



SCHOOL OF LAW
TEXAS A&M UNIVERSITY

Texas A&M University School of Law
Texas A&M Law Scholarship

Faculty Scholarship

1-2012

Egypt's Protracted Revolution

Sahar F. Aziz

Texas A&M University School of Law, saziz@law.tamu.edu

Follow this and additional works at: <https://scholarship.law.tamu.edu/facscholar>



Part of the [Law Commons](#)

Recommended Citation

Sahar F. Aziz, *Egypt's Protracted Revolution*, 19 Hum. Rts. Brief 2 (2012).

Available at: <https://scholarship.law.tamu.edu/facscholar/115>

This Article is brought to you for free and open access by Texas A&M Law Scholarship. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Texas A&M Law Scholarship. For more information, please contact aretteen@law.tamu.edu.

Egypt's Protracted Revolution

By Sahar F. Aziz*

INTRODUCTION

Egypt's revolution did not end on February 11, 2011. Despite the removal of Hosni Mubarak from the presidency, the former Mubarak regime remains entrenched in Egypt's economic and political system.¹ This is evident from the Supreme Council of the Armed Forces' (SCAF) June 2012 power grab of legislative authority after dissolving parliament — a move many consider to have been a virtual military *coup d'etat*.² Skeptics argue SCAF is merely a Mubarak holdover until the old regime can reinvent itself under a new guise. Former Prime Minister and Mubarak confidant Ahmed Shafiq's near win against the Muslim Brotherhood's Mohammed Morsi in the presidential elections may be proof of this.³ A Shafiq presidency would have instantly nullified gains made through the last eighteen months of protests, sacrifices, and deaths by millions of Egyptians.

But today, even with a Morsi victory, one is hard-pressed to find significant changes to Egypt's political landscape. From the military-run executive branch to senior officials in the national security regime, Mubarak's men still call the shots. Senior judicial appointments to Egypt's high courts are suspected of rulings that are inappropriately lenient toward former cabinet members.⁴ And despite a legitimate parliamentary election process, the military seized back legislative authority after the Supreme Constitutional Court dissolved parliament. Meanwhile, legal challenges to the military's flagrant power grab are quickly dismissed by a judiciary that is increasingly perceived as partial to the military.⁵

The now-dissolved parliament — dominated by the Muslim Brotherhood's Freedom and Justice Party and the Salafi's Nour party⁶ — once served as the sole bulwark against other sections of the military-controlled government. But it proved to be a rambunctious, disheveled, and ineffective bunch, and the few bills it managed to pass could not become law without SCAF's

approval.⁷ Even if a bill became law, implementation was an enormous hurdle because enforcement has always been a major impediment to establishing rule of law in Egypt. So long as holdover Mubarak officials controlled the bureaucracy and security forces, the few reform laws promulgated were as valueless as the paper on which they were written.

Although the current political landscape differs from the days preceding the January 25 revolution, Egypt appears to suffer from a familiar syndrome: for every step taken towards meaningful reform, it falls back two steps due to entrenched counter-revolutionary forces. This began the moment the military took control of the executive branch on February 11, 2011 only to unilaterally replace the 1971 constitution with its own interim Constitutional Declaration on March 30, 2011.⁸ This dubious document unilaterally imposed by SCAF barely holds Egypt together as the country faces one legal crisis after another.

Even when parliament existed, the Constitutional Declaration did not clarify parliament's governing authority viz-a-viz the executive branch. Article 141 of the provisional constitution grants the President the power to appoint the Prime Minister from within the ranks of the political party holding the most parliamentary seats.

However, this article also allows the President to sack the Prime Minister from office without parliament's approval. Article 76 of the Interim Constitutional Declaration does not permit appeals of rulings by the presidential elections commission on election disputes, jeopardizing the legitimacy of the presidential elections as those alleging fraud and voting irregularities are denied a neutral and impartial review. Just as problematic is the SCAF's removal of the 64-member parliamentary quota for women, thereby decreasing female representation in the People's Assembly from twelve percent (64 members) to less than two percent (12 members, three of which were appointed by the SCAF).⁹ Finally, the same police and internal security forces that abused tens of thousands of Egyptians during the revolution remain intact eighteen months later.

These legal shortcomings, among others, contribute to a continued sense of instability among a majority of Egyptians. Ironically, it is the same instability initiated by remnants of the Mubarak regime that bootstraps them back into political office. Former Prime Minister Ahmed Shafiq's victory

“Ironically, it is the same instability initiated by remnants of the Mubarak regime that bootstraps them back into political office.”

*Associate Professor, Texas Wesleyan School of Law. Professor Aziz serves as the president of the Egyptian American Rule of Law Association (www.earla.org) where she works on rule of law projects in support of Egypt's post-revolution transitions to democracy. She thanks Cedric Moon for his diligent research assistance towards the completion of this article.

in the first round of the presidential elections was due to a populace disappointed in the revolutionaries who they deemed incapable of delivering the goals of the revolution — stability, dignity, and prosperity. Indeed, Shafiq’s campaign motto promised to bring back the stability that allegedly self-indulgent and rabble-rousing revolutionaries eliminated at the expense of ordinary Egyptians.¹⁰ In addition, Shafiq’s viability as a candidate was a result of the quick remobilization of the National Democratic Party’s (NDP) leadership.¹¹ The NDP had lay tactically dormant in the first twelve months of the revolution only to later re-emerge and prove correct fears the Mubarak-era political apparatus is far from eliminated. Thus, whatever progress achieved by reformers since Mubarak’s overthrow is quickly being undermined by counter-revolutionaries and the military.



Photo courtesy of Egyptian American Rule of Law Association.

Against this political backdrop, this essay argues Egypt is still in the midst of a revolution and has yet to enter the post-revolutionary phase of nation-building. The essay starts by providing a brief summary of the political context of the post-Mubarak transition. Central to understanding the context is identifying the key political actors and their roles in the ongoing struggle to reshape Egypt’s political landscape. Finally, this essay highlights the importance of the rule of law to steer Egypt through an inevitably turbulent phase at this historic juncture. In many ways, the heated contestation for power is a healthy indicator of Egyptians’ investment in their nation in stark contrast to the pre-revolution sense of hopeless complacency. But such contestations can be politically debilitating if they are not constrained by laws that ensure a fair and level playing field among the various political actors, allow the citizenry to hold elected officials accountable for failing to improve the economy, and guarantee no one — not even a President, as evidenced by the recent criminal trial of Mubarak¹² — is above the law. Without rule of law, however, the citizenry will again disengage from the political system as it discovers its votes and voices are irrelevant to the broader power struggle between the military and Muslim Brotherhood.

In perspective, Egypt’s experience could have turned out much worse compared to other nations undergoing revolutions (see: Syria). However, that alone does not curtail Egyptians’ well-grounded demands of a government at the service of the people and not the other way around. Until leaders who are entirely separate from the former regime and its entrenched interests are elected, the people will not see the goals of the revolution realized.

“... the military appears to genuinely hold a self-righteous savior persona developed during the revolution.”

THE POST-MUBARAK POLITICAL BACKDROP AND KEY POLITICAL ACTORS

Five pre-revolutionary factors have shaped the reality of Egypt’s current political turmoil. First, the Egyptian military has had *de facto* control of the executive and legislative branch since the army overthrew the British-backed King Farouk in 1952.¹³ Second, the Muslim Brotherhood, despite being officially banned, has gained popularity over the past few decades due to a general rise in religiosity and political Islam in the Middle East. Third, Saudi Arabia and other Gulf countries have actively sought to nudge Egypt out of its historic regional leadership role. They have used significant investments in the Egyptian economy to leverage influence in

Egyptian society through various means. The most obvious manifestation of these efforts is the growing *Salafi* movement in Egypt, which is notorious for adopting stringently literalist interpretations of the Quran. Fourth, the rate of poverty has risen at an alarming rate while a select cadre of Egyptians flaunts its corruptly acquired wealth.¹⁴ The rapidly increasing gap between the poor and the rich coupled with the near extinction of the middle class was a veritable powderkeg. Finally and often overlooked, is the deeply seated classism that dominates Egyptian culture. Higher-rung Egyptians’ elitist allergic reactions to lower socio-economic classes impede egalitarian reforms necessary for a vigorous democratic system. The liberal and revolutionaries’ failure to win votes in rural and urban poor electorates is a testament to this.¹⁵

The January 25 revolution was a significant blow to a deeply entrenched patronage system wherein the military monopolized power under a civilian guise of the National Democratic Party (NDP). Former military officials manipulated NDP leadership positions to curry the loyalty of the non-military business elite through corrupt land deals, heavily discounted raw materials, and valuable exclusive product distribution contracts. So long as the NDP was willing to line the business elite’s pockets, the latter was willing to cede political power to it. Thus, when the revolutionaries demanded the fall of the Mubarak regime, the interests of the otherwise apolitical business elite were directly threatened, leading to a well-financed counter-revolution that continues to the present day.

Although a nominally civilian government controlled Egypt, every president since the 1952 overthrow of the British-backed King Farouk was a former military leader. In turn, those presidents appointed trusted military colleagues to head key ministries and public companies, ensuring firm military control over the country. As a result, the military manages a shadow economy that comprises approximately 40% of Egypt’s overall economy.¹⁶ Much like in preceding administrations, the military under the Mubarak government ran a shadow economy free of taxes, duties, and accountability that rendered impossible any attempt to understand its operations, budgets, and profits. These hefty financial stakes explain much of the military’s intransigence in transferring control of domestic affairs to a civilian government.

But beyond its financial stakes, the military appears to genuinely hold a self-righteous savior persona developed during the revolution. It believes tens of thousands of Egyptians would have been murdered had it not refused to defy the former President’s

order of shooting protestors. As such, the silencing of its guns has not silenced SCAF's sanctimonious view of itself as the benevolent patriarch without whom the country would fall apart. However, its numerous missteps over the course of the last eighteen months demonstrate its inability to govern a nation of 85 million people, 25 percent of whom live at the poverty line at \$44 per month and 5 percent living on less.¹⁷



No to dissolution of the parliament. Photo courtesy of Sahar Aziz.

Also worth noting is the Egyptian military's strong ties to the United States military, from which it annually receives \$1.3 billion in aid and training.¹⁸ In considering American interests, the worst outcome of the revolution is an Islamist-controlled Egypt that may not be as compliant with American prerogatives in the Middle East. For these reasons, among others, the military will continue to have significant influence in Egyptian politics.

Looming in the shadows is the Muslim Brotherhood's formidable influence in the countryside and parts of Alexandria.¹⁹ Despite being officially banned from politics for decades, the Brotherhood capitalized on the central government's neglect of the rural areas and the urban poor by providing much needed social services.²⁰ Its immediate success following the revolution, both in the streets and in parliament, appeared eerily calculated such that some Egyptians suspected the Brotherhood of orchestrating the 2011 revolution. Indeed, the Brotherhood's desire for political power was no secret. Despite being banned as a political party, it doggedly sought representation in the People's Assembly by running its candidates in the limited seats allocated for independent candidates.²¹

To many city dwellers, the Muslim Brotherhood was too dogmatic for their sensibilities. Such perceptions were due in large part to Mubarak's successful public defamation campaigns portraying the Muslim Brotherhood as inflexible, religious zealots bent on forcibly transforming Egypt's tolerant society into a Saudi-like theocracy. Known for their pious but moderate interpretations of Islam, Egyptians found the

Brotherhood's social agenda distasteful to their unique cultural combination of piety, tolerance, and humor.²² Thus, when it came time to vote in Egypt's first free parliamentary elections, many urban voters were conflicted between voting for an untested Islamist party and a directionless amalgamation of liberal revolutionaries. In the end, the

Brotherhood attained enough urban poor votes to supplement its popularity in the rural areas.

But the Muslim Brotherhood's initial electoral success in the 2011 parliamentary elections suffered a significant setback. Every promise of disinterest in dominating the legislative and executive branches was matched with a flagrant power grab. For instance, the Brotherhood initially proclaimed it would seek only thirty percent of the now-defunct People's Assembly. Yet, it ran for seventy percent of the seats and won fifty percent in the lower house of parliament.²³ Combined with the twenty-five percent of seats *Salafi* candidates won — many of whom the Brotherhood endorsed — the lower house was firmly in the hands of Islamist parties. Similarly, the Brotherhood promised not to run a presidential candidate. But no sooner had it made the promise did it run two consecutive candidates — Khairat Al Shater who was disqualified and Mohammed Morsi who ultimately won.²⁴ This duplicity significantly eroded the Brotherhood's credibility such that it went from receiving fifty percent of the votes in the parliamentary elections to only twenty-five percent in the first round of the presidential elections.

A significant mitigating force to the Brotherhood's sudden rise to power and the counter-revolutionaries' success is the maturation of the Egyptian human rights community. Although a number of reputable human rights organizations date back to the 1990s, including the Egyptian Organization for Human Rights (EOHR), Al Nadeem Center Against Torture, the Arab Network for Human Rights Information (ANHRI) and the Hisham Mubarak Center (HMC),²⁵ the human rights community expanded and started coming of age in the early 2000s. Around that time, a number of highly effective organizations were founded that currently serve as staunch watchdogs over government abuse. For example, the Egyptian Initiative for Personal Rights (EIPR), founded in 2002, was the first to prioritize defending individual rights including the long-neglected Baha'i and gay communities.²⁶ Two years later in 2004, the New Woman Foundation, which began as an informal study group, formalized its activities into an institution that incorporated gender rights issues into the broader democracy movement taking root in Egypt.²⁷ In 2006, the Association for Freedom of Thought and Expression (AFTE) was created to defend freedom of expression and combat state censorship of public discourse and academia.²⁸ Around the same time, the Egyptian Democracy Academy (EDA) was established to train youth in democracy promotion and grassroots activism.

But the growth of Egypt's human rights community came at a heavy price. The Mubarak regime used every tool in its arsenal

“But the growth of Egypt's human rights community came at a heavy price. The Mubarak regime used every tool in its arsenal to destroy the human rights movement.”

to destroy the human rights movement. Over the course of the past twenty years, thousands of activists have been arrested, detained, tortured, and prosecuted. An indefinite emergency anti-terrorism law authorized the government to deny detainees the most basic civil and human rights under the auspices of national security.²⁹ The law's loose definition of the term "terrorism" gave the government room to surveil, torture, and hold in *incommunicado* detention even peaceful critics of the government. The Non-Governmental Organizations (NGO) registration law was manipulated to strip existing organizations of their registration, deny the application of new organizations, and deny them foreign funding.³⁰ By placing activists outside the law, the government was more easily able to portray them as saboteurs to justify their harsh treatment. Mubarak also set up government non-government organizations, referred to as GNGOs, to discredit independent organizations.³¹ The GNGOs produced purportedly independent research that legitimized government policies and depicted the Mubarak regime as a benevolent caretaker of the country.

For unsuspecting Egyptians, the GNGOs' reports corroborated conspiracy theories of malicious foreign meddling in Egyptian affairs through the nonprofit sector. The former regime successfully discredited human rights organizations as representative of elite Egyptians who were out of touch with the average Egyptian. By exploiting preexisting class grievances, Mubarak deterred many Egyptians from associating with organizations whose political reform agenda could have solved economic woes. Even if Egyptians willfully sought assistance from foreign NGOs, they could not do so freely. Under a watchful governmental eye, they were legally required to first seek permission from the government to associate with NGOs or risk imprisonment.³² Furthermore, the former regime made the situation difficult for NGOs to operate, stalling registration applications for years, then interfering in their activities. The military continued this practice after Mubarak was removed from power.

Despite the military's smear campaigns and fear tactics, the human rights community flourished.³³ As more Egyptian youth became disaffected by the lack of employment, the deteriorating education system, and harsh policing tactics,³⁴ calls for basic rights amplified. The maturation of Egypt's human rights community from ideas to effectual institutions with budgets, staff, and strategic agendas responsive to legitimate economic and political grievances was a fundamental prerequisite for the

revolution. For those reasons, any analysis of Egypt's political environment must take into account the human rights community's role.

Gulf countries, Saudi Arabia in particular, are another set of actors attempting to influence the outcome of Egypt's revolution. A telling illustration of the Gulf countries' distress is their moniker of the Arab Spring as "the Crisis."³⁵ To the ruling monarchs of the Persian Gulf, the uprisings in Tunisia, Egypt, and Yemen set ominous threats to their own survival. Indeed, their first response to the uprisings was to double the salaries of all government employees in hopes of diffusing economic grievances.³⁶ Because Egypt has historically lead the region in transformational political movements, as evinced by the spread of pan-Arab Nasserism in the 1950s and 1960s, Saudi Arabia does not want to see a successful secular, democratic state take root in Egypt. It would only be a matter of time before Saudi citizens seek to emulate their Egyptian counterparts, leaving the government unable to discredit demands for democracy as a seditious Western innovation.

Accordingly, Gulf countries have an interest in preventing the democratic aspirations underpinning Egypt's revolution from coming to fruition. Saudi Arabia and Qatar poured millions of dollars into Islamist parties during elections and currently grant billions in foreign aid to secure their influence over Egypt's political future.³⁷ Not only does an Islamist state decrease the risk of a revolution in Saudi Arabia, but it also provides fertile ground to proselytize their literalist interpretations of Islam, which thus far has been rejected by the majority of Egyptians.

Certainly not to be dismissed is the role of the United States. America's interest in keeping Egypt as an ally is no secret. As the most populous country in the Middle East with a shared border with Israel, America's most valued ally, the United States will not stand by as its influence in Egypt wanes. Arguably, the U.S. government is adopting the same strategy as Saudi Arabia but for its support of liberal groups instead of Islamists. Hundreds of millions of dollars poured into liberal political groups and civil society organizations under the auspices of democracy promotion projects are suspected as aimed to offset any success of the Islamist parties — who are unlikely to be as compliant to American directives as the Mubarak regime.³⁸

But the democracy development aid is paltry compared to the \$1.3 billion paid to the Egyptian military in exchange for its support of American interests in the Middle East. The U.S.'s continuation of financial support to the military, notwithstanding its blatant human rights abuses in violation of Congressional conditions on aid, exposes America's political hedging.³⁹ While the military is the preferred domestic ally, the United States has had to come to terms with the reality that supporting dictators is not sustainable. No longer can tens of millions of Egyptians complacently live near or below the poverty rates while a select few unjustly enrich themselves by syphoning off state resources. Thus, the Obama administration has made multiple overtures to work with the Muslim Brotherhood and its newly



Egyptian women protesting. Photo courtesy of Egyptian American Rule of Law Association.

“Coined as the “revolutionary youth,” millions of young people of different political persuasions bucked tradition by refusing the older generation’s monopoly over political power.”

elected president despite heated domestic opposition. While a political realignment is inevitable in Egypt, the United States will continue to be a key player in Egyptian politics.

SO MUCH HAS CHANGED, YET MUCH REMAINS THE SAME

There is no doubt Egypt was forever changed on January 25, 2011. The seal of fear deeply rooted in the Egyptian psyche was broken, releasing decades of pent-up deprivation. For those familiar with Egypt, witnessing millions of Egyptians taking to the streets, stridently demanding the fall of the regime was nothing short of surreal. Although a revolution seemed imminent every year as economic conditions in Egypt rapidly deteriorated, Egyptians seemed cursed with a bottomless tolerance for suffering. Fortunately for the country’s future, the generation of youth whose futures had been sabotaged by a corrupt and tyrannical regime took the fateful steps into Tahrir (“Liberation”) Square.

For the first ten months of the revolution up until the new parliament took office, the military responded to the protesters in much the same way as its friend and former benefactor, Mubarak. It exercised broad authorities under emergency law, herded hundreds of protestors into military courts where they had no due process rights, tortured detainees by the thousands, and shut down nonprofit organizations that challenged its practices.⁴⁰ If any of those abusive tactics failed, it warned the people of a foreign-born, invisible hand that prompted the protestors to create chaos.

In addition to these familiar tactics, the military desperately adopted even more aggressive tactics to offset its waning legitimacy. Women protesters became targets of assault and sexual harassment by the police and counter-revolutionaries.⁴¹ Military officers coercively performed virginity tests on female detainees, cognizant this form of torture is the most psychologically humiliating in a socially conservative Muslim country.⁴² This strong-armed control measure had the effect as well, to warn other women to stay home. When confronted on television about such practices, military officers dismissed their victims as loose women who “were not like our girls at home.”⁴³ It was a message to all fathers, husbands, and brothers to keep their women home lest they be corrupted by these promiscuous female protesters and ultimately be similarly treated when captured. More distressing is the fact women were sexually assaulted at a troubling rate. The reported cases were just the tip of the iceberg of the actual number of women who paid a heavy price for their attempts to oust the military regime. Ironically, while protesting the sexual assaults, women were accused of destabilizing the country and subsequently attacked by a mob of thugs.⁴⁴ Public

violence against women has become a wedge issue manipulated by the military to decrease the number of revolutionaries.

Still, eighteen months after the start of the revolution, much has changed in Egypt. For the first time in their lives, millions of Egyptians voted in parliamentary and presidential elections.⁴⁵ The importance of this lies not so much in the action of voting but rather Egyptians’ newfound trust in the relevance of their votes. In March 2011, Egyptians across socioeconomic lines actively debated whether they should draft a new constitution before or after electing a parliament. New voices that moderated lively debates among candidates quickly replaced television pundits puppeted by the Mubarak regime. Diverse viewpoints on various TV channels, newspapers, and opposition media subsumed once dominant state-sponsored media. The consequent political energy has been palpable notwithstanding the bumpy transition process.

Another new development is the empowerment of Egyptian youth in an otherwise patriarchal system that once simply dismissed their grievances. Coined as the “revolutionary youth,” millions of young people of different political persuasions bucked tradition by refusing the older generation’s monopoly over political power. This assortment of economically diverse and politically inexperienced young people had worn the yoke of governmental oppression for far too long. In a combined front, they demanded justice, fairness, accountability, the rule of law, and political, civil, and human rights. Despite its leaderless and seemingly rudderless revolutionary fervor, the group’s persistent return to Tahrir Square, the symbolic heart of the revolution, each time the military overreaches has transformed it into a potent political force. Magnifying its efficacy, the younger generation’s mastery of the latest social media technology permits the group to quickly share information, monitor government wrongdoing, and mobilize back to “the Square” even after repeated expulsions. Tenacity appears to make up for the revolutionary youth’s small numbers compared to the Muslim Brotherhood’s large following and the former regime’s lurking counter-revolutionaries.

Not to be overlooked, despite existing risks to their lives and well-being, are the fearless revolutionary women who demand a transformational change in Egypt’s political system. Although the number of women who repeatedly protest in Tahrir is relatively small, a substantial percentage of women has gone to the streets at least once over the course of the last eighteen months. For a society that has traditionally demarcated politics to men because it was considered too dangerous or unbecoming

for women, Egyptian women's fiercely visible participation in each phase of the protracted revolution evinces a significant shift in gender relations. In addition, women in most households are actively debating the latest political issues irrespective of their participation in the protests.⁴⁶ That said, Egyptian women have yet to attain their due access in ongoing political decision making bodies.

Despite all of these changes, much remains the same. The military continues Mubarak-era practices that violate human rights, but at a rate far surpassing Mubarak's flagrant record. Under a cover of impunity afforded by the former regime's emergency laws, the military has tried more than twelve thousand civilians⁴⁷ in military courts where officers swiftly convicted and sentenced defendants to years in prison without providing due process rights.⁴⁸ The military refused to repeal the emergency law after the revolution and kept pointing to ongoing protests to justify the law's importance. It was not until June 4, 2012, during a heated presidential run-off election, the three decades-old law finally expired.⁴⁹ But in its place, other national security laws, some passed after the revolution, continue to authorize the military to engage in the same human rights violations under the color of law. As a result, thousands of protesters have been tortured by the military with no legal recourse. Well-known activists, such as Maikal Nabil Sanad and Asma Mahfouz, were prosecuted in military courts and sentenced to jail to set an example.⁵⁰ Only after intense lobbying by American policy makers and internationally connected Egyptian advocates were the sentences overturned.

Other new laws were also unilaterally passed by the military to assume legislative and executive powers. Individuals were prosecuted for "insulting the army" as a direct affront to the freedom of speech and expression.⁵¹ Journalists were arrested for reporting on issues the army deemed defamatory.⁵² A notorious "thuggery law" was passed under the auspices of returning law and order after a series of violent episodes between revolutionaries and counter-revolutionaries.⁵³ By indicting revolutionary youth for thuggery, the military publicly disparaged them as hooligans seeking to destabilize the country rather than liberate it. In the end, the thuggery law gave the military a tighter grip over the political situation and also allowed it to delegitimize protestors to millions of Egyptians sitting on their couches, watching television trying to make sense of the situation. Known as "*hizb al kanaba*" (figuratively The Couch Party), they represent the silent majority whose opinions are swayed by daily events and whose numbers far outweigh those who regularly protest in Tahrir Square.⁵⁴ State media also portrayed the revolutionary youth and liberal leaning activists as saboteurs who created "*fawda*" or chaos — a

state of affairs that's anathema to stability-obsessed Egyptians. the more the public viewed revolutionaries as low-class thugs and troublemakers generating more instability, the more secure the military's power. And because the military is an extension of the Mubarak regime, its retention of power renders the Egyptian revolution as an illegitimate *coup de'état*, not a grassroots revolution.

ANCHORING DEMOCRACY THROUGH RULE OF LAW

A potent solution to the unpredictable and disorderly situation is for Egyptians to strengthen the rule of law.⁵⁵ Notably, Egypt has one of the most sophisticated legal systems in the Middle East, borne of an amalgamation of Islamic, British, and French law.⁵⁶ An aggravating effect of this complexity is the overwhelming caseloads burdening judges who work in an underfunded judicial administration system. An abundance of procedural delay mechanisms allows crafty lawyers to postpone resolution for decades.⁵⁷ Litigants seeking to resolve their disputes may find themselves in their deathbeds by the time their case makes its way through the convoluted appeals process. For these reasons and others, the Egyptian legal system fails to meet the needs of the business community and the citizenry at large.⁵⁸

In addition to an increased investment in the judicial infrastructure, technology, staff training, and other needs of an effective judicial system,⁵⁹ a cultural shift must occur. Over the past sixty years, the law has been manipulated by the powerful to retain their power and enrich themselves at the expense of the average Egyptian. Rule by law, not rule of law, has been the norm in Egypt. Rule by law allows government officials to manipu-

late laws to concentrate and further entrench their power while eliminating political opposition. In contrast, rule of law ensures no one is above the law, all citizens are treated equally before the law, adjudicators of disputes are independent and objective, and legitimate grievances can be redressed without destabilizing mass protests.⁶⁰

As a result, few Egyptians have faith in the Egyptian legal system.⁶¹ Such skepticism is most glaring in the numerous protests challenging rulings perceived as too lenient, in cases against former Mubarak officials.⁶² Egyptians questioned the judges' impartiality and con-

cluded the entire process was a farce. The distrust in the judicial and legal system was crystallized with the Supreme Constitutional Court's recent dissolution of parliament — a move widely interpreted as a declawing of the Muslim Brotherhood's majority control of parliament and an avenue through which the military assumed legislative powers.⁶³ The Court's move was also arguably a political slap on the face to a parliament that was rumored to have debated eradicating the Supreme Constitutional Court altogether⁶⁴ or interfering in the promotion system of judges.⁶⁵

“Despite all of these changes, much remains the same. The military continues Mubarak-era practices that violate human rights, but at a rate far surpassing Mubarak’s flagrant record.”



Revolutionary graffiti. Photo courtesy of Sahar Aziz.

Court rulings finding unconstitutional the new law disqualifying former cabinet officials from political office, including Ahmed Shafiq, further delegitimized the courts.⁶⁶ This credibility deficit will not disappear overnight. It can only be reversed through a concerted effort to eliminate the rule by law mentality held by most politicians irrespective of their political affiliations. Just as integral to the transition to rule of law is the consistent and impartial enforcement of laws. In many instances, Egyptian laws comply with international law and best practices. However, if those laws conflict with the ruling party's interests, then enforcement is nearly nonexistent. Thus, a legal reform agenda must focus on enforcement in addition to reforming substantive laws.

There is no shortage of laws in need of significant improvement. In light of authoritarian abuses highlighted here, numerous articles in the penal code must either be repealed altogether or amended to narrow the circumstances in which a violation of law is found. For example, Article 184 of the Penal Code prohibits insulting the military establishment or parliament and Article 102 prohibits spreading false information. Articles 179, 182, and 185 criminalize insulting the president, public officials, foreign heads of state, and foreign diplomats. Each of these provisions directly infringe on freedom of speech and expression, a fundamental attribute of a functioning democratic society. Such provisions are also most often too easily enforced to silence opposition. So long as these laws remain in effect, new political leaders whether or not they

are affiliated with the former Mubarak regime, can abuse them to imprison the opposition.

Relatedly, laws that whisk citizens out of the criminal justice context and into a national security context, where due process rights are nonexistent, must be eliminated. Although Mubarak's notorious emergency law expired on June 4, 2012, other laws grant prosecutors the authority to arbitrarily deem a defendant a threat to national security. For example, SCAF can still detain these defendants under the Code of Military Justice and try them in a military tribunal.⁶⁷

One especially important law that needs to be passed is a freedom of information law. Much of Egypt's unchecked corruption can be attributed to the absence of an effective legal mechanism for journalists, lawyers, and citizens to monitor government activities and ensure accountability.⁶⁸ Over the past few decades alone, corrupt, greasy-palmed politicians have robbed the Egyptian treasury of billions of Egyptian pounds, only to be discovered years later, if at all, long after the money fled into foreign bank accounts.⁶⁹

All of this occurred under the blanket of secrecy afforded by the absence of transparency laws. Robust freedom of information laws empower investigative journalists and watchdog groups to ferret out corruption in time to hold rule breakers responsible, serving as a powerful deterrent to future fraud. Because most Egyptians of all political stripes agree corruption is a pervasive problem,⁷⁰ a freedom of information law is a politically palatable measure of reform that should be a priority in the new parliament's agenda. Many other legal reforms, including

free press and fair labor laws, are needed to transform Egypt into a prosperous nation that leverages its human capital and other national resources. In the end, a sustainable democracy cannot exist without a solid rule of law foundation.⁷¹

“Significant conflicting financial and political interests are at stake, making Egypt’s revolution an inevitably protracted process. Part of this painful but necessary process is a shift from a system of rule by law to rule of law.”

CONCLUSION

Egypt stands at a crossroads between merely replacing one set of corrupt leaders with another or completely transforming its political system to create a nation governed by and accountable to its citizens. While the revolutionary youth have clearly communicated their demands for the latter, strong countervailing forces are using every tool in their arsenal to preserve the pre-revolution system. Significant conflicting financial and political interests are at stake, making Egypt's revolution an inevitably protracted process. Part of this painful but necessary process is a shift from a system of rule by law to rule of law. No one, no matter how powerful, rich, or influential should be above the law. And every elected official, no matter how high

up, should be accountable to the electorate. Facts on the ground show this transformation does not occur without significant sacrifices both in terms of lives and livelihoods. But if the ultimate outcome is a more democratic, prosperous, and stable

country, then the long wait is worthwhile. After centuries of authoritarianism by foreign occupiers, kings, and military rulers, Egyptians need and deserve to finally rule themselves.

Endnotes: Egypt's Protracted Revolution

- ¹ Rod Norland and May El Sheikh, *Egyptian President Names Minister in Interim Cabinet as Premier*, N.Y. TIMES (July 24, 2012), http://www.nytimes.com/2012/07/25/world/middleeast/egyptian-president-names-prime-minister.html?_r=1 (reporting that “government ministries remain under the control of figures from the Mubarak era”).
- ² Marwa Awad and Yasmine Saleh, *Egypt rivals claim presidency as army tightens grip*, REUTERS (Jun. 18, 2012), http://www.reuters.com/article/2012/06/18/us-egypt-election-idUSBRE85G01U20120618?feedType=RSS&google_editors_picks=true.
- ³ At the time of writing, Mohammed Morsi had received about 52.2 percent of the total votes. But the election results had not officially been certified. *Egypt's Muslim Brotherhood calls for protests*, AL JAZEERA (Jun. 18, 2012) <http://www.aljazeera.com/news/middleeast/2012/06/201261813938457956.html>.
- ⁴ Mara Revkin, *Egypt's Injudicious Judges*, FOREIGN POLICY (Jun. 11, 2012), http://mideast.foreignpolicy.com/posts/2012/06/11/egypts_injudicious_judges.
- ⁵ See, e.g., Amina Ismail, *Egypt military wins round in presidential power struggle*, THE SEATTLE TIMES (July 19, 2012), http://seattletimes.nwsources.com/html/nationworld/2012728581_egypt20.html (noting that the judges were all appointed by Mubarak).
- ⁶ *Egypt's Islamists win 75 percent of parliament*, CNS NEWS (Jan. 22, 2012), <http://cnsnews.com/news/article/egypts-islamists-win-75-percent-parliament>.
- ⁷ Andrea Teti and Gennaro Gervasio, *The Politics of Egypt's Elections*, OPEN DEMOCRACY (Dec. 5, 2011), <http://www.opendemocracy.net/andrea-teti-gennaro-gervasio/politics-of-egypt%E2%80%99s-elections>.
- ⁸ CONSTITUTIONAL DECLARATION OF THE ARAB REPUBLIC OF EGYPT, Mar. 30, 2011.
- ⁹ Database of female members of Egypt's parliament, QUOTA PROJECT, <http://www.quotaproject.org/uid/countryview.cfm?CountryCode=EG> (last updated May 25, 2012).
- ¹⁰ Ekram Ibrahim, *Ahmed Shafiq: Courting the 'law and order' vote in Egypt*, AHARAM ONLINE (Jun. 10, 2012), <http://english.ahram.org.eg/News/44176.aspx>.
- ¹¹ Rana Khazbak and Mohamed Elmeshad, *Shafiq Campaign Takes Pages From the NDP Handbook*, EGYPT INDEPENDENT (June 15, 2012), <http://www.egyptindependent.com/news/shafiq-campaign-takes-pages-ndp-handbook> (reporting that “[m]any previous NDP members and MPs have already mobilized their own local networks to reach people in the same way they did when the party was in full-force”).
- ¹² Mubarak was tried and convicted for failing to prevent the killing of 900 protesters during the 2011 uprising. He was sentenced to life imprisonment in June 2012. Hamza Hendawi and Sarah El Deeb, *Egyptian judges dissolve parliament, rule ex-prime minister eligible for run-off vote*, DETROIT FREE PRESS (Jun. 15, 2012), <http://www.freep.com/article/20120615/NEWS07/206150412/Egyptian-judges-dissolve-parliament-rule-ex-prime-minister-eligible-for-runoff-vote>.
- ¹³ Amina Elbendary, *The long revolution*, AL-AHRAM WEEKLY (Jul. 18-24, 2002), <http://weekly.ahram.org.eg/2002/595/sc2.htm>.
- ¹⁴ Henry J. Reske, *Egypt's Poverty, Unemployment, Push Youths to Breaking Point*, NEWSMAX (Jan. 31, 2011), <http://www.newsmax.com/Newsfront/Egypt-poverty-unemployment-unrest/2011/01/31/id/384555>.
- ¹⁵ Francis Fukuyama, *The Failures of the Facebook Generation in the Arab Spring*, THE DAILY BEAST (May 21, 2012), <http://www.thedailybeast.com/articles/2012/05/21/the-failures-of-the-facebook-generation-in-the-arab-spring.html>.
- ¹⁶ Sherine Tadros, *Egypt Military's Economic Empire*, AL JAZEERA ENGLISH, (Feb. 15, 2012) (reporting the military controls approximately 15% to 40% of the Egyptian economy).
- ¹⁷ The “extreme poor” live on less than \$28.50 per month. *Briefing: Egypt's presidential candidates vow to tackle poverty*, U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS (Jun. 15, 2012), <http://www.irinnews.org/Report/95655/Briefing-Egypt-s-presidential-candidates-vow-to-tackle-poverty>.
- ¹⁸ David D. Kirkpatrick and Stephen Lee Myers, *Egypt Raids Offices of Nonprofits, 3 Backed by U.S.*, NEW YORK TIMES (Dec. 29, 2011), <http://www.nytimes.com/2011/12/30/world/middleeast/egypts-forces-raid-offices-of-us-and-other-civil-groups.html?pagewanted=all>.
- ¹⁹ Magdi Abdelhadi, *The Muslim Brotherhood connects with Egypt's rural majority*, THE GUARDIAN (Jun. 25, 2012), <http://www.guardian.co.uk/commentisfree/2012/jun/25/muslim-brotherhood-egypt>.
- ²⁰ *Egypt: Social programmes bolster appeal of Muslim Brotherhood*, U.N. OFFICE FOR THE COORDINATION OF HUMANITARIAN AFFAIRS (Feb. 22, 2006), <http://www.irinnews.org/Report/26150/EGYPT-Social-programmes-bolster-appeal-of-Muslim-Brotherhood>.
- ²¹ Timothy M. Phelps, *Muslim Brotherhood to run for Egypt's Parliament*, SAN FRANCISCO CHRONICLE (Feb. 16, 2011), <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2011/02/15/MN8D1HNFBD.DTL>.
- ²² Emad McKay, *In Egypt, Islamists Reach Out to Wary Secularists*, NEW YORK TIMES (Sept. 21, 2011), <http://www.nytimes.com/2011/09/22/world/middleeast/in-egypt-islamists-reach-out-to-wary-secularists.html>.
- ²³ *Egypt's Islamist parties sweep parliamentary polls winning 70 percent seats*, NEWSTRACK INDIA (Jan. 22, 2012), <http://newstrackindia.com/newsdetails/2012/01/22/261811-Egypt-s-Islamist-parties-sweep-parliamentary-polls-winning-70-percent-seats.html>.
- ²⁴ Evan Hill, *The villa and the ministry*, AL JAZEERA (Jun. 18, 2012), <http://blogs.aljazeera.com/blog/middle-east/villa-and-ministry>.
- ²⁵ Tamir Moustafa, *THE STRUGGLE FOR CONSTITUTIONAL POWER: LAW, POLITICS, AND ECONOMIC DEVELOPMENT IN EGYPT 145-48* (2007) (describing the significant increase in human rights activities in the 1990s and identifying the key organizations that set the foundation for more recently founded human rights groups).
- ²⁶ *Hossam Bahgat*, NEW INTERNATIONALIST MAGAZINE (Jul. 1, 2009), <http://www.newint.org/columns/makingwaves/2009/07/01/hossam-bahgat/>.
- ²⁷ New Woman Foundation, <http://nwrcegypt.org/>.

Endnotes continued on page 59

Endnotes: Egypt's Protracted Revolution

- ²⁸ Association of Freedom of Thought and Expression, www.en.afteegypt.org/index.php?do=static&page=abouts.
- ²⁹ Shaun Waterman, Analysis: Egypt's new anti-terrorism law, UNITED PRESS INTERNATIONAL (Dec. 3, 2007), http://www.upi.com/Top_News/Special/2007/12/03/Analysis-Egypt-new-anti-terrorism-law/UPI-8638119670154/.
- ³⁰ *Egypt NGO law could undermine freedoms, says U.N. rights chief*, AL ARABIYA NEWS (Apr. 25, 2012), <http://english.alarabiya.net/articles/2012/04/25/210315.html>; Tamir Moustafa, THE STRUGGLE FOR CONSTITUTIONAL POWER: LAW, POLITICS, AND ECONOMIC DEVELOPMENT IN EGYPT 232 (2007) (noting that human rights groups were almost entirely dependent on transnational sources for funding, they were vulnerable to government-imposed restrictions on foreign funding and smear campaigns in the press).
- ³¹ ALAA AL-DIN ARAFAT, HOSNI MUBARAK AND THE FUTURE OF DEMOCRACY 147-48 (2009) (discussing a problem in Egypt's civil society being that the government brought associations under tight state control by shutting down associations that oppose the regime and creating "parallel" organizations — government-organized NGOs (GONGOs) — to discredit NGOs); Essam El-Din Mohamed Hassan, *Roots of Unrest: Human Rights in the Arab Region Annual Report 2010*, CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES (Jeremie Smith, et al. eds., 2010) (stating that GONGOs are government established and/or supported NGOs that push a particular state(s) agenda while attempting to discredit or limit the voice of independent NGOs).
- ³² Kareem Elbayer, *Egypt's restrictions on NGOs violate international law*, WASHINGTON POST (Mar. 13, 2012), http://www.washingtonpost.com/opinions/egypt-restrictions-on-ngos-violate-international-law/2012/03/12/gIQA1hHDAS_story.html.
- ³³ David D. Kirkpatrick and Stephen Lee Myers, *Egypt Raids Offices of Nonprofits, 3 Backed by U.S.*, NEW YORK TIMES (Dec. 29, 2011), <http://www.nytimes.com/2011/12/30/world/middleeast/egypt-forces-raid-offices-of-us-and-other-civil-groups.html?pagewanted=all; Egypt to prosecute 43 NGO workers>, CBS NEWS (Feb. 5, 2012), http://www.cbsnews.com/8301-202_162-57371663/egypt-to-prosecute-43-ngo-workers/.
- ³⁴ *The Demands of the January 25th Youth Movement*, UNIVERSITY OF TORONTO FACULTY BLOG (Feb. 7, 2011), http://utorontolaw.typepad.com/faculty_blog/2011/02/the-demands-of-the-egyptian-january-25th-youth-movement.html.
- ³⁵ Jennifer Koons, *Saudi Arabia and the counter-revolution*, GLOBAL POST (Jun. 10, 2012), <http://www.globalpost.com/dispatch/news/regions/middle-east/saudi-arabia/120610/saudi-arabia-counter-revolution-gcc-arab-spring>.
- ³⁶ Sarah Mishkin, *Qatar: the price of patronage*, FINANCIAL TIMES (Sep. 9, 2011), <http://blogs.ft.com/beyond-brics/2011/09/09/public-pay-raises-vs-qatarisation/#axzz1zr1kOJ7j>.
- ³⁷ *Political Aid is Reshaping Middle East (shame it's not democracy assistance)*, DEMOCRACY DIGEST (May 18, 2012) <http://www.demdigest.net/blog/2012/05/political-aid-is-reshaping-middle-east-shame-its-not-democracy-assistance/>; Shadi Hamid, *A Democratic Transition in Trouble: The Need for Aid Conditionality in Egypt*, BROOKINGS INSTITUTION, (Jul. 20, 2012), available at <http://www.brookings.edu/research/opinions/2012/07/20-egypt-hamid> (stating "[a]s part of a \$2.7 billion aid package, Saudi Arabia made a direct \$1 billion cash transfer to Egypt's Central Bank in May [2012]").
- ³⁸ Eli Lake, *U.S. 'Paid a Price' on Egypt*, THE DAILY BEAST (Oct. 4, 2011), <http://www.thedailybeast.com/articles/2011/10/04/james-jones-ex-obama-adviser-u-s-paid-a-price-on-egypt.html>.
- ³⁹ Steven Lee Myers, *Once Imperiled, U.S. Aid to Egypt Is Restored*, NEW YORK TIMES (Mar. 23, 2012), <http://www.nytimes.com/2012/03/24/world/middleeast/once-imperiled-united-states-aid-to-egypt-is-restored.html>.
- ⁴⁰ Egypt: Military rulers have 'crushed' hopes of 25 January protesters, AMNESTY INTERNATIONAL (Nov. 22, 2011), <https://www.amnesty.org/en/news/egypt-military-rulers-have-crushed-hopes-25-january-protesters-2011-11-22>.
- ⁴¹ Inderdeep Bains, *Days of shame in the Middle East: Female protesters beaten with metal poles as vicious soldiers drag girls through streets*, DAILY MAIL (Dec. 19, 2011), <http://www.dailymail.co.uk/news/article-2075683/Egypt-violence-Female-protesters-brutally-beaten-metal-poles-vicious-soldiers.html>.
- ⁴² Stephen C. Webster, *Female protesters in Egypt tortured, subjected to 'virginity tests'*, RAW STORY (Mar. 23, 2011), <http://www.rawstory.com/rs/2011/03/23/female-protesters-in-egypt-tortured-subjected-to-virginity-test-amnesty/>.
- ⁴³ Shahira Amin, *Egyptian general admits 'virginity checks' conducted on protesters*, CNN (May 30, 2011), http://articles.cnn.com/2011-05-30/world/egypt.virginity.tests_1_virginity-tests-female-demonstrators-amnesty-report?_s=PM:WORLD ("The girls who were detained were not like your daughter or mine," the general said. "These were girls who had camped out in tents with male protesters in Tahrir Square, and we found in the tents Molotov cocktails and (drugs).").
- ⁴⁴ Leila Fadel and Ragia Mostafa, *Egyptian women decry abuse by soldiers*, WASHINGTON POST (Dec. 20, 2010), http://www.washingtonpost.com/world/middle_east/egyptian-women-decry-abuse-by-soldiers/2011/12/20/gIQA1hHDAS_story.html.
- ⁴⁵ Millions of Egyptians vote in historic presidential election, HERALD SUN (May 24, 2012), <http://www.heraldsun.com.au/news/more-news/millions-of-egyptians-vote-in-historic-presidential-election/story-e6fr-f7lf-1226365098858>.
- ⁴⁶ Carla Power, *Silent No More: The Women of the Arab Revolutions*, TIME (Mar. 24, 2011), <http://www.time.com/time/world/article/0,8599,2059435-1,00.html>.
- ⁴⁷ Jeffrey Fleishman and Asmaa Al Zohairy, *Egypt court dissolves parliament, keeps Mubarak ally on ballot*, LOS ANGELES TIMES (Jun. 14, 2012), <http://www.latimes.com/news/nationworld/world/la-fg-egypt-court-elections-20120615,0,511695.story>; *Egypt: President Morsi Should End Military Trials of Civilians*, HUMAN RIGHTS WATCH (July 15, 2012), <http://www.hrw.org/news/2012/07/15/egypt-president-morsi-should-end-military-trials-civilians>.
- ⁴⁸ These military tribunals have been repeatedly and soundly criticized by domestic and international human rights organizations for their inadequate and/or delayed access to counsel, limited access to appeals, glaring procedural irregularities, and harsh forms of punishment. What is telling is the fact military tribunals have been the government's preferred choice of forum since 1992.
- ⁴⁹ Ernesto Londono, *Egypt's infamous emergency law expires*, WASHINGTON POST (May 31, 2012), http://www.washingtonpost.com/world/middle_east/egypt-infamous-emergency-law-expires/2012/05/31/gIQA-WqqQ5U_story.html.
- ⁵⁰ Maikel Nabil Sanad, *On Hunger Strike in Egypt, Is Dying*, ALL VOICES (Sep. 16, 2011), <http://www.allvoices.com/contributed-news/10360481-maikel-nabil-sanad-on-hunger-strike-in-egypt-is-dying>.
- ⁵¹ *Egypt Must Cancel 'Dangerous' New Powers Given to Military*, AMNESTY INTERNATIONAL USA (Jun. 14, 2012), <http://www.amnestyusa.org/news/news-item/egypt-must-urgently-cancel-dangerous-new-powers-given-to-military>.
- ⁵² *At least 18 journalists assaulted or arrested in Egypt*, COMMITTEE TO PROTECT JOURNALISTS (May 4, 2012), <http://cpj.org/2012/05/at-least-18-journalists-assaulted->

or-arrested-in-e.php.

⁵³ *Egypt: Exceptions to Ending Emergency Law Invite Abuse*, HUMAN RIGHTS WATCH (Jan. 25, 2012), <http://www.hrw.org/news/2012/01/24/egypt-exceptions-ending-emergency-law-invite-abuse>.

⁵⁴ Omar Ashour, *Egypt's Revolution: A Year after Mubarak*, BROOKINGS INSTITUTION (Feb. 7, 2012), <http://www.brookings.edu/research/opinions/2012/02/07-egypt-ashouro>.

⁵⁵ Tamir Moustafa, THE STRUGGLE FOR CONSTITUTIONAL POWER: LAW, POLITICS, AND ECONOMIC DEVELOPMENT IN EGYPT 11-14 (2007) (discussing the relationship between rule of law, development and democracy).

⁵⁶ *Background Note: Egypt*, U.S. DEPARTMENT OF STATE (Mar. 19, 2012), <http://www.state.gov/r/pa/ei/bgn/5309.htm>.

⁵⁷ *The Egyptian Legal System*, UNESCO, <http://www.unesco.org/shs/ethics/geo/user/?action=Geo4Country&db=GEO4&id=9&lng=en>.

⁵⁸ *Business Climate Development Strategy, Phase 1 Policy Assessment: Egypt*, ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT 5 (Apr. 2010), <http://www.oecd.org/dataoecd/49/36/46341549.pdf>.

⁵⁹ *Id.*

⁶⁰ Sahar Aziz, *Rule of Law, Not Rule by Law for Egypt*, HUFFINGTON POST (Nov. 26, 2011), http://www.huffingtonpost.com/sahar-aziz/rule-of-law-not-rule-by-l_b_1113644.html.

⁶¹ Hdeel Abdelhady, *Egypt's prosecutor general must advance the rule of law*, AL AHAM (Jul. 25, 2011), <http://english.ahram.org/News/17279.aspx>.

⁶² Al-Masry Al-Youm, *Thousands across Egypt protest acquittals in Mubarak trial*, EGYPT INDEPENDENT (Mar. 6, 2012), <http://www.egyptindependent.com/news/thousands-protest-acquittals-mubarak-case>.

⁶³ The Supreme Constitutional Court is made up of 18 judges who are mostly Mubarak appointees. *Thousands crowd Tahrir Square for protests*, UNITED PRESS INTERNATIONAL (Jun. 15, 2012), http://www.upi.com/Top_News/World-News/2012/06/15/Thousands-crowd-Tahrir-Square-for-protests/UPI-79161339741800/?spt=hs&or=tn.

⁶⁴ Hajar Ismail, *... And Just a Question: Does al-Katani Have the Power to Abolish the Constitutional Court and to Dismiss the Military Council?*, BAWW BAT AL-SHAB B [THE YOUTH PORTAL] (Jul. 10, 2012, 5:57 PM), <http://shabab.ahram.org.eg/News/4249.aspx> (addressing a rumor that the Parliament will dissolve the Supreme Constitutional Court and the Military Council, the article cites the Vice President of the Court of Cassation as saying that this cannot be done, that he doubts Parliaments would do such a thing, and that this is an attempt by some political forces to create a crisis); Ahmad Nasif, *Concerns About Abolishing the Supreme Constitutional Court in the New Constitution*, ĀkhīrSā'ah [LAST HOUR] (Mar. 26, 2012, 11:25:32 AM), <http://www.dar.akhbarelyom.org.eg/issue/detailize.asp?mag=ak&field=news&id=5343> (boycotters of a parliamentary meeting expressing concerns about forming a constituent assembly through a Muslim Brotherhood-controlled Parliament, and stating that the Brotherhood is tending toward abolishing the Supreme Constitutional Court and unifying the judiciary); Muhammad Ibrahim Taemah, *Video. Nassar: The [Muslim] Brotherhood Wants to Abolish the Constitutional Court*, AL-WAFD [THE DELEGATION] (Mar. 21, 2012, 10:25 AM), <http://tinyurl.com/bvr7ykx> (Assistant Dean of Law at Cairo University

stating that the Muslim Brotherhood has an intention to unify the judiciary and abolish the Supreme Constitutional Court) (includes embedded video).

⁶⁵ Al-Masry Al-Youm, *Supreme Constitutional Court in New Standoff with Parliament*, EGYPT INDEPENDENT (May 5, 2012), <http://www.egyptindependent.com/news/supreme-constitutional-court-fresh-standoff-parliament>.

⁶⁶ *Ahmed Shafiq disqualified from Egypt presidential poll*, BBC (Apr. 25, 2012), <http://www.news.live.bbc.co.uk/news/world-middle-east-17836402>.

⁶⁷ *Non-Renewal of Emergency Law Does Not Mean an End to Egypt's Omnipotent Security State*, HUMAN RIGHTS FIRST (Jun. 1, 2012), <http://www.humanrightsfirst.org/2012/06/01/non-renewal-of-emergency-law-does-not-mean-an-end-to-egypt%E2%80%99s-omnipotent-security-state/>.

⁶⁸ Angela Migally, *Freedom of Information Legislation: Best Practices for Egypt*, THE EGYPTIAN AMERICAN RULE OF LAW ASSOCIATION (April 12, 2012), www.earla.org/programs.php

⁶⁹ Yasmine Saleh, *Hopes for a new Egypt marred by pervasive corruption*, REUTERS (Apr. 27, 2012), <http://www.reuters.com/article/2012/04/27/us-egypt-corruption-idUSBRE83Q0W220120427>.

⁷⁰ *Id.*

⁷¹ For more information about the importance of rule of law in promoting democracy, see the work of the Egyptian American Rule of Law Association, www.earla.org.

Endnotes: A New Emergency Law Model for Egypt

⁷ John Ferejohn and Pasquale Pasquino, "The Law of Exception: A Typology of Emergency Powers," 2 INT'L J. CONST. L. 210, 211-12 (2004).

⁸ *Id.*

⁹ *Id.* at 212.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ International Covenant on Civil and Political Rights, art. 4(1) (1966), available at <http://www2.ohchr.org/english/law/ccpr.htm>.

¹⁴ International Covenant on Civil and Political Rights, art. 4(1)-(2) (1966).

¹⁵ *E.g.* Ferejohn and Pasquino, *supra* note 7, at 213.

¹⁶ George Schwab, "Introduction," in Carl Schmitt, *Political Theology: Four Chapters on the Concept of Sovereignty* (George Schwab trans.), The MIT Press (1985), xi-xii.

¹⁷ *Id.* at 5-15.

¹⁸ *See, e.g.* Ferejohn and Pasquino, *supra* note 7, at 215-16.

¹⁹ Eric A. Posner and Adrian Vermeule, *Terror in the Balance: Security, Liberty, and the Courts*, Oxford University Press (2007), 38.

²⁰ *See* "Egypt Report 2010," *Amnesty International* (May 2010), available at <http://www.amnesty.org/en/region/egypt/report-2010>.

²¹ *E.g.* Ferejohn and Pasquino, *supra* note 7, at 234.

²² *See id.* at 230-31.

²³ South Africa is unique in giving authority to declare a state of emergency to the legislature. *See* SOUTH AFRICA CONST. art. 37 (1996). However, the emergency powers in the 1996 Constitution have not, to date, been tested, so it is difficult to evaluate the wisdom of conventionally giving the legislature exclusive authority

to declare an emergency. For this reason, combined with the institutional advantage of the executive branch with regard to taking decisive action, this paper does not recommend that Egypt adopt the South African model.

²⁴ Examples include South Africa, SOUTH AFRICA CONST. art. 37 (1996), and Turkey, TURKEY CONST. art. 15 (1982).

²⁵ An example is Indonesia. *Law on States of Emergency* art. 8(2)-(3) (Indonesia, 1959).

²⁶ *See e.g.* Victor V. Ramraj, "Emergency Powers and Constitutional Theory," 41 HONG KONG L. J. 481, 484 (2011).

²⁷ David Dyzenhaus, *The Constitution of Law: Legality in a Time of Emergency*, Cambridge University Press (2006) 12-16.

²⁸ *Id.* at 65.

²⁹ Posner and Vermeule, *supra* note 19, at 20-21.