

## Mubarak's Flawed Trial

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Sep 28, 2011

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**It is important -- for both the future of the bilateral relationship and the economic and political success of Egypt -- that the legal process surrounding Mubarak's trial is transparent, credible, and not driven by mob justice.**

This week in Cairo, attorneys representing the families of those killed during the Egyptian uprising filed a motion for a mistrial in the murder prosecution of former president Hosni Mubarak. It wasn't supposed to be this way. The trial was supposed to represent a critical phase of transitional justice -- an opportunity to hold Mubarak and the senior officials during his 30 years in office accountable for their crimes. Just weeks into the trial, however, preliminary indications suggest Egyptians are going to be disappointed with the outcome.

Mubarak stands accused of three crimes. In addition to two corruption allegations, he is charged with having given the order to open fire on protestors during the revolt that toppled his regime. Nearly 850 people were killed in the demonstrations. If Mubarak is convicted, he could face the gallows. But while Mubarak may be found guilty on the lesser two charges of corruption, it seems increasingly likely that Mubarak will beat the murder rap.

Putting aside the prosecution's complaints of judicial bias, it's not a problem with the courts or judges. Even during the height of the corrupt authoritarian Mubarak regime, the judiciary retained much of its independence and was one of the most respected institutions in the state.

At its core, the trouble appears to be that the trial was hastily arranged, not providing the prosecution with adequate time to prepare for the case and resulting in charges limited to only relatively recent transgressions. Given the time, the prosecution might have pursued some of the decades of human rights abuses and other endemic regime excesses. Alas, time was in short supply, in large part because the Supreme Council of the Armed Forces (SCAF) currently governing Egypt was loath to render Mubarak before the tribunal. When the military finally consented to the trial, it did so because it was compelled to by the street.

The haste of the trial is striking. By way of comparison, consider the timeline of Iraqi dictator Saddam Hussein. Captured in December 2003, Saddam's trial didn't start until October 2005 -- nearly two years later.

Another complicating factor has been the public nature of the trial. Unlike criminal trials in the west -- where victim's families typically only testify during the sentencing phase -- dozens of lawyers representing the families of the dead are participating in the mixed civil/criminal trial. Perhaps not surprisingly, these lawyers agree neither on demands nor on procedural points. Worse, until mid-August (when the judge ordered them removed) the attorneys were grandstanding for the courtroom television cameras. As one defense lawyer quipped a few weeks ago, "At this rate, the case will take ten years."

More problematic for the prosecution, however, have been some early setbacks with witnesses. To date, none of the witnesses the prosecution has put on the stand have implicated the president -- or his co-defendant in the murder trial former Minister of Interior Habib Adly -- in the killings. Indeed, several high-ranking police officers and a deputy interior minister have all testified that they received no order to shoot protestors. The prosecution has cried foul -- accusing the officers of changing earlier statements -- but the damage has been done.

Star witnesses -- i.e., those most likely to know what actually happened -- have been even less likely to help prove the case. Given their loyalty to Mubarak and their desire to head off any future criminal proceedings, it was clear that Minister of Defense Mohammed Tantawi or Chief of Staff Sami Annan -- who testified behind closed doors earlier this month -- would not drop the dime on their former boss. To wit, according to the leaked transcript of his September 24 testimony, Tantawi answered "I don't know" to nearly 1 out of every 3 questions. Instead of implicating Mubarak, Tantawi suggested instead that "foreign interference" may have played a role in the violence.

Clearly the state has faced difficulties with its witnesses. But the fact is that even if the prosecution had enough time and was better prepared, it would still be difficult to prove that Mubarak gave an order -- to his Minister of Interior or anyone else -- to kill protestors. Of course, the proceedings may end up being moot; Mubarak is by all accounts ill with cancer and may not live to see the trial conclude. And at 83, if he is convicted of even one of the corruption charges, it would basically prove a life sentence.

Notwithstanding, for the families of the victims and for many Egyptians, anything short of the death penalty for Mubarak would be considered a miscarriage of justice and a compelling reason to once again reoccupy Tahrir Square in protest. But this would be a mistake. Ironically, after all, if Mubarak does slip the noose, it will only be due to the implementation of rule of law.

At the end of the day, Washington has no stake in whether Mubarak lives or dies. What is important -- for both the future of the bilateral relationship and the economic and political success of Egypt -- is that the legal process is transparent, credible and not driven by mob justice. As the recent storming of the Israeli embassy and the re-imposition of the Emergency Law would suggest, however, the rule of the street is increasingly supplanting rule of law in Egypt. Regrettably, if the Egyptian military doesn't get a handle on this problem soon, there will be no stability, no transition to democracy and no real justice for Mubarak -- or anyone else in Egypt -- for some time to come.

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