

Establishing Political Accountability in the Post-Mubarak Era: Transitional Justice vs. Authoritarianism

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Abstract

Two parallel but contradictory trends have come to characterize the early decades of the twenty-first century. On the one hand, the traditional principles of international law highlighted in the UN Charter, such as the principles of state sovereignty, non-intervention, and the state officials' immunity, have become considerably weaker norms. The dimension of moral sovereignty of governments, by contrast, has gained much traction, as more and more states tend to prioritize the protection of internal jurisdiction over the promotion of human rights. However, at the same time, the notion of the responsibility to protect (R2P) and transitional justice in practice have cast their specter over countries' internal developments, misconduct, and human rights violations, holding them accountable to domestic and international laws. These conflicting trajectories have come to a head during and in the aftermath of the 2011 Arab uprisings. Charged with human rights violations, the ruling elites of Libya, Tunisia, and Egypt faced trials—both locally and internationally by the International Criminal Court. The UN Security Council authorized applying R2P to protect Libyan people and International Criminal Court issued the arrest warrants against Libya's Muammar Gaddafi, Saif al-Islam Gaddafi, and Abdullah Gaddafi. In Tunisia, an absentee trial for the deposed President Zine El Abidine Ben Ali was held. In Egypt, however, the trial of Hosni Mubarak and those associated with his regime bypassed the so-called transitional justice model, while following the all too familiar pathway to promoting stability under the guise of national reconciliation. This paper's central thrust is that political interests of the new rulers of Egypt, most notably the Supreme Council of Armed Forces (SCAF), the Muslim Brotherhood, and the military-backed interim government have turned the accepted and modern notion of transitional justice process on its head, while pursuing instead an authoritarian and managed judicial process in the name of state sovereignty and national stability.

Keywords: Transitional Justice, Egypt, regime change, human rights violations, impunity.

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Definition and the Implementation Cycle of Transitional Justice

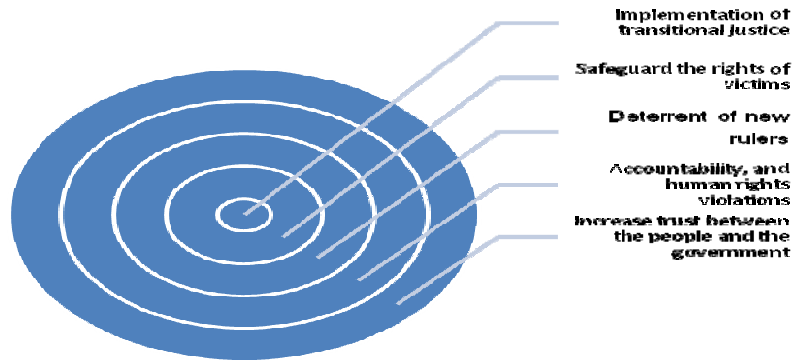
United Nations has defined Transitional justice as “a set of procedures and judicial and non-judicial mechanisms that with the efforts of community to overcome on the legacy left from past form of human rights violations merged and it is for ensuring of accountability, justice and achieve reconciliation” (Report of the Secretary General, 23 August 2004: 4).

This definition suggests that the main goal of transitional justice is the implementation of Justice for those who committed numerous human rights violations and crimes in the past regime, but by having power or relation with other powers they gained impunity due to the lack of independent judicial mechanism. Implementation of justice for the violators of Human Rights in the past regimes of a state can lead to

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a lesson for the new rulers. Also, this important incident can lead to a halt or at least a decrease in human rights' abuses on behalf of the new rulers via the accountability principal of the previous actions and an increase in trust between the government and the people. Finally, formation of national reconciliation would be another important step in this process. Below the cycle of transitional justice and the impacts of national reconciliation, effects of the implementation of transitional justice, and the stability in transitional societies can be observed.



The events that happened in Egypt after the Mubarak era in the field of transitional justice are called "guided justice." In this type of justice, dependent judges perform the trial of the defendants in which not all of the charges would be considered. Accordingly, only some of the previous regime's crimes will be selectively chosen and the process of the trial would be slow and eroding. The real purpose of the guided justice trial is not justice itself, but the intent to deceive the public opinion, reduce the revolutionary excitements, neutralize people's viewpoints towards the past rulers, and issue inappropriate sentences with their past crimes. Consequently, the basics of the implementation of transitional justice in Egypt was formed incompletely from the beginning of the revolution. This is because under the Mubarak era from 1981 to February 2011, different crimes and human rights violations such as forced disappearances, tortures, and murders took place by the security forces, and only a limited number of crimes during the 18 days of the revolution (from 25 January to 11 February) were investigated. Only two of the crimes

from before the January 25 revolution, which had attracted the attention of public opinion, were under consideration by the Egyptian court: 1) The trial for the death of “Khaled Saeed”, in which two police officers were sentenced to 7 years in prison (Egypt Independent, 26 October 2011). 2) The trial for a civilian named “Seyed Bilal”, who died under torture when he was arrested by the armed forces. In this event, the Egyptian court sentenced 4 Polices in to life imprisonment, one person sentenced to 15 years in prison (Egypt Independent, 6 June 2012). While there were several cases of human rights violations before and during the Revolution of 2011 that must be addressed, there was no political will to investigate the serious human rights violations in Egypt during that time. The responsibility and accountability principals to the past crimes were ignored and led to the fact that the Egyptian security forces had no fear of carrying out further violence against pro-democracy protesters in Egypt after the Mubarak era. Amongst the crimes that were committed during three decades of Mubarak`s regime, only economic corruptions were seriously considered by the Egyptian courts, and cases such as the arrest and torture of dissidents, exiling political activists, killing protesters, and contravention of the political rights of the people, particularly the violations that occurred as a result of guided democracy, were not considered.

Transitional Justice Mechanisms in Post-Mubarak Egypt

After Mubarak`s regime in Egypt, only five transitional justice mechanisms were used to investigate and deal with crimes committed during the era of President Hosni Mubarak.

Formation of the Truth Finding Commission:

The truth finding Commission is one of the mechanisms of transitional justice that was used four times in post-Mubarak Egypt. The first truth finding commission was formed in Egypt by the order of "Ahmed Shafiq," Mubarak's last prime minister, only one day before the ouster of President Hosni Mubarak. Ahmed Shafiq, on 10th of February 2011, issued the order of forming the fact-finding committee on the Egyptian revolution. The committee was supposed

to investigate the events in Egypt, including any illegal activities that lead the protests to lose their peaceful settings, and also by hearing the witnesses and those who were associated with these events, in order to adopt the necessary measures. All of the governmental agencies and the related organizations had the duty of providing the necessary information to this committee. This Committee, after its investigations, issued a 300-page report about the shootings and the revolution's incidents, such as the attack of Pro-Mubarak demonstrators by camels to the demonstrators, and presented it to the former minister of Justice and the former prosecutor (In Arabic; موافى،

نوفمبر ٢٠١٣: ١٤-١٣.

The second truth finding commission in Egypt was formed by the Supreme Council of the Armed Forces which after Mubarak's ouster had the power up until the presidential elections in April 2012. This commission only considered the human rights violations that took place during the 18 days of the Egyptian revolution, and after investigating the incidents, announced the number of killed and wounded people, and finally declared that the Egyptian police and the members of the National Democratic Party were responsible for these events. However, the Egyptian civil society and the opposition groups found the commission's report unclear and evaluated it as a useless report (Barsalou, June 2012: 3).

The third truth finding commission was formed by "Mohamed Morsi," the first President of Egypt after Mubarak. On 5th of July 2012, Mohamed Morsi ordered his staff to gather information about the murder of the demonstrators in different parts of Egypt. According to this interdict, a committee under the chairmanship and membership of a number of Egyptian officials and representatives of the families of martyrs, wounded, and revolutionary youth, was formed as observers. The authority of this committee included visiting the site of the accident, collecting information about the events, talking with troops, witnesses, and organizations that participated in these events, the investigation of the remained materials, and the expression of information and evidence relating to the crimes that had occurred in the recent protests. Based on the president's interdict, the aforementioned committee was supposed to provide the results of its report within two months. Nevertheless, this committee did not review

the status of the victims of the previous regime, and the role of this committee was only limited to finding facts. Moreover, the committee members were prohibited from giving any kind of information to the media (In Arabic; موافى، نوفمبر ٢٠١٣: ١٤-١٥). Several NGOs proposed the establishment of the transitional justice mechanisms to the Egyptian government, but never received serious attention. Although the text of the committee's report was not publicly released, several domestic and foreign media published parts of the report, particularly the sections on witness statements. According to witnesses, military forces torched detainees and then killed them and buried some of them in mass graves (Abdel Tawab, 2013: 106).

The fourth truth finding commission in Egypt Since the Mubarak administration was formed in 2013 by "Justice Mansour", the interim president of that time, to investigate crimes carried out by the Muslim Brotherhood for their one year power duration. The main point about this commission was that they did not investigate the crimes of the regime of Hosni Mubarak that occurred during the 18 days of the revolution on January 25th. The commission only considered the contraventions of the Muslim Brotherhood during their one-year power term.

The main point about truth finding commissions in Egypt is that some political affiliations meddled in the formation of these commissions, and there was no impartiality in the process of selecting the commissions' members and their procedures. If the truth finding commissions in Egypt were formed like what was seen in Bahrain which was presided by an international judge as "Cherif Bassiouni ", it could have been more effective. Consequently, we can say that in all four periods after the ouster of Mubarak from power (Prime Ministry of Ahmed Shafiq, the military era, the presidency era of Mohamed el Morsi and the Muslim Brotherhood and Justice Mansour interim period), the truth finding commissions, as one of the most important mechanisms of transitional justice in Egypt, failed as a real and legal approach.

1. Formation of the Courts

Another mechanism of transitional justice which was used in Egypt is the court system. During the formation of these courts in Egypt,

such as the establishment of the truth finding commissions, the political attitude and behavior dominated over the legal attitude and behavior. Actually, it can be said that a kind of reductionism clearly existed during the formation of these courts. This reductionism can be analyzed in three dimensions of time, accused and charges. From the point of view of the time, only the crimes which were committed during the January 25 revolution were investigated. However, the most important thing is that not all of the offenses relating to the 18-day period have been put into consideration, and only some certain events such as the Camel case and Maspero case were addressed. Also, the number of the defendants in the Egyptian courts was limited, while the transitional justice should include all of those who have committed human rights violations in various forms. Relating to the revolution, only Mubarak, his sons, and his regime's ministers were tried for human rights violations. In fact, the Egyptian military commanders refused to attend the military courts, and even hundreds of police officers were declared as not guilty for all of their charges such as shooting the protesters. Apart from some of the accused, the rest of them were not arrested and even many of them were promoted to higher ranks. A huge reductionism was clear in the circle of investigating the allegations. The charges were only limited to "not trying to stop the killing of people, corruption, and misappropriation of funds". Whereas during the January 25 revolution, many major violations such as killing and injuring protesters, arresting protesters and political activists, cutting off the Internet and mobile communications, and torture and repression of protests occurred, but the perpetrators of these violations escaped from any prosecution or punishment (In Arabic; ١٣-١٧:٢٠١٣ نوفمبر، موافى).

Using the court mechanism for performing the transitional justice can be categorized in three main parts:

1. The trial of Mubarak, Mubarak's sons, the interior minister, and his six deputies.
2. The trial of some of the officials and ministers of Mubarak's regime.
3. The prosecution of police officers.

A: The trial of Mubarak, Mubarak's sons and Habib Al Adeli the interior minister of Mubarak and his six deputies

For the first time on 10th of April 2011, Mubarak and his sons, "Gamal Mubarak" and "Alaa Mubarak", were summoned and the order of interrogating them was issued. The charges against them were announced as killing the protesters during the revolution on January 25, embezzlement of public budget, and bribery and selling gas to Israel with a lower price than the actual price. Habib Al Adeli, the interior minister of Mubarak and his six vice presidents were accused of "not avoiding the killing of protesters" (Petkova, December 2012: 5-6). Except the corruption charges, other charges were only limited to the 18 days of revelation period. The first session of their court was held in August 2011 and its process continued to June 2012. Finally, this court acquitted Mubarak's sons and Al Adeli's six deputies from their charges, but Mubarak and Adeli were sentenced to life imprisonment for not avoiding the killing of people during the revolution on January 25. Therefore, Hosni Mubarak and Adeli demanded the revision of their sentences (Al Asar, 24 September 2014). From May 2013 to September 2014, 54 court sessions were held (Michael, 27 September 2014). What intensified the nullified transitional justice into the guided justice in these courts was the coincidence of the second phase of Mubarak's trial with the discharge of Brotherhood Muslims from the power and detention of Mohamed Morsi. Other important evidence that show the implementation of guided justice in these courts are:

- 1: Invitation of several witnesses who were faithful to the former regime. Actually, the Egyptian court invited witnesses like Mohamed Hussein Tantawi (Mubarak's defense minister) and Ahmed Nazif (Mubarak's Prime Minister) (Ibid).
- 2: Issuance of the court sentences in two phases. In May 2014, Hosni Mubarak and his sons were convicted to three years of jail for the accusations of millions of dollars in reconstruction of the presidential palaces (Fick, 21 May 2014), which was the first part of the issued sentences, and no sentences were announced for the killings of the protesters. Therefore, the court continued its process and in August 2014, Hosni Mubarak defended himself in trial for the first time and denied all of the charges about his order to kill

protestors in 2011, and the history will judge about him as well. While the judge of the trial should have issued his sentences in September 2014, he asked more time for it (Michael, 27 September 2014).

Finally, on 29th of November 2014, Mubarak and his sons and also Habib Al Adeli and his six deputies were acquitted of the charges of killing the protesters. This event proved the fact of politicization of the court and completed the process of the transitional justice into the guided justice in Egypt (Al Jazeera, 29 November 2014).

B: The trial of ministers and officials of Mubarak’s regime

In addition to Hosni Mubarak, his sons, and Adeli and his deputies, several officials of his regime were tried. The most important thing about the trial of these officials is that all of them were judged for the accusations of financial corruptions in their careers. Nevertheless, some of these officials committed important crimes such as blocking the internet and mobile phones during the January 25 revolution that was not examined by the court. Additionally, another important issue is that the arrest warrant was not issued for some of them and the trial was guided in a way that many officials could get the residency of foreign countries during the trial process.

The most important of those officials who were tried in the Egyptian courts are:

Name	Post or Rank	Accusation	Sentence
Ahmed Nazif	Prime Minister	Illegitimate revenues	3 years physical punishment- 1year suspended prison
Ahmed Al Maghrabi	Minister of Housing	Land speculation	Sentenced to 5 years in prison, but his sentence was suspended
Anas El Fiqqi	Minister of Information	Corruption	Sentenced to 7 years in prison, but his sentence was suspended
Zohair Garranah	Minister of Tourism	Land auction and corruption	Sentenced to 5 years for land auction, 3 years for corruption

Name	Post or Rank	Accusation	Sentence
Sameh Fahmy	Oil Minister	Gas deal with Israel	15 Years imprisonment
Youssef Wali	Minister of Agriculture	Waste of public resources	Sentenced to 10 years, but it got suspended in Jan 2013
Rachid Mohamed Rachid	Secretary of Commerce	Corruption and waste of public resources	Sentenced to 20 years in exile and settled in the Persian Gulf
Youssef Boutros Ghali	Minister of Finance	Corruption and Profiteering	Sentenced to 10 years for corruption ad 30 year for profiteering, but he has Great Britain's residency
Safwat El Sharif	Former chairman of parliament	Corruption, illegal land acquisition, involvement in the Camel incident	Awaiting trial on the charges of corruption and illegal land, acquitted for Camel incident, and released on bail in December 2012.
Amr Assal	President of the Industrial Development Fund	Corruption	10 years imprisonment
Ahmed Ezz	Senior member of the ruling National Democratic Party	Corruption and money laundering	Sentenced to 10 years in prison on corruption charges, but his sentence was suspended. Was charged for money laundering and was sentenced to 7 years in prison.
Fathy Sorour	Former Secretary-General of the National Democratic Party	He was investigated for corruption and illegal land acquisition	Freed on Oct 2012
Zakaria Azmy	Head of the Office of the President	Abuse of post	7 years imprisonment

C: The trial of police officers

The third major trial which was held in Egypt was the trial of police officers for killing protesters, particularly in the event of "Camel" and "Friday of Rage". The important thing is that none of the Egyptian military and security officials were investigated for killing the protesters during the revolution and only 10 top police officers were tried for such accusations, and the rest of the officers who were tried were the lower rank officers. Because of the high number of the defendants, Egypt's prosecutor general held this trial in various cities. The Egypt prosecutor held the trial of "Friday of Rage" in 26 cities; (In Arabic; موافى، نوفمبر ٢٠١٣: ١٨) however, many police officers were acquitted by the courts and the punishment of the convicted officers was not fit to the crime they committed. In fact, after the events that occurred during the January 25 revolution, the courts themselves were scenes for other crimes as well, because there is no doubt that the sentences were political rather than legal, and mixing judgment with politics is a great crime.

2. Institutional Reform

Another mechanism of transitional justice that was abused in post-Mubarak Egypt was the mechanism of institutional reform. This mechanism got affected from political attitudes and the involvement of politicians for seeking power. In March 2011, the Egyptian Interior Ministry announced that they dissolved the department of "Government's Security Information" and created the "Territorial Security of Egypt" (Barsalou, June 2012: 3). However, it was only a shift of name and no changes were seen in the quality and function of the Interior Ministry as one of the most important organs of the security in Egypt. Whereas one of the main demands of the Egyptian protesters was the reform in the administrative structure of the country, especially in the ministries of Interior and Judiciary. However, after the fall of Mubarak, no effective action was taken to reform the Interior Ministry and the Security Services, and the permanent members of the former regime remained on power. The most important dimension of reform in Egypt after Mubarak is related to the reform of the country's constitution. Over the last 80 years,

anyone who took the power in Egypt as the president, either reformed the country's constitution, or created a new constitution. Jamal Abdel Nasser, who took the power in Egypt in 1953 by coup, banned the "constitutional monarchy" which was highlighted by the Egyptian political system in the constitution of 1923. Abdel Nasser, for the first time in 1953, announced Egypt as a "republic" and approved the new constitution. After the passing of Nasser, Anwar Sadat came to power in 1971 and enacted a new constitution, but "Mubarak", during his 30 years of power, made some reforms on the same constitution (Feuille, 2011: 239-245). Since 2011, when Mubarak stepped down from the power in Egypt, and during the three time intervals of Mohamed Hussein Tantawi, Mohamed Morsi, and Adli Mansor, just before "Abdul Fatah Al Sisi" came to power in June 2014, Egypt was witness of an amendment to the constitution and also the creation of two new constitutions.

A: Amendment of 9 articles to the Constitution by the Military Council

When the armed forces of Egypt inherited the power of Mubarak, they immediately released the amendment to the constitution on 19th of March 2011 (Al Jazeera, 20 March 2011). The amendments included limiting the power of the president, facilitating free elections, and putting an end to the pressure. One of the most important reasons why Egyptians started protesting against the regime was the vast powers of the president of the Republic of Egypt, and they believed that this may cause a dictatorship. Accordingly, in amendment of the Constitution in 2011, the military council revised some of the constitution's articles that were related to the power of the president. Articles 77 and 139 are some of those articles which were revised in 2011 in order to decrease the power of the president. According to article 77 (1971 constitution), the duration of the presidential term was 6 years and it set no limitations for the number of times that a person could candidate himself for the presidency, but in the amendment of Article 77 in 2011, that duration was decreased to 4 years. Also, according to the article 139 of the Constitution of 1971, the president had the power of selection and removal of his vice president; however, this power was optional and President Mubarak only a few days

before his ouster used this power. In addition, in amendment to the article 139, it is stipulated that the president should introduce his deputy only 60 days after taking his power (Feuille, 2011: 246-247).

Moreover, facilitating free elections was one of the most significant human rights violations during Mubarak's three-decades ruling. Mubarak's regime did not hold a free election at all, but the elections were conducted. Therefore, one of the most important demands of the Egyptian people in the revolution of 25th January 2011 was providing conditions for holding free elections. Accordingly, the Egypt's military council revised articles 76, 88, and 93 of the Constitution of 1971 to remove some of the barriers of the free elections. In article 76 of the Constitution of 1971, the support of 250 members of parliament was necessary for a candidate in the presidential election. This condition was necessarily a guarantee for Anwar Sadat and Hosni Mubarak to become Egypt's presidents. Additionally, in article 76 of the constitution of 1971, formation of the "election committee" was proposed that this committee had all of the responsibilities of the elections. However, the important thing is that Mubarak's supporters dominated this committee during his reign. In 2011, by putting three conditions in the constitution, the military council tried to make it easier for the candidates to nominate themselves for the presidential elections. These three conditions were: 1: Each candidate should be supported by 30-members of the People's Parliament or the Shura Council. 2: Each candidate can collect 30000 signatures of his supporters from 15 provinces. 3: Each candidate can be a member of a party that has at least one seat in the parliament. Consequently, this reform could provide more competitive participation in the presidential elections. (Ibid: 247)

Article 88 of the Constitution of 1971, provided the general rules for all kinds of elections. It also stipulated that a selected committee that is made up of judges should oversee the election process. However, during Mubarak's regime, the Judicial Committee had not done its duties correctly regarding the elections and their results, because the people's parliament that was under the influence of the president was able to leverage on the Judicial Committee and the results of the elections. Amendment to the article 88 of the 2011, gave more authority to the judiciary system and electoral commission to monitor the results of election which were announced by the election

committee. Article 93 of the Constitution 1971 gave the people's parliament authority to determine the validity of the membership of the parliament. This law let the dominant party (National Democratic Party) to determine only the validity of their supporters and revoke the credit of the candidates of small parties like Islamists and anti-Mubarak's movements. According to this article, if two-thirds of the House of Representatives do not vote for the credentials of the representatives, they will lose their credibility. But the amendment to article 93 in 2011 gave this authority to the Council of the Armed Forces. Of course, this theorem was protested by political activists and the supporters of the Egyptian revolution on January 25, because they believed that this amendment strengthens the role and the influence of military in power (Ibid: 247-248).

End of repression and pressure: Another example of the constitutional amendment of 2011 that was considered by the military council is related to the articles which provide the field of repression and pressure on people. Article 148 of the Constitution of 1971 in Egypt is one of those articles. According to this article, the Egyptian president had the right to declare "State of Emergency". Moreover, the extension of this situation was possible by the votes of the majority members of the parliament, who have voted to this state of emergency for the past 30 years. Yet, this article would allow the president to detain people without any reason. In the amendment to article 148 in 2011, the validity of parliament to extend the state of emergency was deleted. However, the declaration of the state of emergency was assigned to the people's referendum. This transfer of authority from the parliament to the people of Egypt ensures that the emergency state will only be declared in a real situation (Ibid: 248).

B: Constitution of 2012 in the state of Mohamed Morsi

One of the most important steps during one-year power of Mohamed Morsi was forming a committee which was consisted of one hundred members to enact a new constitution. This action in all stages was faced with disagreement from the Muslim Brotherhood society and finally led to a consensus against Mohamed Morsi. In fact, his efforts for the enactment of a new constitution resulted in his removal from power. 60 members of this committee were affiliated

with the two Islamist parties, one "Justice and Freedom"(dependent to Muslim Brotherhood) and the other Salafi party of "Al Noor". This composition was faced with the protest of secular parties and other parties of Egypt. Consequently, Egypt's secular parties announced that they will form a parallel committee for a new constitution because they believed that the composition of the first committee would not look after the interests of all Egyptians, especially the minority groups (Gallala Arndt, 2012: 144). This constitution, which was published on 26 December by Mohamed Morsi, was similar to the basic structure of the constitution of 1971. This constitution had major problems including: (Al Ali, 2014: 1-11)

- No mechanism was predicted for implementation and support of socio-economic rights of the people.
- The judicial sector remained unchanged.
- Political rights such as the freedom of speech and assemblies were not considered, and although its basis was placed on the freedom of speech, some restrictions were enacted against it.
- The president power such as the on in the Constitution of 1971 was high, and the president was supposed to introduce its candidate for the office of the Prime Ministry. If he failed to obtain the vote of confidence from the parliament, the president could nominate the candidate of the largest party of the parliament. And, if this person again failed to obtain the vote of confidence in the Parliament, the president could dissolve the parliament. Thus, the parliament would be under the pressure of voting for the prime ministry candidate which is proposed by the president. Another example is that the President kept his right to select 5 percent of the parliament's members. This let him have a strong influence on the parliament. However, this 5 percent right meant violation against the principle of the separation of powers and the interference of president in the parliamentary issues. Moreover, this constitution let the president declare the state of emergency without the cabinet's approval.
- One of the most important criticisms of the constitution of 2012 was that the military members' situation remained just like the past conditions, in which they kept their loyalty to the president. Also, in this constitution, the Defense Minister was elected by the president and he could choose him from the armed forces. According to this law, the regulation of the budget of the armed

forces was assigned to the "Council of National Defense" which the president was the head of that council as well. In article 145 of the constitution of 2012, the president had this right to appoint and dismiss the army's authorities.

- In the Constitution of 2012, the trial of the civilians in the military courts was recognized under article of 197.

C: Constitution of 2014 in Adli Mansur's Government

After the military started a coup against Mohamed Morsi and formed an interim government, one of their first actions was to form a committee which would develop a new constitution. This new constitution was approved by referendum in January 2014 (Kingsley, 18 January 2014: 1). The new constitution was again based on the constitution of 1971 and only some of its items were adjusted. This constitution was also faced with criticism from political activists and civil society members in Egypt. Some of the criticisms are: (Abd Rabou, 24 March 2014: 3-7)

- According to the Constitution of 2014, the military forces still remained loyal to the president because the president has the right to select the defense minister with the agreement of the Council of the Armed Forces, and also play a role in the decision making for the military's budget as the Chairman of the National Defense Council.
- In the Article 204 of the constitution of 2014, the trial of civilians in military courts was confirmed.
- This constitution gave a lot of power and authority to the military forces such as: only with the consent of the Supreme Council of the Armed Forces, the Defense Minister could be selected, and the presentation of the military budget to parliament should be under their agreement, and the parliament does not have any authority to examine the details of the military budget.
- The article 54 of the Constitution of 2014 permits the detention of people without any trial. While one of the most important issues and criticism of the public during three decades of Mubarak was that individuals should not be detained without trial by the security forces. In addition, this rule does not deal with the civil liberties when faced with the police forces.

- This law gave a great power to the Judiciary System without creating any guarantee for the good use of this power.
- Another important objection to the article 74 of the Egyptian Constitution of 2014 is that the formation of any political party which has religious activities is banned. In fact, this article aims to confront with the Muslim Brotherhood in Egypt. Briefly, what caused the constitutional reform or the edition of a new constitution is that this action was not done with the aim of moving towards the creation of a democratic system, but the main purpose was to control the protests and prevent from the disruption of the fundamental structures of the former regime. Thus, some issues such as detention without trial, the trial of civilians in the military courts, the vast power of the president, and the judiciary system and military's high power can be seen in the new constitution. Existence of these matters in the new constitution of Egypt led to some changes, especially in some quantitative aspects such as the number of rounds which a person can become president, and also some structural aspects such as the procedure of the introduction of defense minister. Nonetheless, from qualitative point of view, we cannot see many touchable changes in the new constitution such as the establishment of a democratic system, a decrease in repression and oppression of the people, and an increase in the public freedoms.

4. Political Lustration

One of the most important mechanisms of the transitional justice in post-Mubarak's era is the mechanism of "Political Lustration" that was introduced in the form of "Political Isolation". However, the important thing is that this project has not gone any farther than theory, due to the intervention of the Egyptian judiciary system. Actually, Egypt's new parliament approved a law in April 2012 that according to it, "anyone who was the member of State Party, the political committee, political office, member of the parliament or House of representatives during the period before the January 25 revolution, will not have the right to nominate himself in the elections for 10 years". This law targeted the candidacy of Omar Suleiman and Ahmed Shafiq in the presidential election. Yet, the Constitutional Court declared that it was illegal and let Ahmed Shafiq nominate

himself in the presidential election. The Supreme Court's permission led Ahmed Shafiq (Mubarak's last prime minister) to proceed to the second round of the country's presidential elections and to become the rival of Mohamed Morsi (the candidate from the Freedom and Justice Party from Muslim Brotherhood). Eventually, this election ended with the victory of Morsi (In Arabic; نوفمبر ١٣: ٢٠: ١٢). (موافى، نوفمبر ١٣: ٢٠: ١٢).

5. Compensation

Another mechanism of the transitional justice is related to the compensation of the victims. After the ouster of Mubarak from the power, victim groups in Egypt demanded for compensation. In this regard, to care for the families of martyrs and victims the National Council was formed, but its performance was in a way that caused the victims to ask for the closure of it. Moreover, Egypt's Supreme Council of the Armed Forces announced that they will provide free medical care for the victims and all of the personnel of the armed forces who are working in governmental jobs, and that they will get medals for their bravery. However, this issue was never put into action (Abdel Tawab, 2013: 107).

The Reasons for the Failure of Transitional Justice in Egypt

The fact is that the transitional justice in Egypt did not work. Although some mechanisms of the transitional justice such as the truth finding commission, courts, institutional reforms, and political lustration were used, this mechanism has never been considered as a legal approach and it got exploited for the purpose of deceiving the public's opinion and for the political purposes of the rulers. Considering the predominant causes of the triumph of the political approach to the legal approach, some reasons can be mentioned:

1. Continuation of the military forces' presence in the power

The military forces have always constituted one of the sides of power in Egypt and have had an important role in this country. Gamal Abdel Nasser, Anwar Sadat, and Hosni Mubarak, who were in power from 1952 to 2011 respectively, were army officers in Egypt. The

presence of the military forces in power for more than 60 years, especially as the presidents of Egypt, is the reason why they have political and economic power in Egypt and are familiar with different aspects of politics and government in this country. Egyptian army, with 450 thousand active personnel, is the largest army in Africa and in the Arab world. Egyptian army, which controls about 40 percent of the country's economy, is in fact, an "economic empire" in this country (Digital Granma International, 3 June 2014) and it owns more than 35 companies and factories that produce, different kinds of food products, construction tools, automobile, pharmaceutical needs, and etc. (Tadros, 15 February 2012). In 2008, the "Wiki Leaks" documents showed that the Egyptian army's annual revenue from the private sector was about 2 billion Egyptian pounds (286 million US \$) and that 40 thousand people are working in the private companies of the Army (Kholaf, 5 August 2013: 5). On the one hand, these economic advantages of the Egyptian army lead to this fact that they have an important role in the Egyptian society. On the other hand, this causes that they do not simply leave the power and keep preventing reforms in this country. With the fall of Hosni Mubarak from power in February 2011, the Egyptian military council, with the presidency of "Mohamed Hussein Tantawi", had been temporarily in power, and was required to provide the backgrounds of parliamentary and presidential elections in Egypt. However, the Egyptian army knew that according to the new system of this country, the president that should be selected by the people in free elections will not have his last position; thus, they tried to prevent the completion of the ideals of the revolution of January 25th. Not only Egypt's military has rejected the roadmap of the revolution, but also once again they have used the tools of repression, torture, and intimidation to stop anti-government protests and even increased the violence of the military forces against the protesters. The military intervention not only led to no progress in bringing the military forces into courts, but also reversed the trend and the violence that the military used against the protesters after Mubarak was even more than what had been seen during the 18 days of January 25th's revolution. In mid-October 2012, a civil judge was introduced by the families of victims to investigate the complaints against General Mohamed Hussein Tantawi (the former commander of the military council), especially for his role in the murder of the incident

"Maspro".¹ This was a step forward, because for the first time in the history of Egypt's crimes, a military leader could be examined by a civilian judge, but this deal never occurred in Egypt (Abdel Tawab, 2013: 105). Achievement of Abdol Fatah Al Sisi to the power in Egypt led the Egyptian army to enjoy the de facto immunity against the crimes that they had done so far. Therefore, it should be mentioned that the Egypt's military intervention in the political process is one of the most important obstacles in the implementation of the transitional justice in this country.

2. Lack of reforms in the judiciary system

The judicial independence and the rule of law are under the focus of the international communities. Many experts believe that the judicial independence plays a vital role in three areas of the government: 1. The protection of human rights has a direct relationship with the independent judiciary, fair, and decisive system. 2. The Judicial independence facilitates the political justice and stability. 3. Judicial independence is useful for safe economic developments (Sheriff and Brown, 2002: 1). The United Nations General Assembly in 2003 announced some of the most important principles of judicial independence as following: "Independence from interference by executive system, impartiality, appointments based on merit, immunity and security of tenure during tenure responsibility, and disciplining in managing and the removal of the judges (power handling and removal of judges should be entrusted to an organization that is independent of the executive system)" (UN General Assembly, 2012: Para16). What was observed in the Egyptian legal system, especially during the Mubarak regime, did not comply even the least with the components determined by the United Nations General Assembly. The executive system had a great influence on the justice system in Mubarak's era. Since most of appointments were done by the President and the Minister of Justice, the impartiality of the judges was under question. The executive system and the President had an important role in most of the removals and appointments of Egypt.

۱. برای اطلاعات بیشتر راجع به حادثه ماسپرو و همچنین وضعیت مسیحیان در مصر ر.ک. به: براونلی جایسون، (۲۰۱۳)، العنف ضد الاقباط و المرحلة الانتقاليه في مصر، مركز كارنيغي للشرق الاوسط.

Generally, the interference of the executive system in the judicial system of the Mubarak's era can be mentioned in two tangible and intangible forms:

Tangible methods of interference of the executive system in the judicial system in Egypt
1. Formation of the Supreme Judicial Council
2. President of the Supreme Court of constitution
3. President of the Supreme Court
4. Attorney general
5. Interference by the Minister of Justice

Intangible Methods of interference of the executive system in the Judicial system in Egypt
1. Encouraging and Persuasion
2. Intimidation and threat

2.1: Tangible methods of interference of the executive system in the judicial system in Egypt

The Egypt's executive system involved and interfered in some tangible removals and appointments based on the constitution. Notable methods are: (In Arabic; ٢٠١٠: ٧٣-٦٩، فتوح، الشازلي، كريم و الشازلي، فتوح)

A: The Executive role in the formation of the Supreme Judicial Council

The Supreme Judicial Council was consisted of the Supreme Court, the president of the Cairo's appeal Court, the Attorney General, two of the most experienced Vice Presidents of the Supreme Court, and two of the most experienced presidents of the court of appeals that the majority of its members, including the "Attorney General", are selected directly by the executive system. The other members of the Council take over these positions based on their records and most of these positions are determined by the executive system.

B: Determination of the President of the Supreme Constitutional Court

The Constitutional Court of Egypt is one of the key pillars of the judicial system of the country. However, according to the constitution, the head of this Court was appointed by the President. The President, after taking the confirmation vote of the Board of the Judicial Council, would select one of the two candidates (who were nominated, one by the General Assembly of the Court and the other by the president of the Court). Interestingly, although it was the President that would finally select one of the candidates, these two nominees had already occupied some positions by the order of the President. Usually for achieving these high positions, the candidates should already had passed most of their time work in the department of attorney general (who were appointed by the President) or they should have worked several years in the special court for certain crimes. Such person, according to the latest amendments of the article 76, along with his other judicial responsibilities, was also the chairman of the presidential elections and investigated the complaints related to the election process. It is obvious that such person could not remain neutral.

C: Appointing the Chairman of the Supreme Court

The Supreme Court has a key role in the judicial system of Egypt, which is responsible for equalizing the law in all of the courts of the country. This Court has always been one of the important entering vents of the interference of government in the judiciary system, because the President would select the head of the Supreme Court among his deputies with the agreement of the Supreme Judicial Council.

D: Determination of the Attorney General

The first paragraph of the article 119 of the Law of the Judiciary insisted that the general attorney should be selected among the Vice Presidents of the Court of Appeal or the Supreme Court's consultants with the decision of the President. Of course, according to the third paragraph of the article 119, the President must have the approval of the Supreme Judicial Council to determine the rest of the attorney generals.

E: Interference in the judicial system by the Minister of Justice

In addition to the direct interference of the President, the Minister of Justice also had the authority to appoint judges in different geographical areas of Egypt. Also, the Minister of Justice had the authority to appoint judges for the special courts and these appointments were based on the relations, rather than law or any criterion, and the Meritocracy was not considered. The Minister of Justice was able to change or transfer the judges to non-judicial posts. In accordance with Article 9 of the Judiciary, the Minister of Justice would elect the judge of the primary court among the judges of the appellate court with the agreement of the Supreme Judicial Council.

2.2: Intangible Methods of interference of the executive system in the judicial system in Egypt

In addition to what said before, the executive system, especially the President of Egypt, had other intangible tools of interference by which could affect the judges and use this power to restrict the independence of the judicial system. Some notable tools are:

A: Encouraging and Persuasion

To encourage the judges to enforce the requirements of the executive system, several methods were applied, among which are: sending the judges to missions (sending judges to different parts of the government of Egypt), bribery, and the donation of the higher public office to the subordinated judges. For instant, in the last years of Mubarak`s era, with the decision of the President, several judges were appointed as Governor or Minister (In Arabic; ٧٨ :٢٠١٠، فتوح، الشازلي، كريم و الشازلي، فتوح، ٧٨ :٢٠١٠).

B: Intimidation and threat

The Executive system used several methods to put pressure on the judges directly, such as sending independent judges to remote areas with harsh weather, inspecting, and the inspection of independent judges in courts of justice/security. According to the Considerable transferred powers, presidents of Egypt could easily refer the personalized issues to

the Security Courts or Special Courts. In fact, the terms of the “State of emergency” gave a considerable authority to these courts. These courts covered many crimes, which the scope of these crimes was mainly determined by the president and the judges directly selected by the President of Egypt (IBAHRI, February 2014: 43-44).

In the framework of these legal vents, the independence of the judiciary system in Egypt was only a tool to carry out orders, policies, and the objectives of the President, the executive system, and the Judicial System during the 30 years of Mubarak’s era. This situation was completely in the hands of Hosni Mubarak, and the people who worked in this structure were all submissive, so that they supported him even after the revolution.

Under these conditions, the implementation of the transitional justice, especially in the trial of Mubarak, his sons, his regime’s officials, and also hundreds of police officers, was given to the Egyptian judicial system without any amendment. However, the important condition for realization of the transitional justice in transitional societies is that the new regime should reform the previous judiciary system from the direct control of the former system. Moreover, in the process of judicial reform, both "structure" and "broker" should be examined. In the Egypt of Mubarak’s era, both judicial "structure" and "broker" had problems. The legal structure was dependent to the executive system and also the parliament of Egypt had no ability to monitor the judicial system. On the one hand, the judicial brokers, especially the judges, were dependent to the executive system and the President, and on the other hand, they were not selected based on meritocracy (In Arabic; الشازلي، كريم و الشازلي،

فتوح، ٢٠١٠: ٧٣-٦٩. The Al Shorogh’s newspaper wrote on December 7th 2013: “A quarter of the judges appointed by the Egyptian judiciary are the Judges’ sons and if the relative’s relationships, grandson of judges and the marriage relationships considered, this figures will be much higher” (El Chazli, 25 March2014: 9).

3. Unfulfilled Reforms in the Interior Ministry

Another reason for the incomplete implementation of the transitional justice in Egypt is that after the ouster of Mubarak from

power, especially after the rise of the Muslim Brotherhood, no attempt was done to reform the administrative services and the Egyptian Interior Ministry. Actually, having no serious attempt to reform the Ministry of Interior, led the employees to feel that they are immune. However, the rate of torture and death of the human rights' activists during the days of the revolution on January 25 was high, and the Police violence increased in that particular time. Instead of performing reforms in the administrative structure, Mohamed Morsi and the Muslim Brotherhood appointed new loyal people for administrative posts. This issue led the oppositions of the Muslim Brotherhood to accuse them of dictatorship and to claim that the only change that can happen is that the National Democratic Party gets replaced by the Muslim Brotherhood party. However, one of the most important demands of the revolution of 25 January 2011 was the reconstruction of the country's Interior Ministry, and to ask for their accountability for their past actions. The revolutionaries demanded that the security forces understand that the concept of security has changed in modern times and the security of citizens should be considered more than the regime's security (Abd Rabou, 24 March 2014: 6). In fact, instead of changing the structure, Mohamed Morsi shifted the brokers and tried to appoint loyal brokers to the Muslim Brotherhood in order to increase the power of his party, which is the same mistake of Mubarak's regime.

Achievements

In the Egypt of after Mubarak and before the rise of Abdol Fatah Al Sisi in June 2014, three governments had emerged, which all of them emphasized on human rights violations for achieving their goals. Nevertheless, the superiority of political interests to the legal approach caused the transitional justice formation in Egypt to remain incomplete. Four truth finding commissions formed in three years in Egypt, and the trial of the officials of the former regime was guided and their approach was erosive. Organizational reform was only limited to the reform and development of two new constitutions, which none of these cases did not cause a decrease in the role of the military forces, reinforcing the role of people, and finally reducing the role of the security environment in Egyptian society. The law of the

political lustration was approved, but never put into the action. Moreover, the issue of compensation to victims was discussed, but the real victims were not recognized in order to receive any compensation. Finally, the verdict of acquittal of Mubarak, his sons, and Habib al-Adli and his deputies on 29 November 2014 was issued and proved the rollback of the transitional justice into the Guided Justice. One of the main reasons for this incident in Egypt is that the United Nations, and internal and international human rights organizations did not enter into the issue of human rights in Egypt. If the process of the transitional justice in the transitional societies such as Egypt, forms with collaboration of the United Nations, non-governmental human rights organizations, and international and independent judiciary system, we can say that the transitional justice will not lead to the guided justice.

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