holding a child and touching his buttock. The child was naked, apart from underwear. The computer also allegedly contained films with obscene scenes.

It should be noted that the Prosecution only called two witnesses in Court, the policeman and the father.

The Nature of the Defence Case

Aya Hegazy was represented by three lawyers, the observers are unable to ascertain the exact dates of representation. In the early stages, her first lawyer was Samir Sameh, who stood down due to other commitments. Taher Abolnaser then became her lawyer; he remained as her lawyer to the end of the case with the exception of a short period of time in the later stages where Ahmed Saad joined Taher as Ms Hegazy's lawyer.

The defence case was that the allegations were untrue: no abuse or trafficking had taken place at the association. There was no credible evidence of any sexual assault to any child or of any kidnapping. The organisation was running a legitimate NGO assisting children. It had been lawful and operated an open-door policy for street children. The organisation had received donations, but these were also legitimate. In fact, the donors had at times attended Belady, and none of the donors had complained about the treatment of the children.

The defendants also claimed that they were ill-treated during the investigation. This included during the raid, the seizure of their property, and their very lengthy detention awaiting a verdict. They were not guilty of the allegations, which were misconceived in both fact and law.

The defence was also adamant that the police investigation was fraught with malpractice and procedural failure. This included both the methods of investigation and the failure to keep proper records of it.

In seeking to undermine the prosecution case, the defence put weight on the inconsistency of the prosecution witnesses and called evidence to contradict the prosecution assertions.

- The complainant father was not a credible witness. His live evidence contradicted what he had told the police on important matters, for example, the identity of people at the Belady.
- Despite the prosecution's reliance on witness statements from children who claimed they were abused during their time at Belady, only one came to give oral evidence in court. He contradicted the prosecution case, saying that he had not been kidnapped, held against his will, forced to protest, or abused at all whilst at Belady. Conversely, he said that he was taught to read and write by Belady and had been able to visit parents and friends. The only beatings he received were at the police station. He appeared as a defence witness at trial, and his testimony was supported by his mother.
- Contrary to the prosecution's claims about forcing the children to protest, the defence produced evidence that there were no protests at the times alleged.

- They submitted that the forensic evidence suggesting sexual penetration of the children, even if correct, could not conclude that the acts took place during the period when they were at Belady.

The defence was also adamant that the police investigation was fraught with malpractice and procedural failure. This included both the methods of investigation and the failure to keep proper records of it, including:

- The search of the Belady address had been unauthorised and unlawful. Items were seized unlawfully, including laptops, computers and documents. Many of the items produced in court were not the originals seized from the address. The defendants themselves were unlawfully questioned by police, and they were never confronted with the statements made against them.
- They questioned the technical evidence in respect of the seized computers and pornographic films allegedly found on hard drives, claiming that when accessing the computer without the password, the data on the hard drive would have been deleted during the reset. Similarly, the photograph showing a child in underwear was tampered with because it was written on in a suggestible way. The child in the photo gave evidence in Court that one of the defendants was his uncle and that the photo was taken in jest to get him to listen to his mother.

The defence intended to submit a disc to the court including statements from other children who retracted their statements about abuse at Belady. Some said that they were forced by the police to give a statement against the defendants. The prosecution, having taken possession of the disc, later claimed to have lost it, and it was never provided to the Court. The defence argued that this amounted to an attempt to suppress evidence that favoured the defendants.

The Legal Proceedings

As far as the observers have been able to ascertain, there were fifteen hearings in Aya Hegazy's case. The observers attended five of these hearings between 13 February 2016 and 16 April 2017. The chronology of all the hearings that took place is set out below.

| | Date of Hearing | Outcome | Observers | Other observers present |
|---|-----------------------------|---|----------------------|--|
| 1 | 16 March 2015 ²¹ | Defence lawyers asked to hear and review attesting evidence and for conditional release on bail due to lack of cause. Each application was refused without explanation. | No | Unknown |
| 2 | 18 May 2015 | Although witnesses and exhibits were available, the court adjourned to 16 November 2015 without hearing witnesses or opening exhibits. No explanation was provided. | No | Unknown |
| 3 | 16 November 2015 | Prosecution and defence witnesses were called. The judge then adjourned the case because of the absence of the defendants in the courtroom at the scheduled time of the trial caused by the prison authorities. | No | Unknown |
| 4 | 13 February 2016 | Adjournment until 17th Feb. No reasons or explanation was provided. No opportunity was given to the defence lawyers to approach the judge, make any bail application or make any representations at all. | Yes | At this hearing there were observers from EU Delegation to Egypt Office, the French Embassy and the Embassy of the USA. |
| 5 | 17 February 2016 | Adjourned until 23 March due to technical issues where the court technician was unable to turn on the computer and laptops. | Interpreter attended | Yes |
| 6 | 23 March 2016 | Adjourned to 21 May due to scheduling issues. No explanation was provided. | Interpreter attended | Yes |
| 7 | 21 May 2016 | Technical committee was sworn in and given six months to complete its report on the laptops and desktops seized. Requests for conditional release were made in chambers with defendants and lawyers present but were denied without explanation. None of the international observers were permitted into the chamber. Adjourned to 19 November when the technical committee is to present its findings. | YES | At this hearing, there were observers from EU Delegation to Egypt Office, the French Embassy and the Embassy of the USA. |
| 8 | 19-22 November 2016 | A new judge, Mohamed Al Fikky, was appointed as part of the regular rotation. Requests for conditional release were again made and denied. The technical committee submitted its report on the contents of the computers. The judge began hearing evidence in the case, including video evidence and witness examinations. | Interpreter attended | |

²¹ We have been unable to ascertain with certainty whether this hearing took place on 15 or 16 March 2015.

| | | | | |
|----|---------------------------|---|----------------------|--|
| 9 | 17-18 December 2016 | Evidence is heard in chambers due to the sensitive nature of the medical evidence relating to sexual abuse and rape of boys presented by general manager of the medical examiner's office. Aya's second lawyer requests conditional release without a formal response. The hearing was adjourned to 21 December so that another attempt could be made to find the initial complaining witness.. | YES | |
| 10 | 21 December 2016 | The witness was not presented to court. The hearing was adjourned to 14 January 2017. | Interpreter attended | |
| 11 | 15-16 January 2017 | The initial complaining witness is examined. Evidence of promotional material for Belady Foundation and a defendant's laptop are presented. The case is adjourned until 18 January to allow the contents of the laptop to be examined. | YES | US Embassy |
| 12 | 18 January 2017 | The court ordered a technician to open the laptop of the 5th defendant. The contents allegedly relate to the charge of attempting to influence a witness against the 5th, 6th and 7th defendants and does not relate to Aya Hegazy. | Interpreter attended | |
| 13 | 19-22 February 2017 | Defence Witness statements are presented in court. The Prosecutor and Defence make their closing statements. | YES | At this hearing, there were observers from EU Delegation to Egypt Office and the Embassy of the USA. |
| 14 | 23 February 2017 | Additional defence comments made. | Interpreter attended | |
| 15 | 16 April 2017 | The Judge delivers his verdict. All defendants, including Aya Hegazy, are found not guilty on all charges. | YES | At this hearing, there were observers from EU Delegation to Egypt Office and the Embassy of the USA. |

By the time of her release Aya Hegazy was in pre-trial detention for 1,081 days (2 years and 11 months).

What follows are further details on the hearings that the Mission observed.

The Hearings and Trial

What follows is a summary of the observations made during the hearings where an observer was present.

The 13 February 2016 Hearing

On 13 February 2016, the observers attended the Abdeen Court in Downtown Cairo. No specific time was given for the matter against Aya Hegazy to be heard. The observers arrived with an interpreter at 9.30am in time for the first session that would ordinarily begin at 10am.

At the outset, the observers sought to present a typed letter, through the interpreter, explaining the observers' status to the judge, Yahia Rafat. The letter was given to him in chambers by one of the clerks, where he remained in private session.

At no point did the Judge emerge from his chambers into open court for the observers to meet with him, nor did the observers speak with the Prosecutor because he was with the Judge inside chambers in an apparent closed session.

At this session, there were observers from the EU Delegation to Egypt, the French Embassy, and the USA Embassy. There were also other lawyers present with whom the observers discussed how the Egyptian criminal law and procedure operates.

The observers spoke with Samir Sameh, who represented Aya Hegazy in the initial stages of the proceedings. Mr Sameh confirmed that he made bail applications for Ms Hegazy at each of the detention renewals. These are made after arrest, four times during the first 45 days and then at each of the procedural hearings. There were three hearings in 2015, and in the final hearing of 2015, Mr Sameh was replaced by M. Abolnasr was formally retained by Ms Hegazy on the date of this hearing.

Mr Abolnasr confirmed that the first interrogation of Ms Hegazy took place on 3rd May 2014. Despite repeated applications for bail, the Judge has provided neither oral nor written reasons for the consistent refusal of bail. Mr Abolnasr stated that the legal team was told informally by the clerks to the court that bail was refused because of risk that Ms Hegazy would flee justice since she is a United States citizen and of concerns of witness interference.

Upon arrival to the court, Aya Hegazy and the other defendants were placed in the defendants' cage within the courtroom with all defendants whose cases were waiting to be heard. Ms Hegazy waited in the steel cage for nearly two hours before her case was called before the Judge in chambers.

The lawyers and observers made their way to the front of the courtroom to request access to the Judge's Chambers to attend the closed hearing. No reason was given by the Judge to the lawyers or observers as to why Ms Hegazy's case would take place in a closed session. An instruction was then issued by the clerks in Arabic that the private session would not take place. No further information was provided at this stage.

Quite suddenly, the atmosphere in the courtroom became very charged. Security guards and the clerks tried to remove people from the courtroom, including the observers, and to prevent anyone, including the defence lawyers, from speaking with the defendants in the cage, which until that point had been permitted. The observers noted that the lawyers were not provided a place or time to meet with their clients in the court nor did the defendants have the right to a legal consultation with their lawyer at court. It was confirmed by the lawyers that the best opportunity to speak with their clients was through the cage barriers, surrounded by other defendants and the general noise from within the cage and courtroom; an opportunity that was stripped from them when the security guards required the lawyers to sit down on the benches.

It was further confirmed by the lawyers that no provision was made in prison for private consultations or communications, and that all meetings with clients take place in open waiting rooms.

After another hour of waiting, the Judge communicated through his clerk that he would make the hearing public and that the Prosecutor and court would then consider the confiscated material. Shortly afterwards, a box with confiscated laptops and a hard drive appeared on the judge's bench. However, no computer screen was attached or obviously available.

The Egyptian lawyers explained that the usual practice was for confiscated items to be sealed with wax. While Aya Hegazy's apartment was sealed after her arrest, the Foundation premises was not sealed.

Both observers spoke to Ms Hegazy very briefly as the guards endeavoured to keep everyone away. She indicated that she is only allowed to meet her husband when they are together in the defendant's

cage during court sessions²². Although she was being treated well in prison, there were some issues communicating with her husband. These issues were not resolved prior to her release.

From appearance alone, Ms Hegazy and her husband seemed physically well and in good spirits; they were not separated or handcuffed and were holding hands. Ms Hegazy was veiled, a measure that is considered necessary to protect her from harassment in prison since it is understood that she does not normally wear a hijab.

When the clerk called the prosecution witnesses mid-afternoon, no one was present and the prosecution did not provide an explanation for their failure to attend.

At around 2pm, the clerk announced that the matter was adjourned until 17 February 2016 (with no specific time set). The Judge failed to appear in open court and the confiscated materials were never viewed. No reasons or explanation were provided for the adjournment or for the failure to view the confiscated material. No opportunity was afforded to the defence lawyers to approach or make representations to the Judge, including to make bail applications.

The 17 February 2016 Hearing

Because the observers had already left Cairo, the interpreter and an observer from the EU Delegation to Cairo, who was present at both hearings, provided an update on what had happened at the hearing on 17 February 2016. News updates and public statements by others following the hearing were also available.

The hearing was postponed again until 23 March 2016 because a court-appointed technician was unable to turn on a laptop that allegedly contain key evidence for the Prosecution. The confiscated items would be viewed first, followed by an examination of the prosecution witnesses.

The Court would assemble a committee to prepare a report on the content of the confiscated items at the hearing on 23 March to be presented in a hearing on 20 April 2016.

Mr Abolnasr informed the observers that he had requested conditional release for Ms Hegazy, and that request, though documented, was refused implicitly by the Judge's order that the defendants remain in detention. It appears neither oral nor written reasons were provided for the refusal.

Mr Abolnasr also confirmed that prosecution witnesses were present on this occasion, namely two police officers and a child.

The 17 May 2016 Hearing

On 17 May 2016, the observers again attended the Abdeen Court in Cairo. As previously, no specific time was given for the hearing, and the Judge conducted the sessions in chambers. At court there were observers from the EU Delegation to Egypt, the French Embassy, and the USA Embassy; however none of the observer missions were permitted entry into the closed session. The observers learned about the substance of the hearing from lawyers and interpreters later.

Mr Abolnasr no longer represented Ms Hegazy. However, due to court commitments surrounding the session, the observers were unable to speak to the new lawyer.

In the hearing, a technical committee of three members was formally established and sworn in to create a report on the confiscated items.

The hearing was then adjourned until 19 November 2016 for the report to be produced.

²² We add our understanding that Mohammed filed several requests to visit his wife (as is his right, by law) but they were all refused until earlier this month, October 2016, when he was permitted to visit his wife.

An application for conditional bail was made and refused, again without written or oral notification or reasoning.

On this occasion, neither of the observers could speak with Ms Hegazy since she was only briefly kept in the courtroom cage before being taken down to the courtroom cells where it was not possible to visit her. From both her outward appearance, and upon talking to her mother and sister afterwards outside of the hearing, Ms Hegazy's spirits were low and she was upset by the continued delays in proceedings. The family was very concerned that no progress was being made in court, that the adjournments were each becoming longer and that the delays appeared to be perfunctory.

The 19-22 November Hearing

No observers were available to attend, however our interpreter attended and provided a brief round-up of what happened. A new judge, Judge Mohamed Al Fikky, had been appointed as part of the regular rotation. On the first day of the hearing the judge heard requests from lawyers for conditional release amongst other things. The technical committee also handed over its report on what they found on the computers. Sunday the judge begun hearing evidence in the case. This included the video evidence. He denied the request for release of defendants. On the second and third day witnesses were examined.

It is important to note that the judge has not given a copy of the report to the defendants. Even by the end of the trial they had only seen two thirds of the 200-page report. As we understood, the judge reads through the report with the defence lawyers.

The 17-18 December 2016 Hearing

With the permission of the judge, observers attended the entirety of the proceedings in December 2016. It should be noted that with the change of Judge even the climate in the courtroom changed, for example the security guards were more tolerant of our presence and also permitted us to speak to Ms Hegazy and the other defendants through the cage. The court clerks were also helpful in providing us with information as to when they anticipated the case would be called.

The hearing was conducted in chambers given the sensitive nature of the medical evidence relating to sexual abuse and rape of boys being presented. The general manager of the medical examiner's office was called and questioned by the judge and defence lawyers.

The judge must approve each question before it is asked of the witness. He blocked at least one question relating to the transmission of STDs for lacking relevancy. In total 3 questions were asked by the defence lawyers: (1) whether the medical examiner could provide a time frame in which the rape occurred; (2) the difference between recent and old sexual violence based on the scars; and (3) when the injuries were inflicted to the face of one child.

The defence asked that the children be called, but the judge refused, saying he would only hear adult witnesses. Ms Hegazy's second lawyer requested conditional release, and the judge declined to make a decision at that time. Ms Hegazy was represented by two lawyers at this stage, Ahmed and Taher (who is also Mohammed's lawyer).

During the adjournment, the observers spoke at great length with Ms Hegazy and the other defendants, seemingly in better spirits since their last hearing. They were upset that they were still detained without any evidence having been presented to court, so were relieved that the current judge seemed to be progressing the case.

The hearing was adjourned to 21 December to allow the Prosecutor to find initial complaining witness, the father who alleges his child had been kidnapped by Belady. According to the interpreter, the witness was again unavailable at the following hearing and the case was adjourned to 14 January 2017.

On 21 December 2016 no observer was available to attend, however our interpreter attended and reported to Dr Christou that the witness (the complainant father) was not presented to court, so the hearing was adjourned to 14 January 2017.

The 15-18 January 2017 Hearings

On the first day, the Judge permitted the observers to monitor the hearing in its entirety. Once again, the defendants remained in the cage in the main court room throughout the day until their hearing.

Again the observers were able to talk to the defendants through the cage. The case was eventually called in Judge's chambers with four Judges present. One judge serves as the chief judge in the proceedings, with two judges serving as advisors and a fourth judge to observe the proceedings. While Judges and the Prosecutor sit at desks, defendants and their lawyers must stand. The Judge's chambers were very small, approximately 20 feet by 12 feet. The observers stood in front of the judge's table behind the clerk who was taking verbatim notes by hand. None of the judges serving as the trier of fact were taking notes, the presiding judge would occasionally note something, and it was unclear whether the judges would rely upon the clerk's notes in reaching their decision.

The Court heard the father who had made the initial complaint and the key prosecution witness. The man described visiting the Belady Foundation while searching for his son and allegedly seeing children naked or in only their underwear. He claimed at least one child complained to him about the conditions in the flat and that he took the child out of the facility. Although he claimed one of the children told him that his son was in the facility that day, he later admitted that his son had left the facility at least twenty days prior. This is the first time he has appeared in Court after the judge insisted that more efforts be made to locate him otherwise he would proceed without hearing his evidence. He gives his evidence standing in front of Judge's table. Questions asked by J1. No Judge takes notes. The witness describes looking for his missing son in Tahir Square. He then filed a complaint with the police as he thought his child had been kidnapped. He visited the Belady Foundation premises, a flat after meeting with one of the defendants. He was asked by whether he has seen any of the children naked at the flat. He says just in their underwear. He is asked by whether any of the children are asking for his help because they are being beaten. He says one child was crying and he took him with him to the police station. He went to the flat twice in total. The second time, with his wife. On that occasion he was told by one of the children, Said, that his son was at the premises. J1 asks the witness to clarify whether he broke into the flat with his relatives. He says that he did which is when he saw one of the children in his underwear. The witness says he waited outside the flat for the police, who arrived around 2300. He confirms that his son left 20 days before he visited the Belady premises. He says his son was beaten by a car mechanic who was training his son. The apartment door was opened by the third defendant. Inside were Aya Hegazy and Mohammed Hassanein. None of the children complained to him about the Belady Foundation.

The witness was then cross examined by defence lawyers for Ms Hegazy as well as the other defendants. All questions are directed to the lead Judge who then determines their admissibility and then repeats the question to the witness. The Judge acts as a filter, deciding on whether the question is admissible. It appears that the questions are all being allowed. Clerk stops questioning at one point to check his note of the evidence is correct. It appears that during cross-examination, the Judge helps the witness when he seems to contradict himself about how many times he has visited the premises, who with, etc. On cross-examination, the witness testifies that he met the second defendant (Aya's husband) at Tahir Square, he told him that his son had runaway and Mohamad said that he worked with street children and would return his son to him if he ever came across him. The father admitted that he went to the Belady offices with his wife the first time and a second time with his brother (brother was allowed in – but not the father that time because he was in his dirty work clothes, but did not find the son). The third time he asked his relatives to go to Belady and stay at the front door until he could get the police. He said that he was suspicious of Belady because street children in Tahir Square said that Belady had kids staying there. But when he went said he saw children sitting all clothed but one who was in his underwear. He had filed a complaint to the police about his missing

son but no progress had been made. However, he told the Court that he has now found his son in a Governate 1 hour by car outside Cairo staying with a woman who had taken him in.

The court also examined evidence from the missing confiscated laptop, which is still in its sealed box when brought into court. One of the defendants identifies the laptop as his and requests the contents be viewed in a closed session to protect his right to privacy; however, in light of potentially exculpatory evidence being lost by the prosecution, the defence team also requests that the laptop not be viewed by the prosecutor alone. The Court then clears the room to deliberate on the requests; however, the prosecutor is permitted to remain with the judges during deliberations. Ultimately, the Court rules in favour of the defence and the Prosecution is not permitted to view the laptop on their own.

On the second day, the observers were not permitted into the courtroom until the judge decided to admit them.

The fourth judge who was observing the previous day's proceeding was not present. Several journalists who attempt to enter are made to leave. The defence presents promotional material from the Belady Foundation, including TV news clips of a marathon they organised, and TV interviews with Aya Hegazy. The judge does not allow each clips to play for more than 20 seconds. The defence then presents still pictures of the children from the Belady Foundation, and again the Judge requests they be viewed quickly. The defence then requests to present video evidence of one of the prosecution witnesses; the request is denied without a formal hearing on its admissibility or clear reasoning. The case is adjourned until Thursday 19 January to allow the contents of the laptop to be viewed. The evidence allegedly on the laptop relates only to the charges against the 5th, 6th, and 7th defendants of attempting to influence a witness. After the hearing on 19 January, the case is adjourned until 19 February.

There is no observer present on the 19 January, but the interpreter attends and reports back to Dr Christou. The court ordered to have a technician present to open the laptop of the 5th defendant which contains a video related to the allegation/charge of attempting to influence a witness. This concerns only the 5th, 6th and 7th defendants and does not relate to Aya Hegazy – however for completeness it is included in the report. The video was only 3 minutes long and there were 3 photos. One of them have the 7th defendant appearing with one of the child witnesses. There was no questions from the court or the defence because the witness was not present. The court ordered the case to be adjourned until the 19 February to listen to the defence witnesses and 20th, 21st and 22nd February for defence statements.

The 19-23 February Hearings

During this session defence witnesses are heard by the court followed by the Prosecutor's and Defence Counsels' closing statements. The case is heard in the Judge's chambers, the observers are permitted to be present throughout. However, the time when the proceedings would begin varied wildly from day to day with many hearings beginning late in the evening. The observers were given a reprieve from waiting in the courtroom all day when the court clerk agreed to contact the interpreter shortly before the hearing would commence. During these waiting times we spoke to representatives from the US Embassy, the observer attending on behalf of the EU Representative Office, as well as the defendants and the defence counsel.

On the first day the case was eventually called on at 16:30, having been advised that it would be called on at 12 noon. The hearing commenced by the Judge's confirming the presence and identity of the Defendants. The Judge then invited Defence Counsel to confirm how many witnesses they would call and in what order. The Defence indicated they would call five witnesses:

1. One of the alleged victims who was one of the kids who gave a statement to the police. He was not called by the prosecution;

2. The child's mother
3. One of the alleged victims of the main incident in the case who was said to be naked in one of the relevant photos and who was also said to have been kidnapped;
4. Mohamed Mahmoud – technician (optician)
5. Eslam Abolyazeed – a friend of some of the defendants.

Even with their own witnesses, all questions were first put to the judge who would either reject them or approve them. When the questions were approved, the judge then formulated the questions and put them to the witnesses. It appeared that this was at the discretion of the judge.

A full note of the witness evidence is set out in the Annex to this report, what follows is a summary of the key points.

The first witnesses testified that he had made false statements to the police after being interrogated, with one officer having beaten him and the other children with a belt. He only made the statement so that he would be released, and none of it was true. He stated that he was not kept against his will by the Belady Foundation and that he was not sexually or physically assaulted there, that neither he nor any other children were photographed nude and that they were not made to attend protests. He said that the Belady Foundation encouraged and facilitated contact with his mother and that he was taught to read and write at Belady.

The second witness was the child's mother who testified that she had visited her son during the two months he stayed at Belady. She said, that he and the other children were happy at Belady and that he wanted to stay there rather than return home where he feared his father. When asked whether she had given her statement to the prosecution, she said that she tried but the prosecutor refused to document her statement.

The third witness, the nephew of the 6th defendant, is pictured in a photo in his underwear that the prosecution presented as evidence. When asked to explain in what circumstances the photo was taken, he said that his uncle and friends were only joking with him as a way of getting him to listen to his mother. He was shown the photo and confirmed it was him.

The fourth witness Mohamed Mahmoud had visited Belady premises a few times because he had been asked by the Ms Hegazy's husband to fit one of the children with glasses. Whilst there he did not witness any assaults.

The fifth witness, Eslam Abolyazeed is a friend of some of the defendants who had been to Belady a few times and had participated at a charity party Belady held on Abdeen Square. He testified that he had never seen any assaults or crimes being committed and that Belady operated an open-door policy where children were free to leave at any time.

The Defence requested that the hearing be moved out of the judge's chambers and into the courtroom. They submitted that the room was too small to accommodate all 7 defendants, their lawyers, the 3 judges, the prosecutor and the 5 trial observers and for the Defence to fairly participate in the hearing. This request was refused and the judge requested a table to be bought in for the Defence to rest their papers. Throughout the hearings the defence counsels and the defendants stood.

The judge proceeded to hear the prosecutor's closing statement. The statement did not appear to be based on the evidence heard in court and was simply a repetition of the prosecution case at the start. Citing verses from the Quran and Egyptian poetry, he proceeded to equate the defendants to the cannibals of old. He states that there is plenty of evidence to prove the guilt of all defendants for all charges; however

he failed to mention the contradictory evidence between the live testimony and the witness statements. At conclusion of the statement the Court was adjourned to 13.00 the next day.

On the second day, the case was eventually called on at 19.35. The defence lawyers protested that it was too late to begin and that they were exhausted having waited 6 hours in the courtroom. The case was adjourned to 14:00 the following day.

On the third day, the case was called at 18:00. Taher Abolnasr, counsel for Ms Hegazy and the second and fourth defendants, made his statement. He concluded that the court was being deceived by the prosecutor who was falsely turning evidence against the defendants. These evidential issues and repeated defence requests which were either denied or not fulfilled are repeated so that they can be reflected in the Court records in readiness for any appeal.

In particular he spoke of:

- the CD which the defence had submitted to the prosecutor who had subsequently lost it.
- the arrests and searches and seizure of material being conducted with no prior authorization, despite the police officer having a day to obtain such authorization.
- the questioning was not in accordance with the law because the defendants were not told of the evidence against them.
- the prosecution refusing to take Usama's mother's statement.
- the father (who was only presented to court after defence and judge's efforts) contradicting the prosecution's case during his testimony in court. That a lady not matching Aya's description opened the door and that he never witnessed any assaults.
- Usama's testimony in open court where he said he was well treated and saw his mother.
- The lack of evidence from the confiscated computer and laptops as reflected in the technical report.

He stated for the court record that the ninth prosecution witness, who is key to the prosecution case was never brought before court and they requested he be summoned. He also requested the remaining prosecution witnesses be summoned before court to testify and be cross examined.

In relation to the evidence found on the laptops what the prosecution listed as confiscated is different from what we have been viewed in court. He requested that they be sent to the criminal evidence department so that forensics can state when the films and other items were added, given that it was password protected.

The requests are ordinarily dealt with by the judge at the conclusion of proceedings.

Mr Abolnasr then proceeded to address the key arguments of the defence case and submitted a written copy of his closing remarks:

- There has been a clear lack of accuracy in prior investigation.
- The inapplicability of Article 1 of the Human Trafficking Law and the exclusive features of the trafficking crimes which requires 3 criminals acting as a criminal group. There is no

evidence in the investigations, forensic report, technical report etc, that the other defendants have a role and that the allegations are against Ms Hegazy and her husband as founders of the organisation.

- The lack of evidence proving any for sexual assaults against the children
- The lack of proof of torture or kidnapping incidents in the submitted papers.
- The incorrect claim that the organisation is illegally established because according to the 6th art of 84 of 2002 law it is legally established. Since 60 days had passed since submission by the founders of the required documents and they opened a bank account in the name of the organisation which could not have been opened unless the MOSS gave an acceptance document for the organisation.
- Police Documents were not handed over showing the father's complaint.
- No evidence of trafficking and sexual assault charges
- On protests - according to the mentioned dates in the investigations there were NO demonstrations in the specific locations at that time. He submitted all news published about those days and regions.
- Mr Abolnasr submitted a written copy of his closing speech.

On the fourth day, the defence statements continued. Ahmed Saad made submissions on behalf of Ms Hegazy and her husband He agreed with and built upon Mr Abolnasr's statement and submitted a written copy of his remarks and added the following points:

- That Aya should be released based on art 143 of criminal procedure law since she has passed the legal duration of pre-trial detention (2 years).
- The lack in investigation records submitted for the case.
- The exclusivity of the police officer in receiving the complaint, doing the raid and arrest as well as the investigations.
- Illegality of the process of confiscating items.
- The inconsistencies with the police statement.
- The evidence that the children were beaten up in Asbakeya police station and not Belady organisation.
- The prosecution is not neutral in the case. They disregarded the statement of the wife of Khaled (the father) and refused to document other witness statements.
- The prosecution stated that the children were locked in the apartment, despite the fact that the apartment was on first floor in a public street with open windows and a very busy neighborhood.

- If she was a criminal, it would be illogical for Aya to go to the media about the organisation knowing that eyes will be on her and all the children who confirmed they were being treated well.

Ahmed closed and handed over his written full statement.

The other lawyers then made statements on behalf of the remaining defendants.

In sum they too highlighted the illegalities surrounding the arrests, which were made without prior authorisation from the prosecutor, despite taking place two weeks after the first arrests. They highlighted the contradictions in the statements of the children between what they said at the police station and in Court and raised concern over the mishandling of confiscated items that were not sealed and may have been interfered with.

They repeat requests for prosecution witnesses to be presented for examination before a Court, for MOSS to provide documents on the organisation and for police records on the complaints to be submitted to court.

These requests are made so that their statements can be complete. These requests are dealt with by the judge at the end of the statements. They will make another statement if the requests are approved, but they are normally ignored by the judge. But the defence insists on having the requests documented in the court records since that will help them when if the appeal the case to the court of cassation that first court was not following the procedures.

On the fifth day none of the observers were available to attend, the interpreter attended and reported back to Dr Christou. The statements continued.

A point to note is the lack of any material evidence as submitted by the court. The forensic report which proved 5 out of 20 child had engaged in homosexual sex but this could not be linked to the time they were at the organisation.

On the fifth day, Ms Hegazy made a statement to the Court where she reminded the Court that she chose to return from the USA to set up Belady to help the children of her country, that they had an open-door policy, and that the premises were on a popular street near Tahrir Square, making it impossible to keep 20 children against their will. She was the one who called the police and was shocked when she was arrested. She highlighted that she had been in detention for 1129 day.

Her husband also made a statement highlighting his desire to do good and to help the children and Egypt move forward.

The other defendants also made some very short statements.

Court adjourned to 23 March when the judge said he would deliver his decision; however, on 23 March the court then adjourned to 16 April without providing a reason.

The 16 April 2017 Hearing

Shortly before 11am, while they waited for the interpreter near the court building, the observers saw photographs being posted to twitter by journalists inside the courtroom (from 10.52am onwards). The

defendants had already been locked in the cage in the courtroom and a large number of other people were present in the courtroom.

They arrived at the court at around 11.15am and managed to gain access to the courtroom itself, although this entailed discussions with security officials and it was not clear that access was being granted to all members of the public wishing to attend.

By the time the observers gained access to the courtroom, it was extremely busy. A large number of journalists, foreign and local, were present. The courtroom contained insufficient seats for all those present and throughout the hearing many people (including defence counsel) stood crowded together in the area immediately in front of the bench. The defendants and Ms Hegazy were again held in a large cage inside the courtroom, along with several other persons. With the exception of Aya Hegazy, it appeared that all the others held in the cage were male.

After addressing other listed matters, Judge El Feqy then moved to Ms Hegazy's case, identifying the eight accused, and immediately stating that all eight were acquitted of all charges. The news was greeted with yelling and open celebration in the courtroom. However, no reasons were given for the verdict, and the observers were informed that a reasoned written decision would follow.

Following the announcement of the verdict, the judges left the courtroom. The defendants remained in the cage., with family members and journalists crowding around it to try to touch them, speak to them or photograph them.

The Verdict & Release

Ms Hegazy and all the other defendants in the court were all found not guilty on all counts.

The observers were able to observe the male defendants leaving the court building. They were accompanied by heavily armed security guards and placed in the enclosed back of a prisoner transport truck. It was clear that they continued to be treated as prisoners despite their acquittal.

The observers did not see Ms Hegazy's departure from the court, which occurred separately. They were informed that she was also accompanied by guards and returned to prison.

It took three days for the defendants to be released after their acquittal, with one defendant being kept an extra day due to an error in paperwork. Defendants release is dependent on formal legal steps being taken after the acquittal, including their return to prison and processing by the local police administration. However, even after processing, the police cannot release an individual until they receive verification from the prosecution service that the verdict of acquittal is indeed the verdict of the court. Ms Hegazy's lawyer and family were unsurprised by the prospect of a few days delay as this is the routine process for release in Egypt.

By law, the court has 30 days to issue its reasons, but Mr Abolnasr's expectation from his experience was that the reasons were likely to be available much sooner, perhaps within days. At the time of writing this report the written reasoned judgment has yet to be issued by the judge.

Following the Verdict

Mr Abolnasr explained the post-acquittal legal procedures to the observers.

Release of the acquitted detainees

Despite all eight defendants having been acquitted on all counts, the six who have been held in pre-trial detention were not immediately released. Their release is dependent on further formal legal steps being taken. They would first be returned to the prison, and then dealt with by the police administration in the local area where the case was commenced. Before the police are permitted to release the individuals, they must receive verification from the prosecution service that the verdict of acquittal is indeed the verdict of the court.

Because Monday 17 April is a holiday in Egypt, prosecutors would not be available to verify the verdict until at least Tuesday 18 April. Mr Abolnasr expected that the detained defendants might be released on Tuesday 18 or Wednesday 19 April.

Mr Abolnasr and the other lawyers and family members present were unsurprised at this, and described to us routine delays in release of acquitted defendants.

Written reasons

Written reasons for the judgment will be issued in due course. By law the court has 30 days to issue its reasons, but Mr Abolnasr's expectation from his experience was that the reasons were likely to be available much sooner, perhaps within days.

Appeals

Following an acquittal, the prosecution service may request leave to appeal from the Court of Cassation. This must be done within 60 days of the announcement of the verdict rather than from the date when the written reasons are provided. However, despite the possibility to request leave to appeal, an acquittal is self-executing, and therefore acquitted persons are to be released from detention pending any appeal proceedings.

Mr Abolnasr said that it is not usual for the prosecutor to appeal an acquittal, but he considered it unlikely that they would do so in this case. The Prosecution did not appeal by the end of the 60 day period.

Compensation for period spent in detention

Mr Abolnasr said an acquitted individual can seek compensation for the time spent in detention under Egyptian law. Mr Abolnasr emphasised that he did not yet have instructions on whether to pursue such a claim and that it would be a matter for his clients, taking into account what he considered to be potential risks of and significant amount of time in pursuing such a claim.

Part III: Evaluation of the Trial

The legal standards applicable to Egypt are found in the International Covenant on Civil and Political Rights 1966 (ICCPR), chiefly Article 9 and 14, which are set out below. They are also reflected in relevant sections of the African Charter, which Egypt has ratified,²³ and found in the Egyptian Constitution of 2014.

These legal provisions are set out followed by a short summary of the relevant international law. This is quoted from the Trial Observation Manual for Criminal Proceedings – Practitioners’ Guide of the International Commission of Jurists, 2009 with some modifications.

The report then assess the compliance of the proceedings against Ms Hegazy’s case with the following rights and guarantees arising from Articles 9 and 14 ICCPR:

- Right to liberty
- Right to an independent and impartial competent court
- Right to a public hearing
- Right to be informed of the charges
- Right to adequate time and facilities to prepare one’s defence with legal assistance
- The right to be tried without undue delay
- The right to legal assistance

RIGHT TO LIBERTY

Article 9, ICCPR

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone 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.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 71, Egyptian Constitution

Any person arrested or detained shall be informed forthwith of the reasons for his arrest or his detention. He shall have the right to communicate with whoever he sees fit and inform them of what has taken place and to ask for help in the way organised by law. He must be notified, as soon as possible, with the charges directed against him. Any person may lodge a complaint to the Courts against any measure taken to restrict his personal freedom. The Law shall regulate the right of complaint in a manner ensuring a decision regarding it within a definite period or else release shall be imperative.”

²³ Where the relevant provision of the Egyptian Constitution has not been provided, it is because we have been unable to confirm a translation at the time of drafting this interim report and it will be set out in the final trial monitoring report.

African Charter

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7

Every individual shall have the right to have his cause heard. This comprises:

1. The right to an appeal to competent national organs against acts of violating his fundamental rights as recognised and guaranteed by conventions, laws, regulations and customs in force;
2. The right to be presumed innocent until proved guilty by a competent court or tribunal;
3. The right to defence, including the right to be defended by counsel of his choice;
4. The right to be tried within a reasonable time by an impartial court or tribunal.

The provisions of the African Charter are supplemented by the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa which require that:

- (1.a) States shall ensure that the right of everyone on its territory and under its jurisdiction to liberty and security of person is respected.
- (1.b) States must ensure that no one shall be subject to arbitrary arrest or detention, and that arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorised for that purpose, pursuant to a warrant, on reasonable suspicion or for probable cause.
- (1.c) Each State shall establish rules under its national law indicating those officials authorised to order deprivation of liberty, establishing the conditions under which such orders may be given, and stipulating penalties for officials who, without legal justification, refuse to provide information on any detention.
- (1.d) Each State shall likewise ensure strict supervision, including a clear chain of command, of all law enforcement officials responsible for apprehensions, arrests, detentions, custody, transfers and imprisonment, and of other officials authorised by law to use force and firearms.
- (1.e) Unless there is sufficient evidence that deems it necessary to prevent a person arrested on a criminal charge from fleeing, interfering with witnesses or posing a clear and serious risk to others, States must ensure that they are not kept in custody pending their trial. However, release may be subject to certain conditions or guarantees, including the payment of bail.

Summary of International legal principles

Everyone detained shall be entitled to trial within “a reasonable time” or to release pending trial. Pre-trial detention should not be the general rule and it should be used in criminal proceedings only where necessary and as a last resort. It should be used for the shortest possible time, when required to meet the needs of justice, or of the investigation of the alleged offence or in order to protect society and the victim. Pre-trial detention should be the exception, and bail should be granted, except in situations where it is likely that the accused would abscond, destroy evidence, influence witnesses or flee from the jurisdiction of the State.²⁴ However, even in such circumstances, the risk of such dangers must be properly assessed and explained by the court without blanket statements. Further, the court must assess properly what other measures, short of detention, could address any of the risks posed.

Detention must not be arbitrary. “Arbitrariness” has been defined to include an element of inappropriateness, injustice, lack of predictability and lack of due process of law. Where trial does

²⁴ Human Rights Committee, Views of 2 April 1997, *Michael and Brian Hill v. Spain*, Communication No. 526/1993, para. 12.3.

not proceed in a reasonable time, continuing detention must be reviewed by a judge and assessed in terms of its length and continuing necessity.

The right to a fair trial also incorporates a reasoned decision from the judge, which must be provided in respect of any refusal to release an individual from detention. There must be a right to appeal to a higher judicial or competent authority where an application for release is refused. The right to challenge the lawfulness of detention before a tribunal, court or judge is a non-derogable right.²⁵ It is crucial for protecting the right to liberty and preventing arbitrary detention.

FACTS

Aya Hegazy was held in pre-trial detention from 2 May 2014 to 20 April 2017, lasting 1,081 days (2 years and 11 months). Her lawyers requested at every available opportunity for her to be conditionally released (bail), however this was never granted. As far as we know, no reasons were ever formally provided by the judge either orally or in writing. Upon enquiring, the lawyers would be told by the court clerks that she would remain in detention, or they would receive their answer when Ms Hegazy was being taken back to the prison. As far as we were able to ascertain, no assessment appears to have been conducted as to whether continued detention is justified, be it according to the provisions of Egyptian law, or by international standards. Her detention was renewed at each adjourned hearing despite the length of delays between each hearing being up to six months.

FINDINGS

The observers conclude that there are very grave concerns arising out of the substantial length of detention. As such, the pre-trial detention of Ms Hegazy violated her inherent right to liberty, in breach of Egypt's international legal obligations to use pre-trial detention as an instrument of last resort and only by reason of necessity.

International law provides that if a trial cannot be achieved in a reasonable timeframe, defendants held in pre-trial detention should be released unless their continued detention can be justified as necessary and proportionate.

Aya Hegazy was detained for a period of 2 years 11 months. No meaningful assessment appears to have been conducted as to any risk that may justify detention. No evidence was provided to the court to justify any risk of absconding, nor any measures sought to guarantee Ms Hegazy's presence in court. No supporting evidence was provided by the prosecutor that conditional release would endanger the proceedings. No reasons whatsoever were provided for the continued detention or the refusal to release.

There does not appear to be a right of appeal against the refusal to release a defendant from pre-trial detention; therefore no effective domestic remedy existed to challenge obvious procedural flaws in her continued detention.

²⁵ See, *inter alia*: Human Rights Committee, *General Comment No. 29*, paras. 14 and 16 and *Concluding Observations of the Human Rights Committee on Albania*, CCPR/CO/82/ALB, 2 December 2004, para. 9; Inter-American Court of Human Rights, *Advisory Opinion OC-8/87 of 30 January 1987, "Habeas corpus in emergency situations"*, Series A No. 8, and *Advisory Opinion OC-9/87 of 6 October 1987, "Judicial guarantees in states of emergency"*, Series A No. 9; Article 27 of the *American Convention on Human Rights*; Articles 4 and 14 of the *Arab Charter on Human Rights*; Article 17.2(f) of the *International Convention for the Protection of All Persons from Enforced Disappearance*; Principle 32 of *The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*; Principle M (5)(e) of the *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa*; Article 9 of the *Declaration on the Protection of All Persons from Enforced Disappearances* and Resolution 1992/35 of the former UN Commission on Human Rights, entitled *habeas corpus*.

The observers note that none of the delays in Ms Hegazy's case were caused by herself or the defence team, but solely caused by adjournments ordered by the Court, in particular by the first presiding judge.

The observers find that Aya Hegazy's right to be tried within a reasonable time, or to release, was violated.

It is necessary to note that there is a significant systemic background to this problem. A report from the Egyptian Initiative for Personal Rights (EIPR)²⁶ records that at least 1464 individuals are currently being held in pre-trial detention beyond the legal limits. The report asserts that the State is using pre-trial detention as a political and punitive tool. In recognition of the lack of appeal rights, EIPR has submitted a request to the Prime Minister, the speaker of the House of Representatives, and the chair of the Judicial Bodies Council, urging any or all of them to formally request an interpretation from the Supreme Constitutional Court regarding courts' divergent interpretations of Articles 143 of the Code of Criminal Procedure, which sets a maximum limit on pre-trial detention of 18 months to 2 years in criminal cases, and of Article 380, which sets no limit.

Accordingly, and noting both the individual features of this case and evidence which suggests a widespread use of excessive and politically-motivated pre-trial detention, the pre-trial detention of Ms Hegazy violated her inherent right to liberty, in breach of Article 9 ICCPR which requires the use of pre-trial detention as an instrument of last resort and only by reason of necessity. In these circumstances, and also those considered below in relation to Article 14 ICCPR, Ms Hegazy's detention was arbitrary.

RIGHT TO A TRIAL BEFORE AN INDEPENDENT, IMPARTIAL AND COMPETENT TRIBUNAL ESTABLISHED BY LAW

Article 14 ICCPR

- (1) All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

²⁶ Detention Without End, 10 May 2016 – EIPR:

http://eipr.org/sites/default/files/reports/pdf/endless_imprisonment_0.pdf

The authors also note a report by the Robert Kennedy Centre of February 2016: The Problem of Punitive Pre-trial Detention in Egypt, which asserts: "Since June 2013, Egyptian authorities have increasingly used pretrial detention as a punitive measure to silence activists, journalists, and peaceful political dissidents. The number of pretrial detainees in Egypt has exponentially increased and the periods of pretrial detention have exceeded international legal standards and even domestic maximums."

Summary of International legal principles

The accused is entitled to a trial before an independent, impartial and competent tribunal established by law. This is an absolute right that may suffer no exception.²⁷ Only a court of law may try and convict a person for a criminal offence²⁸ and any criminal conviction by a body not constituting a tribunal is prohibited under international human rights law.²⁹ A situation where the functions and competences of the judiciary and the executive are not clearly distinguishable or where the latter is able to control or direct the former is incompatible with the principle of an independent and impartial tribunal.

All tribunals, courts and judges must be independent from the executive and legislative branches of government as well as from parties to the proceedings. It means that neither the judiciary nor the judges of whom it is composed can be subordinate to any branches of the State or the parties to the proceedings.

FINDINGS

There is no evidence to suggest that any of the judges in the present case lacked independence or impartiality. Nevertheless, the positioning of the prosecutor alongside the judges could be said, at least, to give the appearance of a lack of separation between prosecution and judiciary.

THE RIGHT TO A PUBLIC HEARING AND THE PRESUMPTION OF INNOCENCE

Article 14 (1) ICCPR

- (1) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

Article 169, Egyptian Constitution

The sessions of Courts shall be public, unless a Court decides to hold them in camera for considerations of public order or morality. In all cases, judgments shall be pronounced in public sessions.”

Article 67, Egyptian Constitution

The accused is innocent until proven guilty in a fair court of law, which provides guarantees for him to defend himself.

Summary of International legal principles

All trials in criminal matters must, in principle, be conducted orally and publicly. Having a public hearing ensures transparency of proceedings and thus provides an important safeguard for the interest of the individual and society at large.³⁰ This includes that adequate facilities should be provided to enable interested members of the public to attend hearings and trials; and all hearings

²⁷ Human Rights Committee, General Comment No. 32, paras. 18 and 19; Human Rights Committee, General Comment No. 32, paras. 18 and 19; Human Rights Committee, Views of 28 October 1992, Miguel González del Río v. Peru, Communication No. 263/1987, para. 5.2. See also the Arab Charter on Human Rights, Articles 4(c) and 13(1)

²⁸ Human Rights Committee, General Comment No. 29, States of Emergency: Article 4, CCPR/C/21/Rev.1/ Add.11, 31 August 2001, para. 16

²⁹ Human Rights Committee, General Comment No. 32, para. 18. See also: Inter-American Commission on Human Rights, Report No. 49/00 of 13 April 2000, Case No. 11.182, Carlos Molero Coca et al. (Peru), para. 86

³⁰ Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, para. 28. See also: European Court of Human Rights, Judgment of 8 December 1983, *Axen v. Germany*, Application No. 8273/78, para. 25; Inter-American Court of Human Rights, Judgment of 30 May 1999, *Castillo Petruzzi et al. v. Peru*, Series C No. 52, para. 172.

should be open to the general public and not be limited to a particular category of people.³¹ Only in exceptional circumstances do courts and judges have the power to exclude the public.

The right to be presumed innocent until proven guilty according to law is an absolute right, which can never be derogated from, restricted or limited³².

The presumption of innocence: i. places the burden of proof on the prosecution; ii. guarantees that guilt cannot be presumed unless the charge has been proven beyond reasonable doubt³³; iii. ensures that the accused has the benefit of doubt; and iv. requires persons accused of an offence to be treated in accordance with this principle.

Persons undergoing trial, whether or not in detention, should be treated as innocent as long as their guilt has not been established by a court in accordance with the law. Normally defendants should not be shackled or caged during trial or presented to the court in any other way that gives the impression they may be dangerous criminals. They should also not appear in the courtroom in prison uniform but have the right to wear civilian clothes.

FACTS

Hearings took place in Abdeen Court. As far as access to the courtroom is concerned, it is open and accessible to the public subject to approval by the court security. However, access was not straightforward since the interpreter had to negotiate the observers' entry with the court security. This may have been a routine security check; however, during the first hearing observers attended in February 2016, there were several attempts to remove the observers from the court room by security guards. The observers were only allowed to remain after insisting that their removal must be ordered by the judge.

In terms of the public nature of the hearings, the observers find that Aya Hegazy was not consistently provided a public hearing, in violation of Article 14(1) ICCPR and Article 169 of the Egyptian Constitution. The Judges remained in chambers throughout the proceedings. Observers did not see the prosecutor enter the courtroom at any stage; it is believed that the prosecutor was already in chambers with the Judge before the hearings began at 10am, and remained after observers had left. Defendants were taken into the judge's chambers by the court security. As detailed above, only the defence lawyers were allowed to enter chambers at earlier hearings. It was not until the allocation of the second presiding judge that international observers were allowed entry. Inconsistent information was provided about whether the proceedings would be heard in public or not. At the 17 February hearing, the defendants, lawyers and observers were informed that the matter would be conducted in open court. However, the position was revised for reasons that were not communicated to observers.

Later in proceedings, on allocation of the new judge, observers were allowed access to chambers. It was also explained that parts of the proceedings were being held in private due to the sensitive nature of the evidence relating to child abuse, although no reasons were provided for not reverting to a public hearing for other parts of the hearing.

³¹ Human Rights Committee, *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, para. 29.

³² Human Rights Committee, *General Comment No. 29, para. 11, and General Comment No. 32, para. 6*; InterAmerican Commission on Human Rights, *Report on Terrorism and Human Rights, OEA/Ser.L/V/II.116, Doc. 5 rev. 1 corr., 22 October 2002, paras. 247, 253 and 261*; and Inter-American Commission on Human Rights, *Report No. 49/00 of 13 April 2000, Case No. 11.182, Rodolfo Gerbert Asencios Lindo et al. (Peru)*, para. 86

³³ Human Rights Committee, *Views of 24 July 2006, Francisco Juan Larrañaga v. The Philippines, Communication No. 1421/2005, para. 7.4.*

FINDING

The observers find that Aya Hegazy has not consistently been given a public hearing, in violation of Article 14(1) ICCPR and Article 169 of the Egyptian Constitution. As set out above, hearings attended by the observers were held in the judge's private chambers and not in the public courtroom. Initially, no reasons were given for this. In the absence of any reasoning being provided by the judge on those occasions, none of the exceptions provided by Article 14(1) to the right to a public hearing apply. The failure to provide reasons earlier in the proceedings amounted to an interference with Ms Hegazy's right to be presumed innocent.

However during the February 2017 hearings the judge did explain that further proceedings being held in private was due to the sensitive nature of the evidence relating to child abuse the reasons for holding the hearing in private and these would fall within the permitted exceptions.

On the face of it, it appears that the first judge's reason for open justice to be denied may have been to prevent publicity before international observers and missions. Whilst the second judge did provide reasons why parts of the hearing relating to child abuse. However when the Court returned to hearing non-sensitive evidence, or hearing submissions from counsel, the hearing should have reverted back to being in public. This did not occur and no further reasoning was provided. We therefore find that there was a violation of Ms Hegazy's right to a public hearing when the first judge failed to provide any reasons and when the second judge failed to revert to a public hearing.

INFORMED OF CHARGES

Article 14(3)(a) ICCPR

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

Summary of International legal principles

The first minimum guarantee in criminal proceedings is the right for all persons charged with a criminal offence to be informed promptly and in detail, in a language that they understand, of the nature and cause of the charge(s) against them. This guarantee applies to all charges of a criminal nature, including those brought against people who are not in detention, but not to criminal investigations that precede the laying of charges. However, this right arises if, in the course of an investigation, the court or an authority of the prosecution decides to take procedural steps against a person suspected of a crime or publicly names him or her as such.³⁴

FACTS

Ms Hegazy was informed of the charges against her. In fact the nature of the charges were also made public.

FINDINGS

There is nothing to indicate that Aya Hegazy was not informed of the charges against her. In fact the charges were communicated to Ms Hegazy early on, as well as being disclosed to the public and media. The observers thus find no interference with this right.

³⁴ Human Rights Committee, General Comment No. 13, Equality before the courts and the right to a fair and public hearing by an independent court established by law (Article 14) para. 8

THE RIGHT TO PREPARE DEFENCE

Article 14(3)(b) ICCPR

To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

Summary of International legal principles

The right of the accused to have adequate facilities to prepare their defence requires that they should have the ability to communicate, consult with and receive visits from their lawyer without interference or censorship and in full confidentiality.³⁵ Interviews between detainees and their lawyers may be conducted within sight, but not within the hearing, of law enforcement officials.³⁶

FACTS

Our understanding is that Aya Hegazy has never been able to communicate with her lawyer in private. All visits by her lawyer took place during general visitation times in the same room as other visits with prison guards patrolling the room. Nor do facilities exist at court for defendants to meet with their lawyer. The only opportunity for them to communicate and consult is if the lawyer can approach the cage where all defendants are held and communicate with their client before being ushered away by the court security.

We note that this issue is not unique to Ms Hegazy's case and is a systemic issue within the Egyptian criminal justice system.

FINDING

The observers find that there has been a violation of Ms Hegazy's right to prepare a defence and to communicate with her lawyer given that Aya Hegazy was never able to communicate with her lawyer in private. The extremely limited right to communicate with counsel in circumstances where they are overheard by law enforcement officials, and thus without confidentiality, interferes with Aya Hegazy's rights pursuant to Article 14(b) ICCPR.

The observers note that this issue is not unique to Ms Hegazy's case and is a systemic issue within the Egyptian criminal justice system; as such the observers also recommend that urgent steps be taken by the Egyptian government to address this.

Additionally, there was a severe lack of disclosure in Ms Hegazy's case. For example, the defence never received a copy of the report produced by the technical committee which reviewed the confiscated computer and laptops. The only access they had to this report was the partial review carried out by the judges during a hearing.

³⁵ Human Rights Committee, *General Comment No. 32*, para. 34; *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, Principle 18 (3) and the *UN Basic Principles on the Role of Lawyers*, Principle 8.

³⁶ Principle 18 (4) of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*.

THE RIGHT TO BE TRIED WITHOUT UNDUE DELAY

Article 14(3)(c) ICCPR

To be tried without undue delay;

Summary of International legal principles

The right of the accused to be tried without undue delay means that he or she must be tried within a reasonable time. The authorities must ensure that the entire criminal proceedings, from the pre-trial investigation stages until the final appeal, are completed within a reasonable time. The time period considered in determining whether this right has been respected begins from the time of the very first step in the proceedings (for example, and depending on the circumstances, when the suspect is arrested, when he or she is informed that charges have been brought against them or when they are notified that they are going to be tried) and ends when all possible review and appeal mechanisms have been exhausted and final judgment is pronounced.³⁷

Anyone arrested or detained on a criminal charge has the right to be tried within a reasonable time and without undue delay, or to be released pending trial.³⁸ Both prolonged detention without trial and prolonged detention while awaiting trial that has been unduly delayed are prohibited by international law and constitute arbitrary detention. In cases involving serious offences such as murder, and where the accused is denied bail by the court, the accused must be tried as quickly as possible.³⁹

In cases in which the court has refused to grant the defendants bail, the latter must be tried as quickly as possible.⁴⁰

FACTS

The delay in bringing this case to trial was substantial. None of the adjournments were required as a result of Ms Hegazy or her legal team's conduct.

Some of the adjournments were the result of bad case management by the prosecutor, the court or both: prosecution witnesses did not attend, prosecution evidence was not ready to be presented to the court, or the wrong committee was constituted by the court.

FINDING

The observers find that there has been a violation of Aya Hegazy's right to a timely trial as provided by Article 14(3)(c) ICCPR.

³⁷ Human Rights Committee: *General Comment No. 13*, para. 10; Inter-American Court of Human Rights, Judgment of 12 November 1997, *Suárez Rosero v. Ecuador*, Series C No. 35 paras. 70-72.

³⁸ See, Article 38 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and Human Rights Committee, Views of 4 April 1995, *Leroy Shalto v. Trinidad and Tobago*, Communication No. 447/1991, para. 7.2.

³⁹ See, *inter alia*, Human Rights Committee: *General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial*, para. 35; Views of 19 July 1995, *Isidora Barroso on behalf of her nephew, Mario Abel del Cid Gomez, v. Panama*, Communication No. 473/1991, para 8.5; and Views of 16 July 2001, *Sandy Sextus v. Trinidad and Tobago*, Communication No. 818/1998, para. 7.2.

⁴⁰ Human Rights Committee: *General Comment No. 32*, para. 35.

THE RIGHT TO LEGAL ASSISTANCE

Article 14(3)(d) ICCPR

To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

FACTS & FINDINGS

Aya Hegazy has had legal representation during all hearings. Therefore, on the face of it there has been no breach of this right.

However, although legal representation has been permitted, the role of the lawyer has been significantly undermined by the fact that there are no opportunities for lawyer-client confidential communication when the defendant is like Ms Hegazy in detention. Lawyer visits take place at the same time as general visits in the open visiting room with guards circulating. In addition there is limited (if any) communication at court. When permitted by the court security, any communication took place through the cage and whilst Ms Hegazy was inside the cage with all other defendants. Finally there is a severe lack of disclosure, for adjournment.

All the above have a significant impact on Ms Hegazy's right and ability to be able to prepare a proper defence, and therefore on her right to a fair trial more generally.

Conclusions and Recommendations

For the reasons set out above the observers find that the pre-trial detention and criminal proceedings to which Aya Hegazy has been subjected to represent serious violations of her right to liberty and a fair trial pursuant to Articles 9 and 14 ICCPR, the ACHPR and the Egyptian Constitution. Given what were clear violations in the defendants' right to a fair trial, the verdict of not guilty is welcomed. The procedure followed was manifestly incapable of producing a fair verdict of guilt.

A more detailed comment on the verdict and its reasons must await the court's written reasons which at the time of writing had yet to be issued by the judge.

The verdict is a positive development when seen against the backdrop of frequent adjournments, most occurring without any reasons being given. The right to be tried without undue delay requires that adjournments only occur where absolutely necessary, and this is particularly so where defendants are in custody.

There are many disturbing features in Ms Hegazy's case:

- Unreasonable length of the pre-trial detention and failure to give reasons for the delay;
- Significant, lengthy adjournments between hearings, set without any notable or reasoned consideration of impact upon Ms Hegazy or upon the consequences for the fairness of the trial;
- Unreasoned refusals to grant conditional release on bail;
- Inability to meet with her lawyer in private;
- Repeated failures of the prosecution to produce evidence before the court after such a lengthy detention, coupled by the tolerance of the first Judge of their failures to produce that evidence at a scheduled hearing;
- Failure of the first Judge to permit international observers into that closed session, as well as the failure to list this matter for trial in an expeditious manner all suggest that the detention was punitive.

As such, the observers formed the view that there have been a violation of the following of Ms Hegazy's rights:

1. Article 9 ICCPR: Right to liberty, in relation to length and the lack of evidential basis and judicial reasoning for her pre-trial and post-acquittal detention.
2. Article 14(1) ICCPR: Right to a public hearing, by reason of the fact that the hearings whilst the first judge was presiding were held in the judge's private chambers and not in the public courtroom with no reasons provided.
3. Article 14(2) ICCPR: Right to be presumed innocent, due to the length of pre-trial detention.
4. Article 14(3)(b) ICCPR: Right to prepare her defence, in terms of both inadequate facilities and the inability to communicate confidentially with her lawyers.
5. Article 14 (3)(c) ICCPR: Right to a trial without undue delay, given that the excessive adjournments are not attributable to the defendant and are for the most part unjustifiably long.

Egypt is obliged under Article 2(3) of the ICCPR to provide a remedy to those wrongly detained. At the time of writing the observers are not aware of any application for compensation being made by Ms Hegazy; however often such applications are postponed until it is clear that the Prosecutor will not appeal against acquittal.

It is unacceptable that persons acquitted of all charges should remain in detention not only for hours but for days after that verdict. Even where continued imprisonment is in accordance with domestic law, it can nonetheless violate the prohibition on arbitrary detention contained in Article 9 ICCPR where it is

unreasonable and unnecessary. Even short periods of detention, for less than one day, can violate this prohibition. In circumstances where individuals have been found not guilty by a court, continuing to hold them in prison for several days thereafter cannot be justifiable by reference to bureaucratic procedures or official holidays. Of particular concern is the use of procedures which make an acquitted person's release dependent on cooperation from prosecuting authorities. This approach not only contributes to delays but fails to provide an adequate safeguard against the risk that prosecuting authorities can become politicised or otherwise act without impartiality and independence.

While the procedure followed in this case may comply with Egyptian law and regular practice, it contravenes international standards and Egypt's obligations under article 9 ICCPR. The procedures should be modified to ensure the immediate release of acquitted persons and without reliance on procedural steps taken by prosecutors.

Recommendations

The authors of this report wish to record that many of the issues identified in this report are not unique to the case of Aya Hegazy, but are systemic within the Egyptian criminal justice system.

The observers have spoken to many lawyers, activists and other international observers to understand the way in which the Egyptian criminal justice system operates, and have themselves observed in part fundamental flaws in the system, such as the use of cages to hold defendants in court, which demean the integrity of defendants and interfere with the presumption of innocence, or the lack of provision for defendants to have confidential communications with their lawyers, both in detention and at court.

We continue to support the application by EIPR for the Egyptian Supreme Court, or as may be appropriate, to provide urgent clarification on the status of Article 143 of the Egyptian Constitution in respect of the ceiling limits on pre-trial detention.

We recommend that steps be taken by the Egyptian government to address these failings, particularly (but not limited) to:

- The holding of defendants in cages at court, which is demeaning and dehumanising and which can negatively influence the presumption of innocence;
- The lack of provision for confidential client-lawyer communications, both in detention and at court;
- The apparent ease, frequency and excessive use of pre-trial detention which may be arbitrary and constitutes an interference both with a defendant's right to liberty and which may interfere with the presumption of innocence;
- Frequent failure to provide reasons for refusal to order conditional release;
- Reforms to ensure that there is an effective and prompt right to appeal any refusal to order conditional release and that there is provision for compensation for any unlawful detention.
- The continued detention of acquitted person.

Annex I

19-23 February Hearing

Day 1

Witness One (Child)

The witness provided a birth certificate and confirmed that he was 16 years old.

What do you know about the case?

I was a resident in the organisation and they were treating me in very good way and there was nothing wrong there.

Have you been assaulted in the organisation sexual or physical?

No.

The father who filed the complaint said that you were kidnapped and holding you inside a room nude?

No.

Have you been in the organisation with your consent?

Yes

How many days you stayed in the organisation?

I do not know.

Do you know someone called Mohamed Elsayed (7th defendant) and have you seen him inside the organisation?

No.

Did Mohamed Hassanein ask you to participate in any protests?

No

Have you been photographed nude you or any of the children?

No.

Have you been taking any educational classes in the organisation?

Yes, I learnt how to read and write from the organisation.

Have you had the chance to visit your parents while you were in the organisation?

Yes, when I asked, they took me there and also my friends.

Have you been physically assaulted at the police station?

Yes. I do not know his name but he was beating us with the belt.

Witness Two (Witness 1 Child's Mother)

What do you know about the case?

There were domestic issues, he (my son) ran away, I filed a complaint that he disappeared. After 22 days Amira the 4th defendant said that my son was depressed and at first he refused to tell them about his address and she managed to get him to come back home. I am divorced and my son fears his father a lot. He is scared to stay with me at home. Amira asked if the mother would allow him to stay with them because my son wants to and that it would be better for him to stay at an address not known by his father. Amira gave me the organisation's address and I visited him and I asked him again to come back but he insisted to stay at the organisation. After one month, I left my apt and went back to another governorate to live with my mum and I continued to visit him. He was happy at the organisation. I heard about the arrest later on, 10 days after it happened.

For how long was your son resident at the organisation?

He had disappeared for 21 days and 2 months after resident in the organisation.

Why did you not give your statement to the prosecution?

I went there but the prosecutor refused to document my statement.

Do you have any information about any assaults your son has been subjected to?

No

During your visits to your son, did you see any assaults on the children in the organisation?

No they were playing and fine.

Witness Three (Child, 14 years old)

What do you do?

I am a student.

What do you know about the picture (where he was with pants but no trousers)?

I am the nephew of the 6th defendants, we were at my house and we were playing Karim and Mohamed Sayed and Mohamed Hassanein and they were joking taking a photo of me without my trousers so that I would listen to my mum.

How do you know the defendants?

Karim is my uncle and the others are his friends.

The court clerk was asked to find the photo in the files so that they can confirm it is of the witness.

Are you the one in the picture?

It is me yes.

Witness Four: (Mohamed Mahmoud, 43 years old, technician.)

What do you know about the case?

I know the organisation because I made eyeglasses for one of the children based on a request of Mohamed Hassanein.

Do you know what was happening inside the organisation?

I visited them couple of times while I was doing the eye glasses for the child.

Have you noticed any assaults on the children?

No.

Witness Five: (Eslam Abolyazeed)

Witness confirms that he is 23 years old and is a student in the Faculty of Commerce, living in Dokki

What do you know about the case?

Everything I know is that the Belady organisation does charity work, I dealt with them couple of times and I have not seen anything bad.

Do you know the defendants?

Yes, they are friends.

Have you seen any assaults on any of the children?

No.

Have you seen any crimes or wrong acts?

No.

Have you participated in any of the organisation's activities?

Yes, in the first activity which was charity party.

Where was the party?

Abdeen Square.

Was there any prior permission from the Ministry of Interior?

Yes of course.

Do you know Mohamed Elsayed and Karim Mohamed in the organisation?

No, they were not in the organisation.

Can you identify the role of each of the defendants in the organisation?

Sherif is the artist but I do not know much.

I just want to testify that every single time I visited I can see the organisation's door is open. They always said it is open for any of the children to stay or leave we cannot force them to do anything.

Defence Application

Upon conclusion of the Defence witness evidence, the defence lawyers requested a week's adjournment to prepare defence statements. They submitted that it was too late in the day for them to commence at the conclusion of the evidence and that had already waited for 7 hours waiting in the courtroom for the case to be called on.

Defence Counsel also asked that the session be held in the courtroom instead of the judges' chamber –albeit restricted to the defendants, their lawyers and trial observer and not open generally to the public. They submitted that the room was too small to accommodate all 7 defendants, their lawyers, the 3 judges, the prosecutor and the 5 trial observers and for the Defence to fairly participate in the hearing. The judge refused the request and said that the hearing would continue in chambers but that he would bring in a small table for the defence to rest their papers.

The judge proceeded to hear the prosecutor's closing statement.

Prosecutor's Closing Statement

The prosecutor started with a verse from Quran. He continued with a piece of poetry about the Egyptians who do not do good for Egypt.

(What follows is so far as possible a verbatim note of his closing statement.)

"In the past we were hearing about people who eat humans and now we are hearing about the ones who carry out human trafficking. The victims sadly are children. I was surprised that I am facing humans because they are inhuman.

They are not human nor Egyptians. The society who gave birth to these people made a mistake. They were driven to assault these innocent children. They are faking being patriots but they are not. On the contrary, they are a black example of this country.

This case didn't start with the complaint being filed by Khaled Gouda (the father), but when they established this illegal organisation. Those first (Aya) and second (Mohamed) defendants used the children in the streets whether sexually, physically and even inciting them to participate in demonstration.

When Khaled Gouda went to the organisation, Aya opened the door and told him no one was there. Sherif opened the door the second time and this is when he went in and found some of the children nude. When the defendants were arrested they stated that Aya and Mohamed are the

co-founders, Sherif (a painter) and Amira both volunteers. The children stated that they were subject to sexual assaults and have been watching pornographic films.

We have confiscated laptops and frozen their bank accounts.

There is a lot of evidence against them.

Khaled Gouda stated that he noticed the children nude and Child Witness 1 nude and locked in one room. The children had mentioned the same thing in their statements. They also said that Mohamed Hassanein took one of the children from the metro saying that they will give him food and shelter then he kept him against his will in the organisation's premises.

The confiscated items included foreign movies with sexual scenes as well as a picture of a lady and in the back some sentences about revolution.

The organisation was not yet legally established as there were no papers.

Also, the defendants went after the children from the shelter where they were kept to change their statement. Zainab (8th defendant) came there and claimed to be one of the children's relative. She promised and gave money to one of the children to change his statement.

The 5 6 7 defendants went after the child KR and threatened him to change his statement and promised an amount of money. They also shot a video when he was giving his new statement.

The police investigation of the child care department and human trafficking department, said that there is criminal group which has established an organisation without following the legal procedures and they attract children promising food and shelter and kept them against their will. The defendants took videos of the children in the streets begging and took these videos to public conferences. Also, they were inciting them to participate in demonstrations against the police and the military.

The forensic report proves that 7 of the children were being subject to sexual intercourse during the time they were located in the organisation.

The above evidence proves the guilt of the defendants."

[He then stated the legal charges and applicable law.]

He then proved the material part of the article is applicable and the intention is there as well and accordingly the human trafficking is applicable.

He summarised and spoke about how bad people are quoting poetry and the Quran again.

The prosecution requested imposing the most severe penalty to save the country from such bad and humiliating examples.

Court adjourned to 13.00 tomorrow.

Day 2

The case was called on at 19.35.

The defence lawyers protested that it was too late to begin and that they were exhausted having waited 6 hours.

The case was adjourned to 14:00 the following day.

Day 3

Defence Statements

Mr Taher Abolnaser, counsel for the first, second and fourth defendants.

Review of Evidence and Restatement of Demands

Mr Abolnaser reiterated previous requests relating to the documents and CD submitted by the defence which he submitted is sufficient to prove the innocence of the defendants. He further said that the statement submitted by the police saying they are unable to bring some of the witnesses in front of the court in addition to the prosecution statement that they lost the CD submitted by the defence all indicates that someone wants to hide evidence or mislead the court. He called upon the court to note this.

At this point, the lawyer for the third Defendant interjected to state that he was withdrawing from proceedings to protest, because the room was too small and lacked adequate facilities for lawyers to properly present their case and participate in proceedings.

The court noted the withdrawal and ordered Mr Abolnaser to continue with his defence statement.

A note of the closing speech is below (this lasted 2 hours; the below note is as accurate as possible):

“I am continuing the statement according to the court wish without taking back my previous request.

There was a mistaken arrest and search because there was no prior authorisation obtained from the prosecution.

Article 30 of the Criminal Procedure Code (CPC) stipulates that a crime shall be deemed a crime *in flagrante delicto* in the following events: if the crime is caught while it is being committed or shortly after; If the perpetrator is chased by the victim or the public while crying out after it has been committed; If the perpetrator is found shortly after committing the crime carrying arms, weapons, baggage, documents or any other items proving that he is the perpetrator of or accomplice of the crime or if there are any indications of guilt.

So how does the police officer’s report relate to one of the above-mentioned situations of *flagrante delicto* justifying his trip to the association’s premises? This takes us to the time lag in what has been stated by the policer officer: he went the first time then called the parents; this has taken hours. After that, he went back, then notified the police (there is no report). The police officer came to the site and carried out the arrest without making a report or hearing the testimony of the complainant and of the two children who claimed that this person had accompanied them to the association although the complainant said that the first child was the

one who guided him to the association premises and went along with him, which means that he was not in the association as this will be made clear later in details.

This demonstrates clearly the attempt of the police officer to fabricate the situation of *flagrante delicto* which provides him with the legal ground for the arrest and the search, especially that we have learnt from your provisions that in the event of a crime, the situation of *flagrante delicto* is a state that is inherent to the crime and not to the perpetrator *per se*.

The police confiscated laptops, a pc and some papers without authorisation.

The defendants were not interrogated legally as they have never been told about the evidence as required according the law.

There was a fraud on what has been said by the prosecution witness in their statements and we have submitted a CD on 11 May 2014 whose contents prove the mistaken statements of the witnesses and the prosecution said it was lost.

It was also proven that the prosecution refused to listen to the statement of Witness 1 child mother who testified in court 2 days earlier and who had been trying to give her statement since May 2014.

Then the CD was not only viewed by the prosecution but also lost by the prosecution which means that the material evidence submitted by the defence is lost and not presented to the Court.

Also, only after immense efforts by the defence was it possible to get Khaled Gouda to Court to testify and we thank the court for their support in this effort.

Khaled Gouda said in front of the court, that he never said that Aya opened the door which is absolutely incorrect, he only said tall girl with glasses (Aya is short and does not wear glasses). He also completely denied that he heard any complaints from the children about assaults.

Child Witness 1 said in front of court how well he was treated and his mother assured the court that she knew her son's location and that Child Witness 1 was getting an education there.

This is evidence of how the evidence was falsely turned against the defendants.

We also wish the court record to reflect that in one of the sessions it was requested that the 9th witness Ahmed Mounir Rady be summoned since he is very important witness, but he never showed up. Accordingly, we demand to listen to the rest of the prosecution witnesses.

We contend that there is no evidence that the crime has been committed, neither in the exhibits, nor in the evidence from the technical report, based on the fact that the items which have been seized were different from the ones which have been produced before the court.

We maintain that the investigations lacked seriousness and were bureaucratic. We even assert that there were no investigations at all. Article (21) of the Criminal Procedure Code stipulates that "the judicial officer shall search for crimes and their perpetrators and shall gather evidence necessary to conduct an investigation with respect to the lawsuit." Article (24) which lists the duties of judicial officers, stipulates that "judicial officers and their superiors shall obtain all

necessary information and carry out relevant inspections with a view to facilitating the verification of facts received or known by any means”.

Since investigations affect the lives of individuals and their freedoms, they must be consistent with the provisions of the Constitution which guarantees personal freedom as an inherent right, the inviolability of homes and of the private life. The Constitution also requires the law, and not any inferior norm, to regulate the conditions of violations of freedoms and rights which are protected by the Constitution. The investigation system affects all these freedoms protected by the Constitution. Therefore, its regulation shall not be left to jurisprudence and case law.

The Egyptian Constitution’s provisions have set out the basic principles for determining the seriousness of the investigations. It is possible to cite among the most important rules established by the Egyptian judiciary the following: The seriousness of the investigation shall be estimated independently of its results; The investigation shall include the attribution of the offence to the perpetrator; Investigations shall seek the truth.

When applying to our lawsuit these principles which have been established by the Egyptian judiciary with regard to investigation reports, up to the seriousness or nonseriousness of the investigations, we find that all of the investigations in our lawsuit have been subsequent to the arrest and search. Furthermore, the investigations conducted by the three police officers did not add anything new as they have echoed what had been written in the fact-finding report. Nor did they include the attribution of a specified act to each defendant apart from within the framework of the charges stated in the detention order, except for what has been ascribed to the first and second defendants as they are in charge of Belady association.

On the lack of evidence from what was called confiscated items and the lack of evidence from the technical committee report – what the prosecution listed as confiscated is different from what we have been viewed in court.

According to the technical report, the confiscated items included paperwork, cables which were not for the confiscated devices and the laptops were password protected. How was the Toshiba laptop accessed? It was proven that they could not access the laptops and so needed to install a new windows setup, which when installed would delete all files on the C drive partition. Yet they found pornographic films on the C partition. Also, from another drive there was another CD which included 2 films.

In light of this the Defence requested that the confiscated items all be sent to the criminal evidence department so that they can check to see what was deleted and what was added and when the items were added. But the request has so far not been answered positively.

I now turn to the picture of the Mohamed Hassanein with the kid without his trousers. Onto this photo was added writings which were not there in the original photo as submitted to the court and these words are leading the court to see the photo as a sexual assault rather than the truth.

Accordingly, there is misleading information coming out from the confiscated items.

There has been a clear lack of accuracy in prior investigation.

In this case all the investigation reports came after the arrest contrary to the norms and legality.

All investigation never pointed to any specific illegal act by any of the defendants except Aya and Mohamed. This means that no one else was mentioned by his/her name of committing any illegal act except Aya and Mohamed.

The whole issue is based on the Belady organisation but not the defendants specifically.

The source of the investigation is secret as usual. However, this source should be a witness because according to what has been mentioned, acts witnessed only by him/her and communicated to the police officer, but that source has been prevented from being presented in front of the court. We can accordingly say that this investigation might not be a reflection of the reality.

The police officer said he took the complaint and took a force and went to the organisation, however he banned the wife from giving the statement, he didn't even mention who are the other officers in the force who got in the organisation. He made the whole incident exclusive for himself so other co-workers do not come and contradict his statement.

- The inapplicability of the Article 1 of the Human Trafficking Law and the exclusive features of the trafficking crimes

The article first requires at least 3 criminals as a requirement to establish the criminal group, in which each of them has a clear role. According to the case documents it is only the first and second defendants who had a role in this alleged criminal group. There is no evidence in the investigations, forensic report, technical report etc, that the other defendants have a role.

Thus, this charge is inapplicable due the lack of the completion of the material evidence.

According to the 2nd article in the human trafficking law it is stated that the dealing has to be with the persons by selling or buying which is not applicable in our case.

The material aspect and the intention of the human trafficking crime is inapplicable.

- Lack of evidence proving any for sexual assaults against the children

There was no evidence in the confiscated items of any pornography evidence, as it was stated by the prosecution in their closing statement, what was found was foreign movies with sexual scenes.

Child Witness 1 the cornerstone of the sexual assault allegations denied in Court that he had been the victim of any of such acts.

Do we have any picture of any of the 19 children during these inappropriate acts? No, we don't.

- Lack of proof of torture or kidnapping incidents in the submitted papers.

The children were asked during the investigation by the police and prosecution if they were visiting their families and whether their families knew their location and all the children said yes.

It was even mentioned by Khaled Gouda that he knew that the child saved was with Mohamed Hassanein and he knew that Mohamed took back the child to his family.

- The incorrect claim that the organisation is illegally established because according to the 6th art of 84 of 2002 law it is legally established.
- Amira came only few times as a volunteer and was helping with food and education of the kids.

The above addressed some evidential issues and repeated defence requests which have either been denied or not fulfilled so that they can be reflected in the Court records in readiness for any appeal.

The Statement

I would have loved to hear from the prosecution any proving evidence. I am here in a court and talking about the law. I am not talking about the unity of the criminals with the devil to do the wrong act. I have never used Quran verses in the hall of justice.

Let me first say that my defendants were absolutely mistaken when they thought that here there might be an island of humanity.

The prosecution was talking about the society and the children of the society and I absolutely agree.

Aya and Mohamed had 19 children and let's say they did something wrong. The children were handed over to public shelters and now the defence is asking where these 19 children are now? The prosecution has never said where they are. Why do they not charge the children's families that they have lost their kids? The children in the streets are the case not those defendants. The 19 children are facing an unknown destiny now.

- First of all, on the alleged illegal entity talked about by the prosecution.

The 6th art in the law 84 of 2002 stating that the Ministry of Social Solidarity (MOSS) has to register the organisation within 60 days of the submission by the founders of the required documents or it will be considered an established entity once passed the 60 days.

Did the founders submit the needed documents for registration? Yes because first they have established a bank account in the name of the organisation which could not have been opened unless the MOSS gave an acceptance document for the organisation.

We have already requested earlier that MOSS to provide the supporting document about the organisation registration in addition to we requested a statement on the same regard from the bank.

Also, the police records at the time of arrest included a proof of part of the submitted documents of registration.

If we are talking about the above then the claim of illegal entities is illogical.

- Police Documents

The police officer who made the arrest, the investigations and the confiscation; the father Khaled Gouda in his statement in front of the court and the child Usma in his statement in front of the court said different information from the ones documented in the police records.

We demanded the record of the complaint filed, the father did not recall the complaint and nor did the police provide the document of the complaint.

- There are illogical stories about the original incident of arrest

The father said he went to the police at 11 am on that day, the police officer said that the complaint came to his knowledge at 12 pm on the next day.

In other words, the difference time provided time for the police to obtain a prior authorisation from the prosecution.

It is clear for the defence that there are suspicious circumstances to justify the police officer to raid the organisation and the confiscation as well as the arrest.

Back to the 20 children. Were there or 19 children? They were 19 only because the 20th is Mohamed Hasanein (an adult) and there was birth certificate for him along with the kids and the prosecution counted him as well.

- Questioning of Defendants

The defendants were questioned but how? According to court of cassation judgements during questioning defendants have to be presented with the evidence against them after stating the charges. This was not the case here.

The prosecution never presented the defendants with the investigations or the witnesses. It was only limited to the content of the confiscated items.

- Evidence of trafficking and sexual assault charges

The documents are clear that speaking about human trafficking is an illusion as previously mentioned.

As to the sexual assaults claims, one of the child said that Mohamed Hassanein *viewed* sexual scenes to find out which of us was practicing sexual acts and when he knew one who was, he shouted at him and asked him not to do that again. The same child said that he was having classes and doing sports and activities there.

Another child said that has never been sexually assaulted. And was taking educational activities. He was asked if they were allowed visitors, he said yes and that he had called his mum one time. However, this child was presented by the prosecution as a victim of sexual assault.

Another child, said that they were having sex together without the knowledge of the administration. One of the children took the laptop from Mohamed and downloaded porn films and showed it to us and when Mohamed found out he took the laptop away and cancelled the internet service and removed the films.

Another child, Child Witness 1 was grounded by Mohamed and put in a room but he was never nude in there.

Another child, stated that he has never been sexually assaulted, and that he was watching with children films with scenes viewing nude women. Sherif was teaching us drawing and Amira was cooking for us.

Another child, was interrogated two times. He said he ran away from the organisation on the same day of the incident. But continued saying 'I went back to say hello to my friends, but I found Aya and Mohamed in the street in which the later called me to help him to carry on something, and I said I will go to hang out and when I am back I will help you. When I came back I found the organisation raided and the door is broken then the police arrested me.'

In the second interrogation when was asked he gave a totally different story, stating that he ran away to down town. Mohamed Hassanein took him from the coffee shop and grabbed him, put him into a taxi and slapped him on the face, both he and Ashad.

I am pointing out this to clarify the importance of having the witnesses present in front of the court to clarify the contradicting documents.

If you follow the statements of the alleged victims, you can see that a child states facts and another denies the allegations. Despite all of that contradictions the prosecution still takes them into consideration in his statement.

According to the prosecution, it ordered to return part of the children to their parents and the others to be placed in public shelter and yet none of them has known address at the moment.

- On Amira

I want to submit my statement in written to the court for the rest of my points but before I do so. On Amira the 4th defendant, I cannot see any link or proof that she has participate at any of the alleged charges and all the children agreed that she only was cooking and helping them with their education.

- On protests

About inciting the children to participate in demonstrations, according to the mentioned dates in the investigations there were NO demonstrations in the specific locations at that time. We have all the news published about that which we are submitting it to the court.

The prosecution should have required from the police stations where the geographical jurisdiction to give the information whether there were any demonstration on the specified dates or not.

One more thing, when we are talking about the children in the streets and speaking about homosexuality, we have this report by the MOSS about one of the orphanages legally registered in which it was recommended to remove one of the homosexual kids away to another orphanage.

We call on finding my clients not guilty and repeat our call on from the 2nd till the 11th witnesses to be presented to Court, in addition for all the confiscated items to be sent to one specialist from the criminal evidence department.

Mr Abolnaser submitted a written copy of his closing speech.

Court adjourned to the following day, no time given.

Day 4

Defence lawyer Ahmed Saad on behalf of Aya and Amira

I confirm my colleague's statement yesterday. I call on the release of Aya based on art 143 of criminal procedure law since she has passed the legal duration of pre-trial detention.

On that regard, the law restricted all of the prosecution, the investigative judge and all courts to not exceed 2 years pre-trial detention in any of the criminal cases.

The court of cassation has only set an exception in 2 cases of life sentence of death penalty to give full jurisdiction for the court to exceed the pre-trial detention duration.

Lack in investigation records submitted for the case. The exclusivity of the police officer in receiving the complaint, doing the raid and arrest as well as the investigations. Despite the fact of having a previous issue between the officer and the defendants as the later thinks that the officer is following them intentionally.

In the first investigation with the first 4 defendants, the officer stated that they have committed all the previous mentioned crimes together, later on in the August 2014 investigations he pointed to Aya as participating in renting the apt where the illegal organisation only.

The prosecution is not neutral in the case. They disregarded the statement of the wife of Khaled since she is a witness of the incident and this proves of bias.

The extreme negligence from the prosecution of losing proof evidence which is the CD submitted by the defence.

The prosecution also has refused several times to document testimonies of parents who accordingly had to document their statement in public registry office.

Illegality of the process of confiscating items.

When opening the confiscated items, the prosecution has changed the serial number of confiscated boxes which means that there might be a change in its content.

During the statement of the police officer, he said he used the force from Abdeen station as mentioned in the records but when asked in front of the court he said I took my force from the juvenile care dept.

It has been proven that the children were beaten up in Asbakeya police station and not Belady organisation.

The police officer was creating the circumstances during arrest cause according to the design of the apartment you cannot see the children kept against their will one of the rooms.

The prosecution stated that the children were locked in the apartment, even though the apartment was on first floor in a public street with open windows and a very busy neighbourhood.

The judge interrupts to say that this was covered yesterday and to go to the next point.

Now talking about the intention of committing a criminal act, it will be illogical if Aya went to the media about the organisation and she already knew that eyes will be on her and all the children who confirmed they were being treated well.

Judge tells Ahmed to proceed to his demand.

Ahmed closes and requests the Court to find his clients innocent.

The judge tells the defendant Sherrif that he cannot remain in Court without a lawyer after his lawyer withdrew. It was agreed that one of the other lawyers would represent him and Sherrif selected Sherouk.

The other lawyers made statements on behalf of the remaining defendants.

In sum, they too highlighted the illegalities surrounding the arrests which were made without prior authorisation from the prosecutor, despite taking place two weeks after the first arrests.

Art. No 13 in criminal procedural law sets out the procedures of search and arrest.

They highlight the contradictions in the statements of the children between what they said at the police station and in Court.

The confiscated items were not sealed which means that someone may have interfered with them and some items were lost.

Defendants 5-7 defendants and Mohamed Hassanein have been friends for a very long time. There is no other connection with the organisation. They decided to record the statements themselves because the child was too scared to go to the prosecutor.

Repeat requests for prosecution witnesses to be presented for examination before a Court, for MOSS to provide documents on the organisation and for police records on the complaints to be submitted to court. These requests are made so that their statements can be complete. These requests are dealt with by the judge at the end of the statements. They will make another statement if the requests are approved, but they are normally ignored by the judge. But the defence insists on having the requests documented in the court records since that will help them when if the appeal the case to the court of cassation that first court was not following the procedures.

Day 5

DEFENCE Statements

The statements continued adding that they all agreed that Sherif was only renting one room in the apartment and was occasionally giving drawing classes.

The lack of any material evidence as submitted by the court. The forensic report which proved 5 out of 20 children had practiced homosexuality but this could not be linked to the time they were at the organisation.

One of the children stated that he had lost his right kidney, when his step mother sold his kidney when he was 10 years old, yet the prosecution ordered to return the child to his family and ordered the detention of Sherif who the child said was teaching him drawing.

One of the lawyers closed by saying how proud he is to be standing on behalf of these kind of youth who tried to help the children in the streets.

Statement by Aya

I would like to talk about facts because the lawyers spoke about all the legal points much better than what I can say.

We were taking the kids from the streets – yes - they were calling them street children but we called and dealt with them as the children of Belady (my country).

The proof of that is my way as said by Salah who is the only child who was mentioned in the interrogations that Ms Aya and Ms Nesma were walking in Ramsis and saw me with Ahmed (another child) they told us about Belady and left us the address and the contact number in case we would like to go. Mohamed Gamal (another child) went first then me and Ahmed and we were all in all 5 children. Ms Aya told me the place is open if you would like to come anytime.

This was my way that we always had open door policy. If I am committing a criminal act, why would I give the free will to the children to come or leave? This accusation is unreasonable. And if reasonable what will be the purpose? I studied in the US with around 20.000 USD a year and if I practiced there the minimum I will be earning is 500 USD per hour, however, I preferred to return to my country and or children in the streets I started a few initiatives such as the Belady Initiative to clean the streets and promote recycling. I would like to focus then that there is no financial reason behind it. But if we talk of the donations for example. Donors are not fools, they will come and see where their money is going, they will see the children are clean and eating and they will talk to them. If the children were being raped, do you think that they will not talk?

If I am establishing a criminal group, why would I keep the children on the premises, I would keep them out since they are evidence.

The other accusation, is inciting the children to participate in demonstration, what I know is that in such acts they get arrested on the spot not being left out.

So according to the questioning, I rape the children to demonstrate in the street. How can I keep control of them in the street and how can I can get them back to the apartment? Where is the apartment? In the very known and popular street near by Tahrir Square. So how can I keep 20 children against their will. This is absolutely impossible.

When they raided the organisation, I called the police. I thought all the way long that I am the victim till I was presented in front of the public prosecution questioning me asking me what I say in response to the accusations against me, by that time only I felt that I am broken.

We have been here for 1129 day.

Statement by Mohamed

I will not talk about the law either. I just want to say that the prosecutor said that we are the devil's children, however we are the roots of this land. Egypt was known as two lands because of the good it was giving no one was convinced that it was only one land. The children in the streets are the victims, any bad behaviour is blamed always to them, I was only trying to present them because no one was talking on their behalf. Those children are the father of the human in the humanity definition, they should be treated well to get better generations. We have been in detention for 3 years, no one can imagine what we and our families have been subjected to. No matter what we say, what we have seen in the prison and how we were featured in the media. Despite of all injustice we still we are willing to sacrifice our freedom again and more for the sake of having this country move forward.

Other Defendants

Sherif, did not want to say anything.

Ashad, said "I just want to say we were dreaming and we are still dreaming."

Karim, said "I just want to go through the fact of my arrest, I was called by my colleagues. I was beaten and they took me to my home and took my laptop and you know how they raid in homes. I said to myself no problem, when I go to the prosecution it will be fine and I went the next morning, I told the prosecutor to ask about me in the neighbourhood the one I am living now because I am newly married and the other one where I was raised for 30 years and I gave him two addresses, I doubt if any bad word will be said about me. Mohamed Hassanein is my colleague from 17 years but I swear I do not know where the organisation is till this moment.

Mohamed Elsayed, said "I personally believe that everyone here have been subject to injustice whether the ones established the organisation with good well or the ones who were searching for others innocence, I do not belong to the organisation but anyone who is doing something good for this country we defend and protect him. I was and still supporting to everyone. I know Mohamed for 17 years and I will not look to myself as a man if I didn't stand for my friend, we tried the legal way to proof that they are not guilty we didn't kidnap the child or hurt him but everything were backfired on us."

Amira, said "I was only cooking for the children and went there for two times one of them was at the time of arrest and I have lost everything in the past 3 years, I only want to say I was trying to do good with good faith that god will reward me if I helped those children in the few times I came to Cairo to visit them."

Court adjourned to 23 March when the judge said he would deliver his decision.