

EGYPT UPDATE NUMBER 17



CHRONICLES OF THE CONTINUED EGYPTIAN REVOLUTION OF 25 JANUARY 2011

CONTACTS

Tel:

+1 312.943.5797

Fax:

+1 312.943.2756

Email:

cbassiou@depaul.edu

Twitter:

@cherifbassiouni

Facebook:

www.facebook.com/mcbassiouni

Web:

www.mcherifbassiouni.com



M. CHERIF BASSIOUNI

Emeritus Professor of Law
DePaul University College of Law
Chicago, IL, USA



Contents

I. The Mubarak Trial	3
II. The Constitutionality of the Parliamentary Election Law and the Political Disenfranchisement Law	5
III. Impact on the Final Round of the Presidential Elections.....	6
IV. The Reaction of the Judiciary.....	7
V. Conclusion	8

Egypt Update No. 17

June 2012

I. The Mubarak Trial

1. Former President Hosni Mubarak was convicted on 2 June 2012 of having failed to take action to prevent the killing of protestors in Tahrir Square in January and February 2011.¹ The Judges found that Mubarak had knowledge of the use of live bullets by police snipers and by hooligans allegedly hired by the police, and failed to prevent the killings.² Mubarak was given life sentence, or 30 years imprisonment, but the prosecution has promised an appeal.³



Hosni Mubarak in Court for the delivery of the judgment on 2 June 2012

2. The Court also convicted Habib al-Adly, the Minister of Interior under Mubarak, and likewise sentenced him to life imprisonment of 30 years for ordering and for failing to prevent the deaths of the protestors. However, the six senior police officials also on trial, including Ahmed Ramzy, the former head of the Central Security Forces and Ismail al-Shaer, the former head of security for Cairo, were acquitted. Because of their initial refusal to use live ammunition against the demonstrators, al-Adly personally issued direct orders to the Central Security Forces to carry out the acts. Mubarak's two sons, Ala'a and Gamal, were also acquitted at trial.



Judge Ahmed Refaat delivering the judgment

¹ It is estimated that of 850-1000 people died in Tahrir Square, but Mubarak was only charged with the deaths of a portion of the total.

² *Mubarak Receives Life Term for Protest Deaths*, AL JAZEERA, June 2, 2012; *Protests erupt in Egypt over Hosni Mubarak verdicts*, BBC, June 3, 2012; Human Rights Watch, *Egypt: Mubarak Conviction a Message for the Next President: But Acquittal of Police Chiefs A Green Light for Future Abuse*, June 2, 2012; Hamza Hendawi, *Former president of Egypt Hosni Mubarak gets life sentence; sons acquitted*, ASSOCIATED PRESS, 3 June 2012.

³ Hamza Hendawi, *Egyptian Prosecutor to Appeal Mubarak trial Verdicts*, ASSOCIATED PRESS, June 4, 2012.

3. The evidence presented at the trial was clearly sufficient to convict al-Adly. Legal analysts will undoubtedly one day look into why the evidence presented by the prosecution against the six senior police officers was so weak. However the acquitted officers originally refused to



Courtroom during the delivery of the verdict

obey the order to shoot at protestors, which should be acknowledged. There was also no evidence linking Ala'a and Gamal Mubarak to these events, and they were rightly acquitted.

4. The conviction of Hosni Mubarak is legally questionable. There was no evidence presented by the prosecution to establish that he issued orders leading to the use of live ammunition against the protestors, whether by police snipers or hired hooligans. The testimony of Field Marshall Hussein Tantawi and former Head of General Intelligence Omar Suleiman, if they are to be believed, established that to their knowledge no such orders were given by Mubarak. In arriving at their decision, the Judges relied on the Prosecutors' theory of the case that Mubarak either knew or should have known about the use of live ammunition and the hiring of hooligans, and that he failed to do anything to prevent the killing of the civilian demonstrators. But the Egyptian Criminal Code does not contain a theory of command responsibility, which is only found in the Military Code. The Egyptian Criminal Code also does not contain a theory of criminal



Police and military units were out in force for the issuing of the judgment and in the ensuing days.

responsibility for omission, unless specific intent can be proven for the failure to act. This was not the case with the Mubarak verdict. In light of these legal problems, an appeal by Mubarak to the Court of Cassation is likely to succeed and lead to the reversal of his conviction.

5. Notwithstanding the above, the Islamists and some members of the revolutionary youth groups took to the streets,⁴ demanding the retrial of Mubarak and the imposition of the death penalty.⁵ The Supreme Council of the Armed Forces (SCAF) responded to the demonstrations by ordering a large number of soldiers into the street.⁶ On the second day after the verdict was delivered the SCAF increased the military presence in the streets of Cairo. These troops are mostly Special Forces and Paratroopers, who form the core of Egypt's professional army. In addition to the above mentioned soldiers, tanks and armored personnel carriers are also ordered onto the streets. This military presence in the streets proved to be an effective deterrent and so far the demonstrations have remained limited and under control.

II. The Constitutionality of the Parliamentary Election Law and the Political Disenfranchisement Law

6. On June 14 the Egyptian Constitutional Court will issue a judgment on the constitutionality of amendments made to the Parliamentary Election Law⁷ and the Political Disenfranchisement Law passed on 11 April 2012 which bans senior members of the Mubarak regime from standing for election.⁸ As predicted by this writer in UPDATES 14 and 16,⁹ the Court is expected to nullify both the amendments to the Parliamentary Election Law and the more recent Political Disenfranchisement Law. The prediction concerning the election law was relatively easy to make since, as discussed in Update 16, they violate the principle of equality contained in the 1971 Constitution as well as the



The Egyptian Supreme Constitutional Court building

⁴ Marwa Awad and Tom Pfeiffer, *Egyptians threaten more protests after Mubarak verdict*, REUTERS, June 3, 2012.

⁵ Nick Meo, *Crowds Call for Mubarak to Hang*, DAILY TELEGRAPH, 4 June 2012.

⁶ These forces reinforced the large number of police already on the streets. *See 20,000 police, 160 tanks to secure Mubarak Trial ahead of verdict*, EGYPT INDEPENDENT, June 8, 2012.

⁷ Law of No. 38 of 1972.

⁸ *Egypt MPs back poll ban on Mubarak officials*, AL JAZEERA, April 12, 2012.

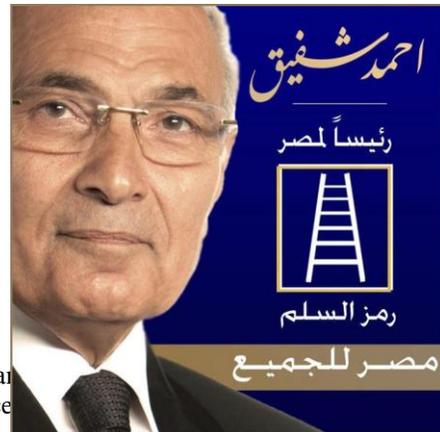
⁹ Egypt UPDATE 13, May 3, 2012; Egypt UPDATE16, May 28, 2012.

principle of equality found in every constitution in the world and Articles 25(c)¹⁰ and 26¹¹ of the ICCPR. The problem with the amendment to the Parliamentary Election Law, which was enacted by the SCAF, is that it gave members of political parties two opportunities to be elected, both as a member of a party on the list of the party in question, and as an individual candidate on the list of individual candidacies. A similar law was enacted by the Mubarak regime in 1987 and was struck down by the Constitutional Court for violating the principle of equality.¹² It is expected that the Constitutional Court will also rule unconstitutional a recently enacted Political Disenfranchisement Law.

7. The decision by the Constitutional Court, which is expected on Thursday, June 13, will result in dissolving the Parliament and render all of the laws passed null and void.¹³ Such a ruling by the Constitutional Court will prompt a strong reaction among the Islamists who secured approximately 60% of the seats of both houses of Parliament and who have felt ever since then that they are very close to obtaining total political control of Egypt.

III. Impact on the Final Round of the Presidential Elections

8. The first round of the presidential elections gave the Muslim Brotherhood candidate Mohamed El-Mursi a slight lead over Ahmed Shafik, the secularist who served as Mubarak's last appointed Prime Minister (and previously Minister of Aviation as well as Chief of Staff of the Air Force).¹⁴
9. As predicted by this writer in Update 16, Shafik will likely win the second round of the Presidential Elections scheduled for June 16-17. He is campaigning hard against the Islamists and is gaining momentum among the "silent majority", which includes an undetermined number of supporters of the



Ahmed Shafik, the secular candidate for president

¹⁰ "Every citizen shall have the right and the opportunity, without any of the restrictions mentioned in article 2 and without unreasonable restrictions: ... (c) To have access to public service in his country."

¹¹ "All persons are equal before the law and are entitled without any discrimination to the effective protection against discrimination on any ground such as race, sex, religion, political or other opinion, national or social origin, property, birth or other status."

¹² Case No. 37/1990/Egyptian Supreme Constitutional Court.

¹³ See Egypt UPDATE 13, April 6, 2012

¹⁴ See Egypt UPDATE 14, May 3, 2012; and Egypt UPDATE16, May 28, 2012.

military regime. The judgment of the Constitutional Court in striking down the Parliamentary Election Law and the Political Disenfranchisement Law will provoke negative reactions among the Islamists, their allies, and some elements of the revolutionary youth groups. What will they do? They have two options: 1) engage in massive demonstrations, confront the army and incur major loss of life; or 2) play the role of the victim, claim a conspiracy by the military and the former Mubarak regime and wait until the next legislative elections to regain a strong position in parliament. It is this writer's belief that although there will be some demonstrations, the second option will be chosen. The principle reasons are the strong military presence in the streets as mentioned above, and that the outcome of widespread and violent demonstrations could result in the SCAF declaring martial law, even though the Law on the State of Emergency was allowed to lapse on 31 May 2012.¹⁵ If this happens just three days before the second round run-off in the Presidential Election it is likely to reinforce Shafik's position at the ballot box because the Egyptian people are largely fed up with demonstrations and the dysfunctional state of their country.

IV. The Reaction of the Judiciary

10. Over the last ten days the Egyptian Judiciary has started to unite and provide a forceful response to attacks by Islamists in Parliament and on the street.¹⁶ The judiciary is rejecting accusations that it is partial and corrupt. The President of the Judges' Club, which is equivalent to an association of all Egyptian judges, has publicly and strongly responded to these accusations and defended Egyptian judges, particularly the panel of judges who judged and convicted former President Mubarak.¹⁷ The Judges' Club has also announced that if the attacks on the integrity of the judges continue they will abstain from supervising the second round run-off in the presidential elections, which could be a reason for the remand of the second round to another date.
11. This strong position of the judges shows that the military is not the only Egyptian institution opposing the extremisms of the Islamists. The judge's stand is also noteworthy because the judiciary remains the most respected institution in the country, and the judges' position reflects the degree to which the country as a whole is disappointed with the actions of the Islamists in Parliament and in the streets.

¹⁵ *Egypt state of emergency lifted after 31 years*, BBC, May 31, 2012.

¹⁶ For an example of these attacks, see *After Mubarak Verdicts, Parliament Opens Fire on Judiciary*, AL JAZEERA, June 3, 2012.

¹⁷ *Egypt head of Judges club lashes out against Parliament's criticism*, AHRAM ONLINE, 7 Jun 2012

V. Conclusion

12. Hopefully historians and political analysts will record the importance of the Mubarak trial. It was the first time that a head of state was forced to resign by peaceful popular demand and was put on trial for at least some of his misdeeds. For sure he should have been prosecuted for so much more than he was, among them the systematic policy of torture which he has supported for 30 years and which is estimated to have resulted in the physical mistreatment and the torture of some 10-15,000 people per year. Why this outrageous practice was not included in the charges can be explained by the fact that they involved many persons from the regime, including the military. In addition, many will ask why so many publicly known policies and practices of corruption and abuses of power ordered by Mubarak, or known to have taken place by his consent or acquiescence, were not prosecuted, and this also remains an unanswered question. But then maybe the answer is the same as above, it simply involved too many people who are either still in office or still operate in the corridors of power.
13. It should not be overlooked that the panel of judges in the Mubarak trial, consisting of Presiding Judge Ahmed Refaat and Judges Mohamed Assem and Hany Burham, have acted in a way that honors the best tradition of the Egyptian judiciary and stands out as a shining example of what courageous and professional judges should do in difficult situations such as these. They have upheld the rule of law and that should not be forgotten.
14. As to Mubarak, his health condition has been deteriorating since his surgery for stomach cancer in 2010. His emotional state has also been deteriorating since the death of his 12 year old grandson in 2009, with whom he was said to be very close.¹⁸ And, of course, he has deteriorated since the events of March 2011. During the trial he was held in a military hospital on the outskirts of Cairo, where he had open ended visits from his family and outstanding medical attention. When the judgment was entered on 2 June 2012 he was transferred to the Tora Prison Hospital where a suite had been prepared for him which cost \$1 million to renovate.¹⁹ It is reported that it took almost three hours to calm him down by medication after the judgment, and to convince him to go to Tora Prison Hospital.²⁰ In the last year he is believed to have become afflicted by some of the manifestations of senility, which includes being difficult to handle, obstinate, morose and depressed. He is probably encouraged by his family that the judgment

¹⁸ *Egyptian President Mubarak's grandson dies*, BBC, May 19, 2009.

¹⁹ Hamza Hendawi, *Mubarak's health worsens amid political crisis*, ASSOCIATED PRESS, June 7, 2012

²⁰ *Mubarak and minister sentenced to life, sons go free*, AGENCE FRANCE PRESSE, June 2, 2012

🌀 EGYPT UPDATE 17 🌀

- is likely to be reversed by the Court of Cassation, and that things will be better under a Shafik presidency.
15. Of importance during this entire period of the Mubarak arrest and trial is that the rule of law has been respected, and that notwithstanding Mubarak's misdeeds he has been treated with a certain dignity and respect that he may not have deserved, but that is a tribute to those in Egypt, particularly the SCAF, who made decisions about his treatment. For 30 years Mubarak was the head of state and symbol of the nation. If nothing else, that deserves respect. Contrary to the demand of the streets, the dignified treatment of Mubarak and of his family, is a credit to Egypt notwithstanding what crimes they may have committed.
 16. With regards to the looming Constitutional Court judgment, this writer reaffirms his predictions that it will declare unconstitutional the amendment to Parliamentary Election Law and the Political Disenfranchisement Law.
 17. The massive military presence on the streets will cause the Islamists to contain the protests in order to avoid a confrontation that is likely to cause extreme bloodshed, and instead show themselves as the victims of a political plot by the military.
 18. In light of the changing political climate in the country and the re-assertion of the powers of the "silent majority", and the opposition to the Islamists by the judges on the one and the military on the other hand, Ahmed Shafik will win the second round run-off elections and become the next President of Egypt.
 19. New legislative elections will be scheduled within six months of the final round of the Presidential Elections, but they will be preceded by the adoption by public referendum of a new constitution. The new legislative elections will probably give the Islamists (combining the Muslim Brotherhood and the Salafi) between 35-40% of the seats in Parliament as opposed to the 60% they won in the first Parliamentary Elections.
 20. The Egyptian People, irrespective of their desire for progress and democracy, are tired of the ongoing public insecurity and deteriorating economy. They will choose the stability of a Shafik presidency, backed by the military, over the alternative offered by the Islamists.

🌀 EGYPT UPDATE 17 🌀

When all is said and done some will say the glass is half full while others will say it is half empty. This writer believes the glass to be half full. The revolution has achieved some successes but Egypt has a long way to go, not only to achieve democracy and the rule of law, but also to achieve economic development and to regain its place as the leader of the Arab World and an important contributor to peace and stability in the region.