

# The Trial Will Not Be Televised: Mubarak and the Struggle for Power in the 'New Egypt'

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ANDREA TETI, AUG 18 2011

The trial of former President Hosni Mubarak is a watershed in Egyptian history, and a microcosm of the struggle for democracy both in Egypt and throughout the region.

It is difficult to overemphasize how important and how momentous a fact this is: if Gamal Abdel Nasser was hailed as the first Egyptian to rule Egypt since the Pharoes and Hosni Mubarak is the first leader in the entire Arab world to be deposed and put on trial by a popular uprising. But, no one among the groups which called for and drove the uprising is under any illusion that the simple fact of the trial is in itself a guarantee that the revolution's goals are being secured, much less that it is a guarantee of the good faith of Egypt's new military junta.

Former President Mubarak, former Interior Minister Habib al-Adly, and six senior interior ministry officials were in the dock for the second time on August 15<sup>th</sup>, facing charges of conspiring to kill protesters. Mubarak is also charged with corruption, along with his two sons Gamal and Alaa, and businessman Hussein Salem.

There were two key decisions in the trial's session: first, to merge the trials of Mubarak and Adly for being responsible for the killing of pro-democracy activists during the uprising; and second, to go back on the commitment to broadcast the trial live on state television.

The first decision was welcomed by Human Rights group leaders like Gamal Eid (Arab Network for Human Rights Information) and Ahmed Ragheb (Hisham Mubarak Law Center) because it makes it harder to convict Adly while absolving Mubarak, and makes life easier for prosecutors and for victims' lawyers, who can concentrate on a single set of charges and proceedings. However, it also raises the stakes, making the military leadership less able to cut individual deals and more vulnerable to veiled threats to call current leaders like Field Marshal Tantawi and General Sami Anan to the stand. Both men knew well the inner workings of the Mubarak regime and its connections to Western governments, as well as of the 'inexplicable' disappearance of former intelligence chief and latterly vice-president Omar Suleiman.

The move to take the trials off air has been highly controversial. Some have argued that Judge Ahmad Refaat's decision would be perfectly normal even by the standards of many established democracies, and taking the trial out of the public spotlight might even reduce the influence of politics. Indeed, publicly airing testimonies would allow witnesses to hear each others' testimonies. But this is not a normal trial, and it is not taking place at a normal time. For a start, to think that politics will somehow disregard the trial and not seek to influence the judicial process the moment the cameras are turned off, or that lawyers will not inform their charges of the testimonies against them imply smacks of naïveté. The decision not to televise the trial is particularly serious in political terms, because the first two sessions have clearly acted as a catalyst for public debate. If the trial remains visible, the corruption of the former regime – and therefore also the issue of social justice, which was a core demand of the uprising – remains in the public eye and therefore at the centre of the political debate.

The ruling junta, however, has in recent months consistently attempted to focus public attention on the question of

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'stability', accusing pro-democracy activists of 'de-stabilizing' Egypt and its economy: taking the trial off air is a major concession to the junta's political interests.

Indeed, there are a number of political dimensions in trial proceedings. It is probably in the junta's best interests that the trial be brief, end in convictions without serious penalties, and kept as far from public attention as possible. Indeed, for the Supreme Council of the Armed Forces (SCAF), the ideal outcome would be for Mubarak to die during the trial, to avoid potentially embarrassing statements by the former president, and the spotlight for other witnesses. The defense, on the other hand, has been threatening to make the trial extremely lengthy by asking for extra time to examine documents, calling for sometimes spurious documents to be admitted in evidence (and therefore time to examine them conceded) such as the criminal records of all over 1600 people who were killed or wounded, and asking that high-ranking members of the junta be called to the stand. But the most politically sensitive issue is the witness list: the junta wants to avoid key figures of both the old and the new regime taking the stand and they want to avoid public attention being focused on the corruption of the system that they themselves were an integral part of before the uprising. Defense lawyers, victims' families and pro-democracy activists, on the other hand, are pushing for exactly this, albeit with very different goals in mind. In this sense, the ban on broadcasting the trial may be a preventive measure by the military before the trial begins to debate the facts of the uprising and its attempted repression.

But the issues and the politics go well beyond the procedural. The justice system as a whole has been called into question, from the effectiveness and objectivity of the investigations carried out by the general prosecutor who Mubarak appointed before leaving office and to the police and security forces, which, after a post-uprising hiatus, have returned to the bad old ways, with abuse of power, impunity, arbitrary arrest and harassment of any opposition regular staples of daily chronicles from Egypt. Even in the course of the trial itself, there have been several cases of officers accused of killing protesters pressuring witnesses or victims' relatives to change their statements, or to prevent them from even filing complaints in the first place.

The trial is also symbolic of the precarious grounds upon which the junta bases its claim to legitimacy. While it presents itself as defender of Egypt and guardians of the values of the revolution, it benefits from a system of privileges rivaled only by those reserved for the elite of oligarchs which Gamal Mubarak and his close friend Ahmad Ezz represent. While it presents itself as the last, best bastion of justice, from the very earliest days after Mubarak was removed, they were involved in violently repressing protest. One need only recall the ignominious episode just after Mubarak's removal in which female protesters being subjected to sexual harassment with the excuse of 'virginity tests' intended to protect the army from accusations of rape. Or indeed the violent clearing of Cairo's Tahrir Square just days before the trial itself started.

Indeed, the junta's record when it comes to supporting the values and goals of the revolution is questionable at best. The SCAF itself is the epitome of lack of transparency, without a clearly defined remit, and without even a list of responsibilities to match to its membership, save Tantawi who acts as its chairman and is *de facto* the country's President. And while the junta has appointed a nominally civilian caretaker government, it has often taken decisions over the government's head, such as the direct appointment of regional governors (most of whom are military men).

Nor have election dates been set for either parliament or the presidency. In fact, parliamentary elections have just been postponed to unspecified dates in November. Perhaps most importantly, the new regime has not repealed the hated emergency legislation which gives vast powers and virtual impunity to the security forces and the army. Instead, activists and journalists continue to be arrested on exactly the same vaguely-worded charges such as 'insulting the military' and 'destabilizing social order' – as were used under Mubarak, which, according to many prosecutions of such 'crimes' through military courts, has actually skyrocketed since the uprising. It is certainly no small irony that while Egypt's 'new' leadership is being lauded for making sure the Mubarak trial is not being rushed through a military court where standards of proof are lower and pressures on the defense can be higher, pro-democracy activists and protesters are being dragged through those same military courts in ever-greater numbers. This is all in stark contrast to the situation in Tunisia where, for all its faults, the military have at least retreated from public life and fixed election dates.

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On its own, each action the new/old military leadership has taken may be interpreted as well-intentioned, but when viewed collectively it is difficult to escape the impression that the SCAF's actions have the effect of consolidating the military's grip on power, marginalizing the progressive groups which initiated the uprisings, and favoring ultra-conservative groups such as the Muslim Brotherhood and its Salafi allies. These are the exact tactics used by the regime under Mubarak.

As the trial edges uncertainly forward, it presents a microcosm of both post-Mubarak Egypt, and of the struggle for power at the heart of the Arab Spring, with the military, conservative Islamists, fragments of the old civilian elites, and increasingly embattled pro-democracy protesters (including progressive Islamist youth) all jostling for position. The stakes are high, both for Egypt and for the rest of the region: if pro-democracy groups manage to maintain pressure on the junta and achieve some parvence of a progressive working democracy in the near future, the effect of a functioning – and socially as well as politically – equitable democratic project will be considerable, on intra-Arab relations, on Arab-Israeli relations, and on relations with Western governments themselves.

Ultimately the best and harshest test for the direction of the trial and of the revolution is contained in one of the most popular slogans of both Egypt's uprising and the 'Arab Spring' in general: *ash-sha'b yurid isqaat an-nizaam*, the youth, united, demand the fall of the regime. The figurehead is gone: the *nizaam* is still in place.

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