

Egypt's Military Tribunals: Illiberal and Destabilizing

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ABOUT THE AUTHORS



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Brief Analysis

By subjecting civilians to military tribunals, Egypt's military rulers risk confrontation with the public.

Since assuming control of Egypt following Hosni Mubarak's February 11 resignation, the Supreme Council of the Armed Forces (SCAF) has subjected civilians to military trials at an unprecedented rate. The increased use of military trials has become a rallying cry for Egypt's major political forces against the SCAF, and a new round of demonstrations is being planned for September.

Background

Egypt's rulers have long used military tribunals to achieve desired verdicts by circumventing the relatively independent judicial system. During the late nineteenth and early twentieth centuries, Egypt's British rulers established military tribunals to avoid the country's national courts and expedite trials of Egyptians accused of offenses against British soldiers. Later, Gamal Abdul Nasser relied on military tribunals to try cases involving political opponents, controlling the outcomes by picking judges and retaining authority to approve verdicts. After Nasser's death, Anwar Sadat mostly discontinued the practice, apparently believing that judicial independence would bolster foreign investment; political dissidents were thus sent to state security courts rather than military ones.

Hosni Mubarak initially followed Sadat's prosecutorial policies but, after a few disappointing verdicts, sought greater control over judicial outcomes. During the early 1990s, the government began trying terrorism cases in its military courts; this gave the regime complete control over verdicts, since the judges in question were military officers appointed by the president and minister of defense for renewable two-year terms. Then, starting in 1995, Cairo expanded its use of military courts for trying civilians affiliated with the Muslim Brotherhood, which the regime defended under a 1966 military judiciary law stating that "the President of the Republic has the right to refer to the

military judiciary any crime which is punishable under the Penal Code or under any other law."

Since February 2011, the SCAF has tried civilians at an unprecedented rate. Although no concrete figures are available, human rights organizations estimate that between 10,000 and 12,000 civilians have been subjected to military prosecution since the January revolt.

Expediency Trumps Justice

The SCAF's reliance on military trials serves two key interests. First, military trials are politically expedient.

Fearing that it will become the target of the same types of protests that ousted Mubarak, the SCAF prefers using military trials -- and the long sentences that convictions carry -- to deter what it considers criminality rather than intervening directly in civil strife and risking confrontation with the public. According to activists, the military has not been shy about its rationale for resorting to military trials, frequently telling the families of those arrested that its goal is to "terrorize the nation back into submission."

To bolster this deterrent effect, the SCAF has widened the scope of crimes that can be tried before military courts. On March 1, it amended Egypt's penal code to include "thuggery," which is defined as "displaying force or threatening to use force against a victim" with the "intention to intimidate or cause harm to him or his property." Although this amendment was widely supported in the aftermath of the Tahrir Square revolt, during which pro-Mubarak thugs violently terrorized the public, "thuggery" has since been interpreted much more broadly to include breaking curfews, possessing illegal weapons, destroying public property, theft, assault, or threatening violence -- in short, a wide variety of activities that grant the military maximum discretion for locking up civilians.

The military court procedures all but ensure convictions for those accused of thuggery. Defendants are typically denied counsel and tried in groups that range from five to thirty people. Anecdotal evidence further suggests that guilty verdicts are predetermined, and according to reports, entire trials can last less than a half-hour -- meaning that families often do not learn of their relatives' whereabouts until after they have been sentenced. Perhaps most alarming, military sentences cannot be appealed.

While the vast majority of military trials have been nonpolitical, the SCAF has increasingly relied on its military courts for advancing a second, inherently political goal: quashing dissent.

A Weapon and a Rallying Cry

In recent months, the SCAF has increasingly employed military detentions and trials against youth activists participating in demonstrations. The first large-scale roundup occurred on March 9, when the military violently dispersed a Tahrir Square sit-in and detained 173 activists on charges of thuggery; at least 76 were sentenced to one to three years' imprisonment on charges of breaking curfew, possession of explosives and knives, and destruction of property. The military carried out additional mass arrests of activists on April 9 (42), April 12 (28), June 28 (50), and August 1 (115). Although the military has responded to the subsequent public outcry by releasing many of those arrested, the activists report overcrowded cell conditions and beatings by junior officers.

The SCAF has further sought to quell criticism of its rule by subjecting a number of high-profile activists and bloggers to arrest and even military prosecution for the crime of "insulting the military establishment." For example:

- On March 28, Coptic blogger Maikel Nabil Sanad was arrested for writing about the military's human rights abuses and, on April 10, was sentenced to three years' imprisonment without his lawyers present.
- On August 14, youth activist Asmaa Mahfouz of the "April 6" movement was arrested for "inciting violence against the military"; she is awaiting military trial.

- On August 15, Kefaya activist Maha Abu Bakr, a lawyer, was arrested; she was later released, with the military claiming that she had been captured due to mistaken identity.
- On August 17, the military accused the leadership of the Egyptian Democratic Academy (EDA), a liberal advocacy group that trains activists to organize politically, of fomenting instability; although the military prosecutor let EDA's leaders go, they remain unsure as to whether the investigation has been closed.

In addition to these military detentions, journalists Rasha Azab, Hossam el-Hamalawy, and Reem Maged have been interrogated by the military -- not the police -- for statements made regarding the military.

While many political detainees have been released, these prominent cases have raised the profile of military tribunals, creating a new source of tension between the SCAF and other political forces. Even the Muslim Brotherhood, which gave strong support to the military's handling of the political transition process, has criticized the tribunals as an "unconstitutional procedure," and Salafist presidential candidate Hazem Abu Ismail has similarly declared his opposition. Meanwhile, during an "online protest" held on August 27, activists posted over 130,000 comments protesting military trials on the SCAF's Facebook page in a mere fifteen minutes.

After a month of diminished political activity, Egypt's youth activists believe that they can reengage the public by focusing on tribunals. Six major liberal and leftist movements -- April 6, the ElBaradei Campaign, Justice and Freedom, al-Karama, Tagammu, and the Democratic Front Party -- have already begun planning a major demonstration for September 9 dubbed the "Friday of Path Correction." If the activists succeed in regaining momentum, they could set the stage for another series of confrontations with the military.

So far, the military has responded by releasing 230 civilians who were convicted in military courts following the demonstrations of June 28-29. But the activists have dismissed this gesture as insufficient, noting that an additional 10,000 or so civilians remain in military prisons without having been given a fair trial. The SCAF's prosecutorial policy seems especially unfair given that it is trying former Mubarak regime officials in civilian courts. Meanwhile, the SCAF seems to have prioritized the military prosecution of civilian activists above the need to recapture the estimated 7,000 criminals who have escaped from Egyptian prisons since the beginning of the revolt.

An Urgent Issue for Bilateral Discussion

While the Obama administration has appropriately given the SCAF wide leeway to pursue political transition in the manner it sees fit, Washington must nevertheless raise the issue of misuse of military tribunals with Egypt's current rulers. For years, successive administrations urged the Mubarak regime to end or redesign Egypt's emergency laws to prevent political abuse in the name of national security. If Mubarak's successors unwisely maintain and even expand this practice, they will be committing more than just a miscarriage of justice. They will also risk creating new tensions with the public that threaten the legitimacy of both Egypt's political transition and the institution -- the military -- that Washington is counting on to shepherd a peaceful, orderly transfer of power. When even Mubarak himself is being tried in a civilian court, it is both right and smart to counsel the SCAF to embrace the civilian judiciary as the appropriate setting for prosecuting civilian criminality.

Eric Trager, the Institute's Ira Weiner fellow, is a doctoral candidate in political science at the University of Pennsylvania, where he is writing his dissertation on Egyptian opposition parties. ❖



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