

Military trials in Egypt: 2011-2014

The use of military tribunals to try civilians was one of the issues that made people rise against then-Egyptian President Hosni Mubarak in 2011. This CMI Insight investigates the extent to which this practice has continued in the turbulent political period that has followed up till today, and argues that military trials for civilians and a politicized judiciary hinders Egypt on its path to democracy and a socially just society.

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Introduction

Ties between the military and the branches of government – and the use of military tribunals to try civilians – were a feature of life in Egypt in the latter half of the twentieth-century, including the Mubarak regime that was overthrown by the popular 2011 revolution. Many activists involved in the revolution hoped that the downfall of Mubarak would bring liberal democracy to Egypt and a system of government which foregrounded the rights of citizens. However, in the three years since the revolution – which has seen three regimes, and the overthrow of the first, controversial, democratically-elected President – civilians have continued to be tried in military courts.

The last few years have been a highly turbulent period for Egypt, including three successive constitutions within three years, and the forcible removal, backed by the military, of the first post-revolutionary President, Mohammad Morsi, in the summer of 2013. Human rights organisations have documented human rights abuses by all post-revolutionary powers, from SCAF, to the Muslim Brotherhood-backed regime of Morsi, to the current regime of President Sisi, which has involved a clamp-down on the Muslim Brotherhood and also on secular activists who were central to the 2011 revolution, and a curtailment of civil liberties such as the right to protest.

The use of military trials on civilians must be contextualized within this post-revolutionary climate of widespread human rights violations from numerous state actors and successive post-revolutionary regimes, and the continued central role of the military in political life. Military trials for civilians were also enshrined in the latest post-revolutionary constitution, the current constitution of Egypt, which was drafted in 2013 after the downfall of President Mohammad Morsi and came into effect in 2014. Military trials for civilians, alongside the wider politicized use of the judiciary, hinder Egypt on its path to democracy and a socially just society, and means the hopes of the pro-democracy 2011 revolutionaries who brought down Mubarak's authoritarian regime are far from being realized.

Military trials and human rights

Egyptian and international human rights organizations have campaigned against the use of military trials for civilians in Egypt, noting that they violate several key provisions in international human rights law. For instance, as Human Rights Watch noted in 2011 in their condemnation of post-revolutionary military trials for civilians in Egypt, military trials of civilians violate the due process guarantees in Article 14 of the International Covenant on Civil and Political rights (the ICCPR, one of the main covenants that forms the basis of international human rights law).

In addition, the Set of Principles for the Protection and Promotion of Human Rights Through Action to Combat Impunity, which was presented before the former United Nations Human Rights Commission in 2005, states that “the jurisdiction of military tribunals must be restricted solely to specific military offenses committed by military personnel.”

The remit and function of military trials are often defined in law in ways that differentiate their power and remit from civilian trials, such as the provision in post-revolutionary Egypt that, unlike civilian trials, military trials cannot be appealed. In practice, in the context of Egypt, the rapid nature of military trials de facto deprives civilians of the right to due process. A related concern with military trials for civilians is that they are part of the broader context of the ‘militarisation’ of public life, in which the military’s powers extend far into the lives of the social and political sphere and into the lives of citizens.

Human rights organisations have documented human rights abuses by all post-revolutionary powers

Egypt’s heritage of military trials

For the latter half of the twentieth-century, Egypt’s path after gaining independence from colonial rule was dominated by authoritarian leadership, from Nasser to Sadat to Mubarak, in which the Presidential powers historically emerged from and were closely intertwined with the strong military. This centrality of the armed forces in political life was embedded into the constitutional decrees of the Nasser era and the so-called Permanent Constitution of 1971, under Sadat, which remained the constitution of Egypt, with several key amendments, throughout the Mubarak era.

Nathan J Brown (see CMI Insight no. 1/2014) and other scholars looking at the history of Egypt’s legal system and judiciary have noted how the weakening of Mubarak’s power in the 2000s came in part because of increasingly activist judges. Nonetheless, as Human Rights Watch noted in 2011, under the Mubarak government, military trials were deployed against civilians – something Human Rights Watch condemned – although they were largely reserved for three specific categories of civilians. The first was high-profile political cases, usually targeting the Muslim Brotherhood, such as the 2008 conviction of the former deputy guide of the Brotherhood. The second was cases in which defendants had been arrested in a military zone, particularly Sinai, which became increasingly militarized and marginalized under Mubarak’s regime.

The third category of civilians against whom military trials were used under Mubarak were bloggers who criticized the regime: growing demands that the regime release members of

this last category fed into the 2011 uprising. The use of military trials against civilians was seen by many of the activist groups and organisations that spearheaded the 2011 as symptomatic of Mubarak’s ‘police state’ authoritarianism, which would have no place in the democratic post-revolutionary period. Unfortunately, this hope did not come to fruition.

The SCAF period: martial rule

The fall of Mubarak in February 2011 was followed by the ‘interim’ or ‘transitional’ period of control by the Supreme Council of the Armed Forces (SCAF), who drafted an interim constitution and set out mechanisms and a timetable for the first parliamentary and Presidential elections. Yet despite SCAF’s position that they were overseeing the transition of the revolution into democratic practices and the establishment of rule of law, the inherently military nature of their rule permeated into their conceptions of ‘justice’. Egyptian human rights lawyers filed two cases before Egypt’s administrative court during the post-revolutionary SCAF period in which the interim constitution was in effect, appealing against SCAF’s decision to use military tribunals to try civilians. However, despite its announcement in July 2011 that it would limit the use of military tribunals (an announcement that had little practical relevance as “thuggery” was one of the crimes SCAF declared it would still try in military tribunals, which covered the majority of civilian cases brought against revolutionaries), the SCAF period was marked by the high use of military trials for the whole duration of the interim revolutionary period in which the 2011 interim constitution was in effect. Human rights organisations estimated that as many as 12,000 people were tried in military tribunals during the interim period of SCAF’s rule, often after their arbitrary detention during and after mass demonstrations.

Morsi and the 2012 constitutional crisis

President Mohammad Morsi’s brief Presidency was marked by ambivalence: he came to power as the democratically elected President of post-revolutionary Egypt, yet was forcibly removed from office a year later. The tensions and ambivalence of Morsi’s presidency centered on the 2012 constitution, and the protests by civil society organisations, secular activists and minority groups that the constitution was too Islamist and the constitution-drafting insufficiently inclusive.

The text of the 2012 constitution marked a departure from the 2011 interim constitution in terms of its explicit provisions for military trials, rather than merely deferring this down to the judiciary as the 2011 interim constitution had done. Article

198 stated that civilians could undergo military trials for “crimes that harm the Armed Forces.” Such a vague provision, explicitly enshrining the right to trial civilians in military courts and yet leaving the scope of what they could be tried for relatively undefined, gave more power to military tribunals while leaving civilians unclear as to their right to be tried in a civilian court. Although the use of military trials declined under Morsi compared to the 2011 interim period of SCAF rule, the Egyptian campaigning group ‘No Military Trials for Civilians’, formed by lawyers and human rights activists in 2011, continued to document and protest the use of military trials, while the Cairo Institute for Human Rights argued that Morsi “lacked the political will” to end military trials of civilians. The inclusion of Article 198 in the 2012 constitution was one of the reasons why the constitution was widely protested against by many sections of Egyptian society that had been active in the 2011 revolution. Morsi’s mishandling of the constitutional crisis that followed – in which, in his November 22nd decree, he granted himself immunity from legal oversight in order to pass the constitution without objections – led to fatal political violence in early December in which protesters were arbitrarily detained. Although he revoked his 22nd November decree in the following weeks, Mohammad Morsi never recovered politically from alienating large sections of Egyptian society through this move, and the Tamarod protest movement was formed to overthrow him and bring a ‘second revolution.’

From Morsi to Sisi: the state turns on the Muslim Brotherhood

The narrative of the events of the summer of 2013 is highly contested and a live political debate: the Tamarod movement claimed it had twenty-two million signatures calling for the removal of Mohammad Morsi from the presidency, in light of his alienating actions during the constitutional crisis, and the lack of inclusive input during the constitution drafting process. The movement built momentum towards a mass nationwide protest on June 30th. President Morsi was forced to resign as the SCAF re-took power. In other words, while some characterise these events as a ‘second revolution’ after Morsi’s authoritarian and alienating decisions during the 2012 constitutional crisis, others instead perceive it as a coup d’etat in which the first democratically elected President of post-revolutionary Egypt was forced from power by the unelected military. What is clear is that this period involved the worst violence, committed by the Egyptian military against civilians, in Egypt’s modern history: a year later, Human Rights Watch published a report which documented that at least 800 and as many as 1,100 people,

A related concern with military trials for civilians is that they are part of the broader context of the ‘militarisation’ of public life

mostly supporters of the Muslim Brotherhood, were killed by the military during the ‘clearance’ of the protests in the neighborhood Rabaa al-Adewiya in Cairo and other locations by those who continued to support President Morsi.

A curfew was imposed as the military regained power and appointed the interim President Adly Mansour to oversee the drafting of a new constitution and new elections.

Campaigning groups such as ‘No Military Trials for Civilians’ hoped the new constitution, drafted between September and December 2013, would change the provisions for military trials for civilians set out in Morsi’s 2012 constitution. However, Article 174 of the new constitution was more detailed in stating when civilians could be tried in military courts, stating this could be deployed “when there is a direct attack on the Armed Forces’ facilities, camps, military areas, borders, equipment, vehicles, weapons, ammunition, documents, military secrets, public funds, or factories; or draft-related crimes, or direct assaults on personnel and their families...the law will define such crimes and determine the jurisdiction of the military judiciary.”

Such provisions in the new constitution seem aimed primarily at ongoing armed skirmishes in the Sinai region, but were more worrying in the overall ‘militarised’ climate of the curfew period after Mohammad Morsi was removed from power. The campaign group No Military Trials for Civilians noted that the constitution’s wording could be used to try journalists who reported on the military in a critical light, and the lack of clarification on what constitutes a “direct attack” meant it could be used to try demonstrators detained by the army during protests in military courts.

In March 2014, the International Coalition for Freedom and Rights issued a report condemning the continued use of military trials to try civilians in Egypt in the period after the downfall of President Morsi. Moreover, since the election of President al-Sisi, the former chief of the armed forces, the

Egyptian state has engaged in a politicised ‘clamp down’ on the Muslim Brotherhood who supported Mohammad Morsi, first banning the group in September 2013 and then declaring them a terrorist organisation (Human Rights Watch noted at the time the Muslim Brotherhood were declared a ‘terrorist organisation’ that the Egyptian state did not provide evidence linking the group to the terrorist attacks it claimed the group had carried out). The use of the language of ‘terrorism’ against the political opponents of al-Sisi enables the state to try them in military courts, as well as arbitrarily detaining members.

Moreover, although a dominant theme of the oscillating pendulum of power in Egypt has been the dynamic between the Muslim Brotherhood and successive militarised regimes, since the ascendancy of al-Sisi, other groups ideologically far removed from the Muslim Brotherhood have also found themselves targeted by the regime, and politicised use of the judiciary has been a mechanism through which to persecute these groups. In early 2014, the leaders of the April 6th Youth Movement that spearheaded the 2011 revolution were arrested, and the organisation banned despite al-Sisi positioning himself as the 'inheritor' and guardian of the principles of the 2011 revolution. The high-profile case of three Al Jazeera journalists arrested in December for, amongst other implausible charges, 'supporting the Muslim Brotherhood', was indicative of the wider clampdown on freedom of expression and media freedom, often through the accusation of "associating with the Muslim Brotherhood." The continued use of military trials for civilians must therefore be contextualised within this politicised use of the judiciary by the Egyptian state.

As if to underline this turn of events and the resurgence of authoritarianism after the optimism of the 2011 revolution, campaign groups and human rights organisations that campaign against the ongoing use of military trials for civilians in 2014 have, in turn, found themselves under scrutiny and pressure to self-censor.

The third category of civilians against whom military trials were used under Mubarak were bloggers

Conclusion

The trial of civilians in military courts is not in keeping with the principles of rule of law or democracy and is antithetical to a socially just society. International human rights law clearly outlines why civilians should be tried in civilian courts, and that the trial of civilians in military courts denies citizens their right to due process and fair trial.

The use of military trials for civilians in the Mubarak era was one of the issues the 2011 revolutionaries protested against, in the hope that the overthrow of Mubarak would lead to a socially just and democratic Egypt in which civilians' rights were respected. However, since the overthrow of President Mubarak over three years ago, this hope has not been fulfilled.

There were unprecedented levels of military trials of civilians during the interim SCAF era of 2011. Following this, both Morsi's ill-fated 2012 constitution and the new constitution drafted in late 2013 have both included provisions in which civilians can be tried in military courts. Military trials of civilians have continued in the increasingly polarised climate in which al-Sisi's Presidency seeks to clamp down on any perceived 'enemies', and now even human rights organisations and civic initiatives which protest against the use of military trials for civilians have found themselves under pressure by the state. The continued use of military trials for civilians, and the provisions made for their use in the new constitution, pose a significant obstacle to fulfilling the hopes of the 2011 revolutionaries that the post-Mubarak era would be democratic, socially just, and respectful of Egyptians' human rights.

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