

The Cairo Institute for Human Rights Studies and the No Military Trials for Civilians Group

Joint Written Intervention to the 20th session of the UN Human Rights Council

Item 3 - Interactive Dialogue with the Special Rapporteur on the Independence of Judges and Lawyers

Military Trials of Civilians in Egypt since the January 25 Revolution

The Cairo Institute for Human Rights Studies (CIHRS) and the No Military Trials for Civilians group¹ express grave concerns over the continuously increasing, almost systematic, practice of referring civilians to exceptional military tribunals in post-January 25 Egypt.

According to official numbers obtained in September 2011, around 12,000 civilians have been tried in military courts since the beginning of the revolution in Egypt.² Among the civilians tried are minors that have been sentenced to terms of imprisonment served in highly guarded adult prisons, in addition to 18 defendants who received death sentences. Despite official statements vowing to end the practice, these figures have now grown higher, as the military police continued to violently disperse protesters, when as late as May, 4, 2012 over 320 protesters were randomly arrested and referred to Military Prosecution.

1. Since the first spark of the January 25 Revolution, and prior to President Mubarak's stepping down, military trials for civilians accompanied the deployment of army troops in Egyptian cities starting January 28, 2011. As early as January 30, more than 30 civilians were convicted and imprisoned in what was known as the case of "robbery of the Egyptian museum."

Mass arrests are usually conducted by military personnel following protests whereby Military Police intervene to quell protests using violence, in many incidents lethal, and conduct random arrests. Some examples are the demonstrations that took place on February 25, March 9, April 8, July 23, August 1, October 9, and December 16 of last year, as well as May 4, 2012. Members of the armed forces reportedly used live ammunition, rubber bullets, electric batons, and at times even ran over protesters with tanks, while in certain incidents police forces aided them by using rubber bullets, pellets, tear gas, as well as live ammunition.

According to victims' testimonies, documented torture dates back to late January 2011, and points to grotesque patterns of torture used against detainees by military police and other army personnel. Torture is documented during arrest; during transferring the arrestees to Military Prosecution; inside the premises of Military Prosecution; and in detention facilities, which in some incidents included the Egyptian Museum, the Cabinet, Parliament halls, the Ministry of Interior's premises, Al Nour Mosque, underground stations, in addition to the

¹ NO MILITARY TRIALS FOR CIVILIANS is a group that was founded in February 2011 after the ouster of the former president Hosni Mubarak and the transfer of power to the Supreme Council of the Armed Forces. The group advocates for the release of those detained during the revolution, the movement of civilians from military trials to trials by a civil judge, and the investigation of torture allegations involving military police.

² Based on a previous statement of the head of the Military Judiciary, on 5 September to the state-owned Al Ahram newspaper. He stated that total numbers of civilians tried before military courts since the beginning of the revolution in Egypt are 11,879, among which 8,071 received sentences. 1,836 of the sentences were suspended and 795 were acquitted. This puts the conviction rate at 93%. Since September 2011, the military has constantly refused to provide lawyers with the exact numbers of civilians who have been referred to military trials and those who remain under military custody.

streets, where protesters were briefly detained and beaten severally (sometimes using electric batons) leading at times to their death.

Released detainees reported the use of wooden and metal bars on different parts of their bodies while handcuffed, given electric shocks, tied and whipped with cables while blindfolded before and/or while appearing before military prosecution. Other testimonies include mass detention (including the injured) inside poorly ventilated vans while in custody for hours. This of course is in addition to the virginity tests performed against 17 female protesters in March and the targeted violence practiced by the military against female protesters in December 2011 and May 2012. Torture was also practiced against doctors from field hospitals and journalists covering protests. Military courts in Egypt are historically infamous for accepting confessions obtained under torture and have constantly refused to prosecute military officers involved in systematic torture practices.

Some of the charges that have been used against detainees include: thuggery (a charge that is commonly used by SCAF to justify the continuation of referral of civilians to military trials under the pretext of maintaining security and stability in the country), possession of weapons, damaging public property, violation of the curfew, illegal assembly, blocking of public roads, disruption of public peace, insulting the military establishment, and inciting against the army. The last two charges were also used against at least three bloggers.

2. Despite the announcement of the Supreme Council of the Armed Forces (SCAF) on May 31, 2012 to revoking the 31 years old state of emergency, this step does not put an end to the practice of referring civilians to exceptional military tribunals. Indeed, several existing legal provisions of the Code of Military Justice law 25/1966 enable, and in fact facilitate, the referral of civilians to military courts without setting concrete limiting conditions to the practice.

Article 5 of the Code of Military Justice defines the jurisdiction of the military judiciary to include crimes committed inside military establishments or areas where military personnel work, or areas under military control, in addition to crimes committed in relation to military equipment, missions, documents, secrets, or all other belongings of the military. Article 7 grants jurisdiction to the military court on crimes committed against members of the armed forces while on duty. Additionally, Article 48 of the same law gives the military judiciary the primary authority to determine whether the offence committed, regardless of its nature, would fall within its jurisdiction or not.³ The arsenal of repressive laws also includes legalizing the referral of minors to unfair military trials under Article 8 (bis) (a) – a provision blatantly constructed to violate basic human rights norms and freedoms.

Recently, amendments to the Code of Military Justice abolished the notorious Article 6, previously allowing the president of the republic, at his discretion, to refer civilians to be tried under military courts during the state of emergency. Nonetheless, all the other above mentioned articles continue to allow the referral of civilians to military courts.

Additionally, the Code of Military Justice grants vast authorities to the SCAF, which enable it to use the entire system for political purposes. In fact, the Military Code was designed to grant major powers to the ruler of the country, being the Commander in Chief of the army as stipulated in the Egyptian constitution, and the Minister of Defense. Articles 105, 112, and 116 permit the president, or whoever sits in his office, to amend, abolish, or even postpone the sentences after they has been signed by the “certification officer.”⁴ These powers were

³ This article is now under the supervision of the Supreme Constitutional Court.

⁴ In accordance with the Military Provisions, there is a certification officer who ratifies the judgments issued by the military tribunals. According to Article 99 of the law, the certification officer has absolute authority to amend or cancel

used by the SCAF in a number of incidents over the past year and a half, in attempted to answer to public discontent about military trials for civilians. Thus, there seems to be a pattern, which has its roots long before the revolution, where provisions of the martial laws are used, and sometimes manipulated, for political purposes.

3. The right to a fair and public hearing before a competent, independent, and impartial tribunal; the right to have adequate time to prepare a defense; and the right to be defended by a lawyer of one's choosing, is all violated under the military judicial system. No defendant against whom a judgment is issued may take procedures for challenging the judgment unless it has been announced following ratification by the certification officer. This in turn restricts the freedom of the defendant based on the will of the officer, as there is no stipulation that obliges him to ratify the judgment within a specific period. This tactic is commonly used against defendants in political cases to ensure their prolonged detention and prevent them from appealing their verdicts.⁵ Additionally, the court sometimes restricts the defendant from access to an attorney of his request. In cases where the defendant does select his attorney, the attorney does not have enough time to review the case documents that enable him to perform his task to its best. Moreover, in several incidents, the court does not respond to the defence's crucial requests that are liable to alter the position of the accused in the case.

Thus, we call on the UN Human Rights Council to stand up to its responsibility of ensuring an immediate end to the referral of civilians to military courts and all human rights violations committed as a result of the practice and to ensure accountability for all violations committed. We further request that the UN Special Procedures on the Independence of Judges and Lawyers, Torture, and Arbitrary Detention, conduct a country visit to Egypt. Finally, we call on the Council to remind the Egyptian government of its obligations under international law to ensure:

- 1- Immediate end to military trials of civilians and referral of all those who have undergone military trials, and that can be submitted with internationally recognized criminal offenses, to civilians courts.
- 2- Ensure all those who were involved in killings, torture, arbitrary detention, virginity tests, and other forms of violations, are held accountable.
- 3- Offer suitable material and psychological remedies to victims of military trials.
- 4- Abolish article 5, 7, 8 bis (a) and 48 of the Code of Military Justice, and ensure that reference to the prevention of the referral of civilians to military courts is stipulated in the new constitution.

the punishment and cancel judgments of acquittal and re-trial, or suspend or annul a judgment. It is worth noting that the certification officer does not witness the trial, nor the defense submitted by the defendant.

⁵ Based on amendments introduced in 2007, an appeals system was put in place where by a defendant can appeal the ruling at first instance in a higher military court.