

EGYPT UPDATE NUMBER 8



CHRONICLES OF THE CONTINUED EGYPTIAN REVOLUTION OF 25 JANUARY 2011

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Updates 6 and 7 raised concerns with respect to Egypt's four categories of issues, namely: economic; security and sectarian; transition to democracy; and restoration of order and stability. With respect to the economic situation and a shared vision of Egypt's future as a democratic state founded on the rule of law and respect for human rights, the situation is not improving.

I. Pressing Human Rights Issues

1. The use of military tribunals to try as many as 7,000 civilians since February has been rightly criticized by Human Rights Watch and others.¹ 5,600 civilians have been convicted, and 1,300 await trial since May of this year. In addition, there are a large number of persons who have been held in detention by the military pending issuance of criminal charges. The exact number is unknown, but some cases have been reported as pending for two years. Assuming the 1971 Constitution is still in effect, subject to its 2011 amendments, and assuming that the SCAF and the Transitional Government consider Egypt to be bound by its international obligations in accordance with the International Convention on Civil and Political Rights (ICCPR) and the Convention Against Torture (CAT) (to name only two), the resort to the military justice system and torture since February 2011 violates the Constitution and these treaties (particularly Art. 14 of the ICCPR, which addresses due process). The ordinary criminal justice system should try the cases presently before military tribunals. Those persons who have been tried and sentenced by military tribunals should have their cases reviewed by a civilian court. The 1971 Constitution and Code of Military Justice should be amended to limit military justice jurisdiction to military personnel and to high treason.



Figure 1 A Muslim holding the Koran and a Coptic Christian holding a cross are carried through opposition supporters in Tahrir Square in Cairo February 6, 2011. (Photo credit: Dylan Martinez).

¹ See Human Rights Watch, *Egypt: Military Trials Usurp Justice System* (April 29, 2011); Kristen Chick, *Egypt Shifts to Military Justice for Civilians in Post-Mubarak Era*, CHRISTIAN SCIENCE MONITOR (May 18, 2011).

2. The practice reportedly carried out by military police to conduct “virginity tests” on women arrested at demonstrations should not only be banned, but those who took part in such abuse should be tried for sexual assault.² The government should have a separate civilian Inspector General to investigate torture complaints, no matter where they occur. Article 126 of the criminal code should be amended to include this practice and psychological torture.

II. Urgent Issues Related to Democracy

3. In preparation for the September legislative and the November presidential elections, a number of legislative reforms are urgently needed, as August is the month of Ramadan when little is accomplished. This includes: a) revocation of the State of Emergency Law No. 162 of 1958; b) modification of the Assembly Law of 1914, which requires any gathering of more than five persons to obtain a permit; c) modification of 1923 Assembly and Meetings Law requiring a permit before holding a public demonstration; and d) modification of the Association Law to allow NGOs to organize without the cumbersome approval procedures of the Ministry of Social Affairs or obtaining security clearances.

III. The Economic/Financial Situation

4. The situation is not improving, but rather holding somewhat steady, even though the foreign currency reserve continues to decrease. There has been no assessment by the Central Bank of its contingent liability with respect to loans made by private banks for investment projects made during the Mubarak era. Moreover, the Central Bank has not assessed the liability of commercial banks with respect to these loans, particularly because of the suspicion that many of these projects’ values have been inflated and that their proceeds may have been siphoned off by the Mubarak oligarchy and transferred abroad. This is detailed in Updates No. 6 and 7.

5. It was recommended by this writer in Updates No. 6 and 7 that a loan be secured from the World Bank and that some other contingency mechanisms be developed with the IMF, including loan rescheduling. Minister of Planning and International Cooperation Fayza Aboul Naga pursued these two avenues, and according to Ahrām Online, Egypt and the World Bank have agreed on the terms of a loan amounting to \$2.2 billion, which “comprises only 7 percent of needed funding to cover the budget deficit for 2011/2012.”³ Negotiations with the World Bank for an additional \$4.5 billion over the next two years are underway. Debt rescheduling with the IMF is still pending, but conditions of that rescheduling are not known. Notwithstanding the welcome news of the World Bank loan and other forms of financial support, it is not a solution to the much more serious economic situation which the government does not appear to be willing or able to address. The economic/financial problem will not go away, and sooner or later Egypt will have to face it. The inheritance of the present problems, which will likely worsen, does not bode well for whomever will be elected President in November/December, and for his or her government.

² Bouthaina Kamel, a woman journalist who is the only woman Presidential candidate, was interrogated by an army general and other officers for six hours for having reported this story. See David Kirkpatrick, *Egypt’s Military Censors Critics as it Faces More Scrutiny*, N.Y. TIMES, May 31, 2011.

³ Ahmed Feteha, *World Bank Denies Cancellation of Loan to Egypt*, AHRAM ONLINE, June 22, 2011.

IV. Internal Security

6. As a result of the deteriorating economic situation, the prices of foodstuffs and commodities have continued to rise, liquidity in the banks is very limited, and commercial loans are almost impossible to obtain. The Egyptian pound has lost some of its value in relation to foreign currencies, and thus most Egyptians are converting their savings from pounds to foreign currencies. Because of the precarious economic situation of over one half of the population (as discussed in Updates No. 6 and 7), a large number of persons are falling below the poverty level. The crime rate continues to increase, public safety continues to decrease, and insufficient efforts are being put into re-organizing the police and enhancing safety. Military forces are assuming the task of ensuring public safety, which is not a function that any military does well. This is why such a large number of persons have been transferred to the military justice system (see para. 1 above). With the advent of the month of Ramadan in August, it is expected that the price of many of the traditional food products Egyptians consume during that month will significantly increase. This will be due in part to the fact that many of these imports (such as kamar el din, and pistachios and other nuts) are imported from Syria and Lebanon. As the Syrian crisis continues to unfold, supply may be limited, and Lebanese imports are likely to increase in price. In the past, shortages of food in Egypt have led to riots and unrest, and certainly dissatisfaction with the government. The combination of these factors, as well as others, is likely to increase public resentment. Public security will be difficult, if not impossible, to control by the army, depending upon the number of rioters and the multiplicity of location of riots. Because of the seriousness of the situation, the SCAF and the Transitional Government should be concerned, and should look for measures to address these issues before their consequences unfold.

V. USAID Grants for Egypt's Democratization

7. It has been reported in the media that Minister Aboul Naga has expressed hesitation with regard to USAID's announcement of \$165 million to finance projects for education, civic development, and human rights. This writer agrees, but for different reasons, based on prior experience with USAID funding in Egypt, as well as in Iraq and Afghanistan. These and other experiences have demonstrated that USAID develops these projects in Washington with little understanding of the needs of the countries in which these projects are to be realized. In Iraq and Afghanistan, the funds have mainly gone to what are commonly referred to as the "beltway bandits". These are a number of corporations that specialize in obtaining government contracts to be executed abroad. The staffing of these corporations is mostly from former DoS, DoD, and CIA personnel, causing an incestuous relationship between the funding offices of these governmental agencies and the corporations which they fund. The administrative and overhead costs of these corporations often exceed the sums beneficially spent in-country. Frequently, these corporations' use of local partners results in corruption, as has been found in Iraq and Afghanistan, and also long suspected in Egypt. The billions of dollars that have been spent in Afghanistan and Iraq have produced few results in the advancement of democracy, the rule of law, and human rights.

8. What USAID needs to do in order to assist Egypt, and for that matter to be more effective in other countries, is to overhaul its grant procedures. More importantly, it needs to engage

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panels of outside experts on different countries and on different subjects to review the projects for which funding is made available, and also to review the applications. It is also necessary that USAID departs from a policy of giving large grants (which large corporate entities are more likely to obtain), and focus instead on smaller grants that small entities are more likely to obtain in order to have a more beneficial in-country impact.

9. This is an important subject on which Secretary Clinton and Minister Aboul Naga should meet face to face in a working session with their respective experts, to devise a plan that would best fit Egypt's needs and achieve the higher goals of the U.S., namely, democracy, freedom, rule of law, and human rights. Understandably, Egypt is concerned about interference with its sovereignty, but in this case, there should also be a concern by the U.S. about the effectiveness of such funding and particularly about how such funding can achieve the higher goals of the U.S., which are not intended to interfere with Egypt's sovereignty. It would not be beneficial for Egypt to reject \$165 million without a serious effort to make this funding more acceptable and more effective.

VI. Freezing and Seizing Assets Abroad

10. It should be pointed out that no progress has been made on developing an effective mechanism for the foreign freezing and seizing of assets obtained by corruption, and whose proceeds have been laundered abroad. Understandably, Egypt does not have enough experts to address this question, but it would seem reasonable for the Prime Minister to appoint an inter-agency task force consisting of experts from the Ministry of Justice, the Prosecutor General's office, the Ministry of Interior, the Ministry of Finance, the Central Bank, the private banking sector, and others, as well as to secure external consultants and investigators to track assets abroad. As has been previously recommended by this writer at numerous training sessions he has conducted since 1984 at the International Institute for Higher Studies in Criminal Sciences (Siracusa, Italy), and which were attended by over 1,900 Egyptian government officials from all of these and other agencies, this task force should begin by training government lawyers. The topics should include: a) laws of the countries where funds are suspected of having been diverted to, such as Austria, France, Italy, Spain, Switzerland, UK, and the US; b) an understanding of the corporate laws of tax haven countries, such as the Netherlands, Antilles, the Cayman Islands, Liechtenstein, and others such as the UK's Isle of Man; c) how trusts operate in certain countries, such as in Switzerland, the UK, and the US; d) money laundering laws of the countries mentioned above; e) international conventions such as the Anti-Money Laundering Convention and the Organized Crime Convention; f) international mutual legal assistance practices and the laws of the countries whose assistance is to be sought; g) banking regulations in these countries; and h) the techniques of investigating corporate and banking finance flows. These different elements of expertise, which are scarcely available in Egypt, should be supplemented by outside experts and consultants. Moreover, Egypt should establish accelerated procedures for communications between such a task force as recommended above, and foreign governmental and banking authorities.

11. If all of this were undertaken, Egypt could recover substantial sums from abroad. However, as matters now stand, very little may be obtained except through the accused's

voluntary cooperation. This is why the Office of the Prosecutor General appears to be going in the direction of relying on some sort of plea-bargaining (which officially does not exist in Egypt) with certain individuals presently under investigation for or accused of corruption, including the Mubarak family, in order to obtain voluntary restitution of some of these funds. This approach will obviously leave the accused in control of the situation, as only he or she knows what has been laundered abroad, where, and how. It appears that the prosecution is in the process of accepting Mrs. Mubarak's argument that some of the funds received in certain foundations at home and abroad, even though directed by her, would not be included in any seizure. Zakariya Azmi, the former Chief of Staff of former President Mubarak, has already argued that receiving funds abroad from non-Egyptians is not subject to the Egyptian law on ill-gotten gains, and it seems that he is getting away with this argument. In short, there is only a superficial effort to track assets abroad. Instead, there is an indication that asset forfeiture will be negotiated, even though that approach will generate only a portion of the ill-gotten assets that were laundered abroad.

12. The big surprise on ill-gotten gains is, however, yet to come. A few years ago the law in question was challenged before the Supreme Court (Court of Cassation), which held that it was suspected of being unconstitutional because it reverses the presumption of innocence which is protected by the 1971 Constitution and by the ICCPR. The Court of Cassation remanded the case to the Supreme Constitutional Court for its decision. That court has been sitting on the case for years, and has yet to schedule a hearing on it. It is possible that it will not hear the case until after a wave of convictions have been made during this transitional period, and then some time in 2012 when the new president is in place and a new government is functioning, the Supreme Constitutional Court can then declare the law on ill-gotten gains unconstitutional. At that time, all of those convicted under this law, including the Mubaraks, could be released. It may be expected that by then, the public's anger against the Mubarak regime will have abated, and that the economic problems are likely to divert public attention away from the corruption of the previous regime. On the other hand, this pro-Mubarak regime scenario may not play out, and the country may demand a retrial of all the persons convicted of corruption.

VII. Conclusion

As necessary as it is, the shaping of Egypt's future as a democracy based on the rule of law which respects and observes human rights is still lacking. There is also no thinking about Egypt's future economic and social development. This transition period would have been the right time for the shaping of such future expectations. Instead, there is nothing of the sort coming out of the SCAF or the Transitional Government. All efforts are being made to address the immediate problems as best as can be, and to maintain some normalcy and stability until the Fall/Winter legislative and presidential elections (see Update No. 7 on this point). In short, the expectation of even a debate on Egypt's future direction has fizzled out. To paraphrase one Egyptian observer, "What's so important about this vision thing? Isn't stability the most important thing right now?" My reply is yes, but if you do not know where you are going, how do you expect get there?

Revolutions are harder to lead to fruition than to start. As the old English expression goes,
"Between the cup and the lip, there is many a slip."

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