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Countries at the Crossroads 2012 - Egypt

2012 Scores

Accountability and Public Voice Score: 2.62

Civil Liberties Score: 1.99

Rule of Law Score: 2.68

Anti-Corruption and Transparency Score: 1.70

Introduction

Note: This report focuses on politically important developments in Egypt from President Hosni Mubarak's resignation on February 11, 2011, until December 31, 2011. Since then, Egypt's first democratically elected parliament convened and was later ruled unconstitutional by the Supreme Constitutional Court on June 14, 2012. The Supreme Council of the Armed Forces (SCAF), the de facto executive, enforced the decision by dissolving the parliament and assuming legislative authority. The SCAF also issued a constitutional declaration on June 17, 2012 – while the presidential election was being held – that limited the president's powers and established wider authority for itself. On June 24, 2012, Mohamed Morsy, a candidate from the previously outlawed Muslim Brotherhood, won the presidential runoff vote. He is currently facing an increasingly severe economic crisis, trying to govern without a parliament, and reaching out to regional and international allies.

The sudden collapse of President Hosni Mubarak's government and the implosion of his National Democratic Party (NDP) in early 2011 marked the beginning of a political transition after decades of authoritarian rule. Efforts to build a full-fledged democracy, however, are ongoing. Generally free and fair parliamentary

elections, which included the long-banned Muslim Brotherhood and the Salafist party Al-Nour, were held between November 2011 and January 2012 with broad participation.^[1] The elections demonstrated some significant political progress since Mubarak's ouster, but there is little evidence of meaningful structural reforms to the country's governing institutions or major changes in the ruling elite that continues to dominate the political system. The Supreme Council of the Armed Forces (SCAF), which assumed power upon Mubarak's exit, has maintained unaccountable executive authority, recreated an exclusive elite political arena,^[2] failed to reform the state bureaucracy or security services,^[3] and appears in some cases to have played social forces against one another in order to maintain political dominance.^[4] The military remains the central nervous system of Egypt's political apparatus, as was the case under Mubarak, and its expanding economic empire is well secured.^[5] Thus the core of Egypt's political system appears to remain largely unaltered.^[6]

With respect to civil liberties, state repression has become unpredictable and is reaching new populations.^[7] The authorities continue to rely on torture as a policing and security tactic, and new violations of human rights – particularly the widespread use of military courts to try civilians – have emerged. While Egyptians now enjoy more freedom of speech than in the late Mubarak years, such tentative progress is overshadowed by new and ongoing rights abuses.

The Egyptian polity has been shaken by disputed electoral processes, foreign policy scandals and crises, fears of sectarianism, and protest-related violence. Further complicating the transition is an economy on the brink of collapse.^[8] In the face of rising citizen demands for stability and reform, the SCAF has largely blamed protesters, organized labor, and society's political cleavages for the ongoing turmoil.

It is not clear how Egypt's transition will unfold. The military is under pressure to either carry out a comprehensive political overhaul based on popular demands,^[9] or cede its influence to the elected parliament and president.^[10] However, the SCAF appears reluctant to take either step. This dynamic will likely cause political gridlock between Egypt's elected and unelected leaders, doing little to alleviate the grievances that motivated citizens to rise up against the Mubarak regime in January 2011.

Accountability and Public Voice

Egypt's system can be classified as an autocracy with contested elections. Elected officials are currently unable to constitutionally challenge the SCAF, which was instated as a temporary power. Its presence has created a complicated, somewhat informal political structure in which elections produce a president and legislature, but an unaccountable and unelected institution continues to redefine their authority at will. While electoral transparency has increased, the actual operation of the government has in many ways grown more opaque, and the degree of influence and power that the parliament and the new executive will enjoy remains unclear.

Since Mubarak was dismissed as Egypt's president through a combination of popular protest and military intervention, the country has experienced some of its freest electoral competition in the post-1952 period. While national and local elections occurred regularly under Mubarak, independent observers routinely reported evidence of state interference before, during, and after the balloting.^[11] These elections featured some of the lowest turnout figures in the world.^[12] For example, the state claimed that 27.5 percent of eligible voters participated in the 2010 parliamentary elections, but domestic groups such as the Egyptian Association for Community Participation Enhancement suggested that the true figure was closer to 10 percent.^[13] The anemic turnout can be attributed in part to the regime's use of voter suppression techniques. Common practices included blocking voters from entering polling stations, violence perpetrated by hired thugs, and strategic appointments of loyalists to guarantee NDP victories in the electoral process. Despite the best efforts of some voters and independent members of the judiciary, elections developed into meaningless exercises, and the government had only a thin veneer of legitimacy when the January 25 revolution began.

The elections in post-Mubarak Egypt reflect both change and continuity. Voter turnout, for example, has increased significantly. However, the SCAF has reportedly manipulated the electoral process and has nominally served as the gatekeeper for those wishing to enter representative state institutions. The first vote held after Mubarak's fall was a March 19 referendum on nine amendments to the existing 1971 constitution. Most of the changes, proposed by a SCAF-appointed advisory body, related to limits on executive power. Popular debate was widespread in the lead-up to the referendum, despite the sense that the amendments would very likely pass.

Official estimates placed the referendum turnout at 41 percent (18 million voters), though observers who toured the country and inspected polling stations questioned the accuracy of this figure.^[14] The proposed amendments passed with a 77 percent majority. Many leaders and supporters of the anti-Mubarak protests opposed the changes, but some groups defected from the protest coalition. For example, the Muslim Brotherhood argued that a "yes" vote would enhance Egypt's stability.^[15] As one Brotherhood spokesman said at the time, "This is the first brick in building our democracy."^[16] A number of those who remained skeptical about the SCAF's intentions voted "yes" in the hope that it would accelerate the generals' ultimate withdrawal from power, but the referendum produced an atmosphere decidedly in favor of the SCAF leading the transition.^[17]

While the referendum was perceived as generally free and fair, its relevance was drawn into question on March 30, when the SCAF unilaterally issued 51 additional amendments in an Interim Constitutional Declaration. The scope of the declaration came as a surprise, though the generals had alluded to the possibility of such a step in the hours after polls closed.

The declaration retained about 80 percent of the existing 1971 constitution. In addition to the nine articles concerning executive power, the decree touched on other aspects of political life. For example, it preserved Article 2, which states

that Shari'a (Islamic law) is the inspiration of Egyptian law. It also maintained the decades-old requirement that at least half of those elected to the lower house of parliament through individual candidacy must be "workers" or "farmers."^[18] Perhaps most importantly, the declaration wrote the SCAF into the constitution, specifically in Articles 56 and 57.^[19] Until that point, there was no formal, legal basis for the council's existence. The Revolutionary Youth Coalition expressed anger, but the general population appeared to be satisfied with the conduct of the referendum and did not mobilize against the March 30 decree. In the absence of street pressure, the SCAF brushed aside criticism, insisting that a new, permanent constitution would be the responsibility of the forthcoming elected parliament and president.^[20] The lack of strong opposition to the declaration was due in part to its ambiguous mixture of provisions and implications. As one Islamist-inclined politician remarked at the time, the SCAF's actions essentially "took with the left hand what it gave with the right."^[21]

The political setting for the parliamentary elections in November and December was entirely different from that of the referendum eight months earlier. By early November, public support for the SCAF had faltered. The military's frequent interventions – including violence against protesters, such as the October killing of over two dozen Christian-led demonstrators in the Maspero massacre (described in greater detail below);^[22] the SCAF's claim to be the protector of the revolution;^[23] and its imposition of guiding "constitutional principles"^[24] – frustrated many Egyptians and appeared designed to reestablish elite control.

The revolutionary movements that had driven protests earlier in the year began to feel that the transition's rulers were ignoring them, and different factions debated the merits of an electoral boycott. Numerous changes to the electoral law favored established political forces. In the lower house of parliament, for example, one-third of the 498 elected seats would still be filled through individual races in two-member districts, while the remaining seats would be allotted according to party-list proportional representation. Although this system might have allowed for legitimate competition based on party platforms, the holding of elections so soon after Mubarak's resignation meant that any new parties were too weak and disorganized to mount a meaningful campaign.

Although the revolutionary groups tried to appeal to the SCAF peacefully on issues including the electoral law, the Maspero massacre, and the lack of reform at the Interior Ministry, the generals rejected their demands, arguing that they did not reflect the will of all Egyptians. The protesters were in fact isolated in many ways from the silent majority, which became known as "the party of the couch."^[25] In this context, protesters battled the security forces near Cairo's Tahrir Square through mid-November. As the polls approached, some international observers questioned whether elections could go forward under such conditions.^[26] However, the SCAF promised to ensure fair and safe elections without the gross state interference of the Mubarak era.

Conducted in three stages over a six-week period from the end of November 2011 to early January 2012, the elections drew a turnout of 54 percent of eligible

voters.^[27] In fact, the participation rate was so high in the early stages that the election commission had to extend voting hours to accommodate demand.

The Muslim Brotherhood's Freedom and Justice Party (FJP) emerged as the winner in January, capturing 47.2 percent of the lower house's elected seats. Al-Nour placed second with 24.7 percent. A variety of non-Islamist parties captured the remainder, including the Wafd (7.6 percent), Egyptian Bloc (6.8 percent), and Al-Wasat (2 percent). The bloc most closely aligned with the protesters, the Revolution Continues party, won a paltry 1.8 percent of the seats.^[28]

The degree to which the elections demonstrated progress in the democratic transition has been the subject of debate. Some observers considered the high level of participation to be a rebuke of the protesters' message and campaign. The fact that the SCAF could oversee balloting that the International Republican Institute (IRI) called "a significant departure with the country's previous elections" even as protest-related violence continued in the heart of the capital represented a serious blow to the revolutionaries.^[29] The generals' stewardship of successful elections essentially marginalized the popular protest movements and gave the military a high degree of control over the transition.^[30] Meanwhile, the state had yet to undergo a comprehensive institutional transformation.^[31]

While it is debatable whether the SCAF has used elections to engrain its informal power into the system, there has been some progress on other fronts. For example, the SCAF has followed up on its promise to try key figures from the Mubarak period, including the former president, his sons Gamal and Alaa, and former interior minister Habib al-'Adly and his deputies. Critics say that Mubarak's trial is little more than an empty show, but the image of the former leader and his sons in the defendants' cage is a symbolically important signal of increased transparency and accountability.

Despite the constitutional guarantee of freedom of association, Egypt's active civil society sector continues to be subject to heavy restrictions and harassment. The Law of Associations, which governs the establishment of nongovernmental organizations (NGOs), prohibits groups that pose a threat to national unity and morals, and stipulates that foreign funding for NGOs must be approved by the Social Affairs Ministry. Authorities have wide discretion to interfere in the activities and operations of the country's NGOs. During the last decade of Mubarak's rule, groups focused on human rights, land rights, women's rights, property rights, and labor rights sprung up around the country, and the expansion of the NGO sector has continued since the revolution. In many respects, because the Mubarak regime heavily restrained the formal political opposition, civil society became the main battleground where political and policy issues were contested. Civic groups and NGOs are legally able to testify, comment on, and influence pending government policy or legislation, but in practice there is little discussion or negotiation with the SCAF, and for most of 2011 there was no president or parliament to hear NGO concerns. Despite early indications that it would be willing to consult with civil society during the transition period, the SCAF did not substantially ease restrictions on NGOs, and many human rights groups criticized it for portraying NGOs as agents of foreign powers and interests.

This smear campaign came to a head in December 2011, when security forces raided the offices of 17 domestic and international civil society groups, confiscating equipment and detaining some staff.

Progress on press freedom has been mixed since Mubarak's fall. There has been an upsurge in independent media, including new television stations and newspapers, but a number of severe restrictions on freedom of expression remain in place. The spreading of false news and information was criminalized in the emergency law that was renewed in September 2011, and bloggers and journalists have been harassed extensively by the authorities. The SCAF was not averse to summoning journalists to "talk" about their reporting, which amounted to a form of intimidation. Blogger Alaa Abdel Fattah was arrested after publishing comments on the Maspero massacre and was held for nearly two months before being released in December 2011. Another blogger, Maikel Nabil Sanad, was arrested and sentenced to a two-year prison term for posting information deemed critical of the military. Sanad's severe health problems reportedly grew worse after prison authorities refused to supply his heart medication and he went on a hunger strike. He was released in January 2012.

Official censorship and self-censorship continue to be common. In December 2011, the English-language newspaper *Egypt Independent* was shut down temporarily after it published an article claiming that there were internal divisions in the military. During the Maspero incident, state media were heavily criticized for calling on "honorable citizens" to come to the scene and protect the army from what they described as violent attacks by Coptic Christians. However, the influence of state media did decrease somewhat during the year. State television and the private channels represent their individual editorial and ideological positions, meaning there is some overall diversity but little genuine debate within one forum.

One area of significant change since the Mubarak era is increased access to online information. Despite the detention and harassment of prominent bloggers, the government generally allows citizens greater leeway to voice their opinions online, and most of the SCAF's generals have Facebook pages through which they often release communiqués.

Civil Liberties

The protection of civil liberties has not increased significantly in the post-Mubarak era. Freedom of speech has expanded, and people have found new ways to voice political dissent. Yet key sectors of the state apparatus, most notably the security services, have not undergone significant reform, and many of the worst practices under the Mubarak regime have continued. These include limiting criticism of the executive, holding political detainees without charges, torturing and otherwise mistreating suspects in custody, and restricting protests and the activities of NGOs. Furthermore, the laws that permit such behavior remain in place, and the SCAF – which claims to be a temporary caretaker that is not responsible for amending laws – in some cases expanded their application. In

addition, alarming instances of sectarian strife have increased since Mubarak was deposed.

The lack of progress in the protection of civil liberties is due in large part to the lack of comprehensive institutional or legal reform of Egypt's state bureaucracy. The various ministries and agencies have gone through only superficial changes, with new names in some cases but nearly identical procedures and personnel. The institutions charged with protecting domestic security rely on the same coercive methods, those who use torture and excessive force continue to enjoy impunity, and at times the SCAF has participated directly in rights violations, contributing to the structurally permissive environment for abuses.

After Mubarak was toppled, the protest movement's key target became Egypt's most notorious security agency, State Security (Al-Amn al-Dawla). Demonstrators began to gather at various branches of the reviled agency across the capital. One evening in early March 2011, thousands of people stormed the headquarters in Cairo's Nasser City district. The army, which was guarding the facility, either allowed the demonstrators to enter or proved unwilling to use force against them.^[32] Protesters took away computer hard drives, videotapes, and documents.

Much of the information from these raids was turned over to the general prosecutor, and some was kept by individual protesters as they initiated their own accountability projects.^[33] Some of the photocopied documents were even sold in Tahrir Square. Unfortunately, this damaged the potential utility of the documents in future legal processes, as a trade in forged documents also began to appear.

In the debate that ensued about the appropriate role of State Security, activists argued that the agency was an authoritarian tool and was no longer necessary in a democratic environment. The SCAF's first inclination seemed to have been to preserve State Security, but a consensus emerged that some reform was necessary. Mahmoud al-Khodeiry, a former vice president of Egypt's influential Cassation Court, described the approach by saying, "The apparatus is necessary and has to remain but it has to be restructured and limited in a way that doesn't allow it to interfere in matters outside of its specialty. It must serve the country and not the regime."^[34] Similar arguments were made about the police forces.^[35]

The SCAF dissolved the 50-year-old State Security and renamed it National Security (Al-Amn al-Qamy) in mid-March 2011. Like its predecessor, the ostensibly new body was charged with maintaining national security and combatting terrorism. Hamed Abdallah was named the first director of National Security.^[36] Given that he had spent his entire career within the existing security sector, many observers interpreted Abdallah's appointment as an indication that the SCAF was not serious about reforming State Security and preventing future atrocities like those committed under Mubarak.

Similar rotations of Mubarak-era officials occurred in other agencies. For example, when Omar Suleiman was dismissed as director of Egypt's main intelligence agency, the General Intelligence Service (GIS), one of his deputies, Mourad Mowafy, was appointed to replace him.

Given the cosmetic nature of institutional reform, it is not surprising that abusive Mubarak-era practices have persisted. Torture and physical brutality were common until the very end of Mubarak's regime.^[37] Indeed, during the January uprising, Human Rights Watch (HRW) issued a report detailing their quotidian regularity.^[38] The most egregious cases, such as that of Khalid Said,^[39] were featured in the news and highlighted by the protest movement. For its part, the SCAF has overseen a period of intense violence against protesters, torture of detainees, and extrajudicial killings of citizens. The military has been directly involved in the repression and torture of dissenters, but the SCAF has repeatedly denied that its soldiers use force against Egyptians.^[40]

Prominent cases during 2011 included the October death of Essam Atta, who had been arrested in a property dispute and convicted in a military court. He was allegedly tortured to death in Tora Prison after smuggling in a SIM card for his mobile telephone. Photographs of his bloated body circulated on the internet as activists called for justice, which has yet to be pursued. In other high-profile cases, Mohamed Mohsen was killed at a protest on August 4, and Ramy Essam was allegedly tortured in March.^[41] Ramy Fakhry was shot at a military checkpoint on his way to work on the morning of May 14. The prosecutor found that Fakhry was accidentally struck during a shootout between the military and drug traffickers, though he had three bullet wounds in his head, neck, and chest. The SCAF promised to investigate, but no case ensued.^[42] Meanwhile, two officers who had initially escaped serious punishment for the June 2010 beating death of Khalid Said were sentenced to seven years in prison in October 2011, but critics said the penalties were too light, noting that the officers were never charged with murder.

Men and women are entitled to equal enjoyment of civil and political rights according to the law, but in practice there continues to be pervasive gender discrimination and harassment against women. Women were active participants in the protests against the SCAF, but they were also targeted with special abuses. For example, detained female activists and protesters were subjected to "virginity tests," in which army doctors conducted compulsory physical examinations of their genitals. The El-Nedem Center for Rehabilitation of Victims of Violence reported that women in detention were questioned about their morality and then stripped and recorded on video as a military doctor inspected them. Army officers were also accused of supplementing this mistreatment with beatings and electric shocks, and allowing male detainees to watch the women being examined and beaten. Groups including Amnesty International (AI) and HRW called on the SCAF to condemn the "virginity tests," which the government initially denied were occurring. In late May, however, a senior general admitted that such tests had been performed, stating, "The girls who were detained were not like your daughter or mine. These were girls who had camped out in tents with male protesters in Tahrir Square. We didn't want them to say we had sexually assaulted or raped them so we wanted to prove they weren't virgins in the first place. None of them were (virgins)."^[43]

Islam is Egypt's official religion. Article 2 of the constitution states that Shari'a is the principle source of legislation. The constitution also guarantees freedom of

religion in Article 46. Though these two articles could complement one another, the actions of the Mubarak and SCAF administrations have undermined that possibility. This is particularly evident in the increasingly tense relations between religious communities in recent years, which disproportionately affects the Coptic Christian community. Roughly 90 percent of Egypt's population is Sunni Muslim, and the non-Muslim minority is predominately Coptic.^[44] Other minorities, such as Baha'is, are not recognized by the state.^[45] Sunni Islam has come to dominate popular culture and political expression, as demonstrated in part by significant public support for the Muslim Brotherhood and Salafist groups.

When Mubarak was president, the state bred discrimination in its attempts to control different religious sects in a centralized fashion. It relied on the security apparatus to mediate conflicts, rather than allowing the courts to ensure justice and punish aggressors. When communal clashes occurred, the state-controlled media faulted supposed foreign instigators. Mubarak's state went to great lengths to convince Egyptians, and the world, that its Muslim and Christian populations were united, but it failed to enforce an agenda that would integrate the two communities.^[46] Discrimination against Copts was common under Mubarak, but it was not systematic. Violence against the minority group increased dramatically in the final years of Mubarak's rule. The Egyptian Initiative for Personal Rights cited 53 incidents of communal conflict between January 2008 and January 2010. The remainder of 2010 saw clashes in Nag Hammadi and Marsa Matruh, as well as a church bombing in Alexandria.

During the January 25 uprising, protesters, revolutionary graffiti around the country, and the news media publicized tremendous communal harmony. In addition to murals on walls, there were frequently images broadcast that showed Christians protecting praying Muslims or Muslims safeguarding a Coptic mass in Tahrir Square as it was besieged by police.^[47] Egyptians proudly reiterated that the two communities were "one hand" (*'eid wahda*). Yet outbursts of sectarian violence continued after the fall of Mubarak, as there was little institutional reform or positive change in the government's approach to the problem.

Under the SCAF, the government has remained reluctant to prosecute those responsible for interreligious bloodshed, and the generals used the state apparatus to escalate anti-Christian violence in at least one incident. In the political realm, they have appeared to exploit existing and manufactured social cleavages. In addition to using the Brotherhood against the Salafists and vice versa, the SCAF was able to play up the fear among Christian and secularist groups of an Islamist majority surrounding the elections. This promoted disunity among the opposition, and they were portrayed as unable to get along.

The continuity of the government's policies toward sectarian strife can be seen in a number of cases from 2011. For example, Muslims burned down a church in Sol, Helwan governorate, in March. The perpetrators were reportedly responding to a rumor of a Muslim-Christian romance in the village.^[48] The prime minister at the time, 'Issam Sharif, dispatched troops to calm the tensions, and the military promised to rebuild the church. The Christian population called for those responsible to be prosecuted,^[49] but to date there have been no charges or even a

formal investigation. The SCAF's General Hassan al-Raweiny later suggested in a television interview that it was ridiculous to investigate, since the church was rebuilt.^[50]

In May, the Saint Mina Church in Cairo's Imbaba district was attacked and burned.^[51] A rumor that a Muslim woman was forced to convert to Christianity sparked the violence, which caused 12 deaths and injuries to 186 other people. The SCAF announced that over 190 people had been arrested. However, the results of the investigation were not shared publicly. A large number of the detainees were later released, casting doubt on the seriousness of the investigation.

In yet another incident on September 30, the Mar Girgis Church in the Upper Egypt village of Al-Marinab, near Edfu in Aswan governorate, was desecrated and burned down.^[52] The villagers had requested permission to renovate the dilapidated church a year earlier, but government inspectors recommended that the building be demolished and rebuilt instead. When the rebuilding plans emerged, Mar Girgis was referred to as a "guesthouse" instead of a church. As the Copts rebuilt, local Muslims began to protest and demanded that the building be demolished. Informal negotiations were held between the two communities, and construction restarted. Finally, after Friday prayers on September 30, nearly 3,000 Muslims tore the church apart and burned down a library. Three homes belonging to Copts were also destroyed. The Copts appealed to the authorities, but they failed to respond.

The incident in Upper Egypt led protesters to gather around the Maspero state media building in central Cairo, after the military approved a march. Although the demonstration was led mainly by Christians, Muslims and other revolutionaries joined in to express their discontent at the situation in Al-Marinab. On October 9, military units around Maspero attacked the demonstrators. The army is believed to have killed 28 protesters and injured 320 others. *Al-Ahram* later published a timeline that documented the massacre.^[53] According to eyewitness accounts and video evidence, soldiers randomly fired live rounds and drove armored personnel carriers into the crowds.^[54] Both state television and the country's flagship paper, *Al-Ahram*, initially issued headlines that portrayed the protesters as the aggressors.^[55] State-affiliated television also contributed to the clashes as they unfolded, calling on regular citizens to come to the scene and defend the army from the protesters.^[56] One news feed at the bottom of the screen read, "Urgent: The army is under attack by Copts!"^[57] State television eventually retracted the assertion that soldiers were killed, and blamed the news presenters for being careless in their coverage.^[58]

The SCAF was less apologetic. One of the council's generals, Mahmoud Hagazi, gave a press conference on October 12. He adamantly rejected the notion that the Egyptian armed forces would ever attack or engage protesters. He also denied that the army used live ammunition. Another general, Adel Emara, made a case that outside "thugs" attacked the soldiers, who simply defended themselves.^[59] Despite video evidence as well as eyewitness accounts to the contrary, military representatives refused to admit any guilt. Similarly, an Interior Ministry official appeared on Al-Jazeera television and cited the protesters as the problem.^[60]

The SCAF declared that the military would be the only authority to lead an investigation into the Maspero clashes.^[61] Military prosecutors charged at least 28 civilians with inciting chaos. They were detained, with some, such as Alaa' Abdel-Fattah, remaining in prison until late December. Three soldiers were eventually charged with involuntary manslaughter for the Maspero deaths. All three were released pending further investigation. No convictions are likely to be handed down, as a military judge recently cited a lack of evidence.^[62]

The incident at Maspero represents the greatest difference between Mubarak's presidency and the SCAF's rule with respect to sectarian violence. The Mubarak regime made few efforts to integrate Egypt's different religious communities, and it relied on reconciliation committees to address interreligious strife instead of using the law and delivering justice. This nurtured suspicion and mistrust between Egypt's Muslim and Coptic communities. The SCAF not only failed to improve upon this legacy, it also steered religious communities toward conflict with the assistance of other arms of the state, such as the National Council for Human Rights and the state-affiliated media. Civil liberties remain at risk for anyone in contemporary Egypt who demands change beyond the limited scope that the SCAF and its allies offer.^[63]

The state legally recognizes every person's right to freedom of association and assembly, but in practice protests are often repressed. The SCAF-initiated protest law, enacted in March 2011, threatens protesters with jail time and fines of up to \$90,000.^[64]

Rule of Law

Egypt's judiciary has a tradition of relative independence, and Egyptian judges enjoy a reputation of being among the most professional in the Arab world. Given their strong academic training and the institution's merit-based hierarchy, Egypt's judges are often considered models for the rest of the region. Their independence is a product of the nationalist struggle against colonialism in the late 19th and early 20th centuries.^[65] After decades of resisting Britain and its client monarchy in Cairo, Egypt's judiciary successfully institutionalized the legal profession and proved capable of training future generations. President Gamal Abdel Nasser attempted to gut the judiciary in 1969, but his successor, Anwar el-Sadat, reinstated it to legitimize his presidency two years later.^[66]

Mubarak largely left the diverse body alone for the first half of his presidency. The relative decline in judicial independence during Mubarak's final years in office was not as sharp as the deterioration in other areas, such as accountability or civil liberties. As Tamir Moustafa argues, "The judiciary was one of the only spaces in the formal political system that enjoyed a measure of autonomy from executive domination over the past six decades in Egypt."^[67] Nevertheless, in the second half of his administration, Mubarak tried to expand the executive's power over judicial appointments and resuscitated defunct courts with compliant judges that would deliver favorable verdicts. As NDP-dominated parliaments continuously extended the emergency law, state security courts were able to try people with few procedural protections. Emergency law also provided the executive with

extraordinary legal powers, such as referring civilians to military tribunals. The Mubarak regime frequently engaged in legal practices, including recurrent detentions, which violated the rights of Egyptians.^[68] Lastly, the Mubarak regime consistently worked to minimize the objections of the autonomous judges' clubs in places like Cairo and Alexandria.

While the SCAF has dabbled with constitutional amendments and attempted to insert itself legally into the state, the generals seem intent on circumventing rather than directly confronting the judiciary.

There is little accountability for violations committed by officers of the state. For months after Mubarak's ouster, domestic and international rights groups pressured the SCAF to investigate crimes committed against protesters, with HRW describing the investigation into allegations of torture as a "sham" by November 2011.^[69] One detainee who was subjected to a "virginity test," Samera Ibrahim, filed a lawsuit against the military, and a court banned the practice in a late December ruling.^[70] The military responded by saying that the judgment was inapplicable because no military laws sanctioned the practice. It also reported that it was investigating those who committed any wrongdoing. In March 2012, suspects accused of performing virginity tests were acquitted on the basis of jurisdictional issues as well as contradictory testimony.^[71]

The primary legal mechanism the SCAF has used is the military court system. On this issue, conditions have grown worse in comparison with the Mubarak presidency. Military courts operate in parallel to Egypt's ordinary courts. Law No. 138 of 2010 explicitly notes that military courts are for crimes that happen in the barracks, camps, institutions, factories, or shops owned and operated by the military. They also adjudicate issues related to military equipment, secrets, or documents. Under normal circumstances, the president of the republic can only refer crimes that meet these criteria to a military tribunal. However, the state of emergency, which has been in place since 1981, grants the executive the right to use military courts in place of civilian ones, and the SCAF introduced a new law in March 2011 that changed the penal code to add the crime of "thuggery." Since that time, anyone accused of thuggish behavior can be tried in a military court.^[72]

It is unknown how often Mubarak used military tribunals during the course of his nearly 30-year presidency. The director of Egypt's Hisham Mubarak Law Center, Ahmad Ragheb, claimed that around 10,000 civilians were tried in military courts under Mubarak.^[73] Other accounts place the number far lower, in the range of 2,000 to 2,500.^[74] No group was subjected to military trials as frequently or consistently as the Muslim Brotherhood.

Mubarak often used military courts against both the Brotherhood and the militant group Al-Gama'a al-Islamiya in the 1990s. The Brotherhood claims that between November 1992 and November 2000, the total number of military trials of civilians was 1,023.^[75] Between 1995 and 2008, military courts sentenced 108 members of the Muslim Brotherhood. Most domestic and international human rights organizations agree with the Brotherhood's assessment that Mubarak's use of military trials against civilians was politically motivated.^[76]

The SCAF has escalated the use of military courts at an alarming rate. It reported in September 2011 that military courts had handled 11,879 civilians between January 28 and August 29.^[77] Of those charged, 8,071 were convicted, while the convictions of another 1,225 had not yet been finalized. A further 1,836 received suspended sentences. Compared with the total number from the previous 30 years, this represents a nearly sixfold increase in just seven months. While advocacy campaigns and organizations have been established to shine a light on this problem,^[78] the SCAF has proven reluctant to end its reliance on military trials.

There is no clear pattern indicating who is liable to be charged or convicted in a military court. With the police force not fully operating, the SCAF appears to have improvised in an effort to maintain order. As one reporter noted, "The large number of defendants suggest that some have been arrested simply for being in the wrong place at the wrong time."^[79] It is noteworthy, however, that all of the former Mubarak officials prosecuted to date have been tried in civilian courts. As Adel Ramadan, a lawyer for the Egyptian Initiative for Personal Rights, has argued, "There is a perception that fair trials are only for the privileged."^[80]

After encountering domestic and international pressure, as well as domestic lawsuits, the SCAF began to respond. Field Marshal Mohamed Hussein Tantawi said in October 2011 that military trials for civilians would end, except as provided for by martial law. Heba Morayef of HRW called this pledge "completely meaningless," arguing that "the only statement that will make sense is if Tantawi says he'll stop military trials in all cases except for those serving in the army."^[81]

Nevertheless, there was a decrease in the number of civilians referred to military courts. Nearly all those detained in clashes with the army in November and December were processed through the civilian courts, though they also lack adequate legal safeguards. Other civilian detainees that were initially slated for military courts, such as those charged in connection with the Maspero clashes, were transferred to civilian courts. While this trend has been a welcome development in terms of the rule of law, activists remain vigilant. As Mona Seif, the head of the "No to Military Trials for Civilians" campaign, argued, "Not transferring new cases to the military court doesn't mean they [the SCAF] learned their lesson. They realized that using military trials will backfire on them, but they are shifting now to new twisted strategies."^[82] As examples she cited anonymous abductions of activists and the military torture of detainees before they are handed over to civil authorities.

No legal guarantee of a civilian trial for civilian detainees has been established, meaning the SCAF could resume using military courts in the future.^[83] Indeed, neither the SCAF nor Egypt's elected parliament seem keen on giving up the option of military trials. In May 2012, the parliament passed a SCAF-backed bill that stripped the future elected president of the authority to refer civilians to military tribunals, but preserved the military's ability to do so. Many Egyptian human rights activists saw this as a dangerous escalation. As *Egypt Independent* reported, "The return of the military trials of civilians is not prompted only by the

newly passed law, but also by a wider acceptance of the practice among the public."^[84]

Anti-Corruption and Transparency

Egypt suffers from high levels of corruption, which reaches into many areas of daily life. Whether it takes the form of bribery or the use of personal networks to facilitate basic bureaucratic transactions, corruption undermines the unbiased and predictable delivery of government services.

Under Mubarak, the government of Prime Minister Ahmed Nazif, in power from 2004 until January 2011, initiated numerous laws to limit money laundering, improve auditing standards, and regulate banking transactions. Nevertheless, Transparency International ranked Egypt 98 out of 178 countries in 2010. The country's ranking under the SCAF in 2011 was slightly worse, at 112 out of 183, with a score decline from 3.1 to 2.9 on the organization's 10-point scale. The transition from Mubarak to the SCAF has not been catastrophic in terms of corruption, but it has slowed the introduction of financial and economic reforms aimed at increasing transparency. Given the SCAF's lack of attention to the issue, no improvements can be expected until a civilian government is firmly in place.

The dearth of legal accountability that allowed corruption to thrive under Mubarak remains largely unchanged, though the SCAF has overseen high-profile corruption prosecutions.^[85] In addition to serving as an important source of legitimacy for the transitional authorities in the face of public demands, the prosecutions are a means of eliminating potential political rivals. Some have argued that the selection of cases is governed in part by a desire to protect the military's business fiefdoms in the country, with unpopular Mubarak business associates put on trial and those with close ties to military companies passed over by prosecutors.^[86]

The series of cases against former ministers as well as the former president and his family have come to dominate Egypt's contemporary political discourse.^[87] However, the current anticorruption drive remains selective and lacks the legal and institutional framework needed to ensure impartial justice in ongoing and future cases.^[88] As with other aspects of democratic governance, meaningful improvements on corruption and transparency will require a decisive break from the model of an all-powerful, unaccountable executive.

Recommendations

- Freely elected civilians in the parliament and the presidency must be allowed to govern without undue or unaccountable interference from the military.
- Bureaucratic reform, particularly in the security sector, must be pursued in a way that ensures civilian control and aims to eliminate torture and impunity for culpable officers.

- An equitable electoral system must be implemented to ensure fair access for all political factions and minority communities.
- Unjust laws – such as Law No. 84 of 2002, which governs associations, and the protest law enacted by the SCAF in March 2011, which threatens protesters with possible jail time and fines of 500,000 Egyptian pounds (\$90,000) – should be abolished.
- The parliament should fully decriminalize libel and slander to help ensure freedom of the press.
- The state must hold those who engage in violence against religious minorities accountable through the formal legal system, and move to a more robust concept of citizenship for members of all religions.
- The security services must be made accountable to independent courts, and those who commit torture must be prosecuted to the full extent of the law.
- Military tribunals should never under any circumstances be used to try civilians.
- The government should fully implement and improve upon its recent transparency-related legal reforms and empower the regulatory agencies that it has set up to combat corruption. This process must include allowing an independent judiciary to serve as the final arbiter in cases of corruption. The authorities should also continue streamlining the registration process for businesses to reduce opportunities for civil servants to extract bribes.
- The government must accept the proper role of civil society organizations and journalists in exposing corruption. The authorities should view the cases that are brought to light as opportunities to improve governance and safeguard public wealth.

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