

UPDATE EGYPT ASSESSMENT: Bassiouni

**Fourth Amended Egypt Update
February 24, 2011**

For the full text of the Background paper and the previous updates, see

<http://twitter.com/cherifbassiouni>

or

http://www.thechicagocouncil.org/userfiles/file/events/FY%2011%20Events/02_February_11/BackgroundPaper_FightforDemocracyinEgypt.pdf

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ASSESSMENT

- What started as demonstrations in Cairo on January 25, quickly turned into the involvement of several million people of all walks of life, who demonstrated in Cairo and in other cities (Alexandria, Suez, Port Said, Beni-sweif, Mansoura and Mehalla). The popular effort was sustained for 18 days, centered in Tahrir (Liberation) Square in Cairo's center. Most of the demonstrators were under 35, but the crowds also contained older persons, women (with and without hijab), Christians and Muslims, poor and middle-class. The demonstrations were peaceful except when provoked and attacked by pro-government civilians and undercover police personnel. After a few days, it became known as "the Revolution." Government officials and the ruling elite saw it only as an on-going series of popular protests seeking reforms. They also saw and managed the crisis as a regime-succession, while those in "the Revolution" wanted a regime- change. The military management of the situation was judicious. Normalcy has returned. Whether it is called "the Revolution" or differently, it was a model of peaceful transformation.

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- The organizers were mostly younger people under age 35, with university degrees, using modern technology (the internet, Facebook, Twitter and other techniques) to communicate with one another, and disseminate information. The older generation of Mubarak, particularly those in the security and political leadership failed to understand this new technological phenomena. They also failed to understand the depth and breadth of the generational gap that separated them from half of the Egyptian people who are under 30, and who sought to end the Mubarak regime. That gap also existed between them and the rest of the population on almost every issue involving the regime's abuses of power and corruption. The price of these mistakes was the fall of Mubarak and the beginning of reforms.

- The popular uprising ended with Mubarak's departure from office on Friday, February 11, 2011. The announcement of his departure symbolizes how much he and those in his regime were out of touch with the people. The terse announcement read by Mubarak's designated Vice President, Major-General (Ret.) Omar Suleiman, former head of General Intelligence, simply stated that the President had renounced the Presidency. The Arabic word chosen was "tanahha" which means "renounces." It was as if the presidency belonged to him by right and that it was his privilege to renounce it or not. So be it Mubarak lives in his villa in Sharm el-Sheikh, and some believe that he is still being consulted by Field-Marshal Hussein Tantawi, who is the *de facto* head of state.

- Since February 11, Egypt has been under the control of the Superior Council of the Armed Forces (SCAF), consisting of 15 generals representing the various branches and senior corps of the military. The SCAF is headed by Field Marshall

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Hussein Tantawi who is also minister of defense. The SCAF has suspended the Constitution dissolved the two houses of parliament, convened a committee of 8 persons of their choice to make selective amendments to the 1971 Constitution. It also promised to make reforms as well as to hold elections in six months, without specifying whether they would be presidential, legislative or both. The SCAF has taken to issuing “communiqués,” much as the Revolutionary Council did after the 1952 military coup led by Lt-Col. Gamal Abdel-Nasser. So far, five “communiqués” have been issued, all of them short and terse. None of them so far offers a program or vision of Egypt’s future.

- The SCAF’s goal is to preserve stability and security, and that translates into perpetuating the regime with new faces, who would bring about reforms, better government, and some opening toward democracy. For the military and the second generation of the Mubarak regime waiting in the wings to take over, it is all about succession. But to most people, it is about regime-change. The military will not allow regime-change for fear of chaos and instability, particularly if the economic situation deteriorates. The military is part of the establishment, and it has a stake in preserving the regime, though conscious of the needs for reforms and some changes on the political scene.

- U.S. policy has been cautious and mostly reactive to domestic events. On the whole, it struck a balance between principles and strategic interests. At times, there were tactical errors, but this is inevitable in such fluid and rapidly changing situations. For example, the Administration seems to have mistakenly believed that VP Suleiman would succeed Mubarak, if only because he was its

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preferred candidate, even though this was questionable. The 1971 Constitution provided, however, in case of a presidential vacancy the Speaker of the House would assume the presidency for 60 days pending an election, and not the V.P. The latter was put out of the picture along with Mubarak. No one knows if he is likely to surface again. Another faulty U.S. assumption has been that the Constitution would be fully revised. This will not be the case (as described below).

- The U.S. media, particularly MSNBC and CNN have done excellent reporting. Al-Jazeera, however, was by far more informed. U.S. commentators, except for Professor Fouad Ajami on CNN, were not well informed. Surprisingly, no Egyptian-American experts appeared on the U.S. national media.

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SPECIFIC ISSUES

1. The SCAF appointed a Constitutional Committee of eight [consisting of: Judge Tarek El-Beshry, Former First Deputy President of the State Council; Prof. Atef Al-Banna, Prof. of Constitutional law, Cairo Univ; Prof. Hassanain Abdel-All, Prof. of Constitutional law, Cairo Univ; Prof. Mohamed Bahy Younis, Prof. of Constitutional law, Alexandria Univ; Mr. Sobhy Saleh. Lawyer and member of the Muslim Brotherhood; Judge Maher Samy, Vice President of the Constitutional Court; Judge Hassan Al-Badrawy, Vice President of the Constitutional Court; and Judge Hatem Begato, Vice President of the Constitutional Court]. The Committee will submit its initial draft on about February 25th, which will be published in newspapers for one week to receive public feed-back. The Committee will then have 48 hours to make the final amendments. These proposed amendments will then be submitted to a

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public referendum. The public vote will be a yes or no, without any opportunity for modifications.

The amendments are expected to address the following:

- a. Abrogate Article 179 (Emergency powers of the President)
- b. Amend Articles 76 (Conditions to elect the President), Article 77 (Presidential terms to be limited to two six-year terms), Article 88 (Judicial Supervision over the elections),
- c. Abrogate Article 93 (The Parliament's power to decide upon the validity of its MPs' memberships) and amend 189 (The Parliament and President's power to amend the constitution).

After the referendum, it is expected that the Committee will make suggestions for implementing laws and may be given the task by the SCAF of drafting some laws to regulate the forthcoming elections in six months.

The historic opportunity to make significant constitutional changes seems to have been lost. This would have included: emphasizing the secular nature of the nation, establishing equality of rights without discrimination based on race, religion, gender, or other factors, emphasizing the supremacy of international treaty obligations and their justiciability in Egyptian courts; facilitating ways to challenge the constitutionality of laws and administrative measures before the Constitutional Court.

2. There has been no further news from the SCAF about establishing the commission or council of 50 that was announced in the third military communiqué. That commission or council was supposed to be comprised of persons representing

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all political and intellectual currents as well as the range of views represented by civil society. Their goal was to prepare an agenda of needed reforms during this transition period. Whether this idea is still being considered by the SCAF, is unknown. It may be that the SCAF will move ahead with reforms without such a consultative body.

3. An important positive development occurred when the feared and despised former Minister of Interior, Police General Habib el-Adly, was arrested on Friday, Feb. 18th, on order of a prosecutor investigating matters related only to corruption, but nothing about torture and other abuses. Two other former cabinet members were also arrested for the same reasons as was the secretary general of the National Democratic Party (NDP). It is believed that other key figures in the Mubarak regime are under investigation. Their names are not yet known. It is also not known if the Prosecutor-General has requested any other state to freeze the assets of any Egyptian under investigation for corruption, bribery, and money laundering.

The four arrested so far are: Habib El-Adly, former Minister of Interior (he was only indicted for some acts of corruption, and not for torture and other crimes), Zuhair Garanah, former Minister of Tourism, Ahmed El-Maghraby, former Minister of Housing, and Ahmed Ezz, National Democratic Party were all indicted for certain acts of corruption. It is believed that the Prosecutor-General, Abdel-Mejid Mahmoud, has also ordered the freezing of assets of a number of persons under investigation, and that he requested the Minister of Foreign Affairs to start contacting foreign governments concerning the freezing of assets of Mubarak, his wife, two sons and their wives, but that is not confirmed.

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4. A number of institutional reforms are believed to be under consideration by the SCAF. There seems to be some willingness to address the massive defrauding of the economy by the Mubarak oligarchy, but under wraps. Individual investigations will be conducted by the Prosecutor-General, but none into the roles of the Central Bank, the Association of Banks, as well as certain private banks, to determine how corruption turned into money laundering and how the Egyptian economy is now left holding the bag for what could amount to billions. The discovery of the size of the government's financial exposure could have economically and politically devastating consequences.

5. The SCAF has not considered establishing a fact-finding or truth commission to prepare a "white book" explaining all of the mis-deeds that have taken place since Sadat assumed power in 1971. This would include the collusion between politicians, government officials, business people, and particularly, the police. The latter and the succeeding Prosecutor-General (over almost 40 years) have not only failed to investigate these crimes, but have covered them up. The truth commission would show how institutional mechanisms were used to obtain the abusive and corrupt results in question by collusion between the police, the oligarchy, the bureaucracy, and the NDP. This type of truth/fact-finding is necessary to institute reforms and to develop mechanisms to prevent their recurrence.

6. The SCAF has been requested by the leaders of the 25 January Movement to establish a victim compensation fund for those who, during the Mubarak regime, have been tortured, arbitrarily arrested and detained, and subjected to other forms of abuses. This should include those who have been killed or injured since January

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25th. This has not yet been agreed to. The Prosecutor-General has, however, established a task force in the Kasr-el-Nil District to investigate the violence that took place in Tahrir Square.

7. The SCAF has asked the new minister of the interior to make institutional reforms but that is not likely to include systematic torture, other abuses, and corruption. A number of other token prosecutions are expected. Other reforms may address all aspects of police professional standards.

8. The SCAF is considering the release of all political prisoners.

9. Dialogue is ongoing between the representatives of “the Revolution” and the SCAF. There are two bodies representing “the Revolution,” and 18 and 32 member body. Their offices are located on Mahmoud Bassiouni Street (off Tahrir Square). This is symbolic since Mahmoud Bassiouni (my grandfather) led Egypt’s 1919 anti-colonial revolution in upper Egypt. This led to Egypt’s independence in 1922. These offices are also across the street from the statue of the late Lt.-General Abdel-Moneim Riad, who was killed by Israel in 1971 while Chief of Staff of the Armed Forces. (He was a second degree cousin to me.)

This is history in the making.

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