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Egypt: Trial of Mohamed Morsi

Introduction

A criminal court has sentenced ousted president Mohamed Morsi to 20 years in prison on charges of involvement in deadly clashes around Cairo's Federal Palace in December 2012.

The court handed down jail terms against 14 other men in the case, including leading figures in the Muslim Brotherhood and its political wing, the Freedom and Justice Party.

What is the case?

The first mass protests against Mohamed Morsi's rule began in November 2012. They came after the president triggered a political crisis by issuing a decree that prevented judges from hearing lawsuits against his decisions, or ruling on the legality of a controversial assembly drafting a new constitution.

As the protests continued, they increasingly saw clashes between Mohamed Morsi's supporters and opponents. The worst violence was on the night of 5 December 2012, when pro and anti-Morsi supporters fought in the streets around the Federal Palace (known as "Kasr Al Ittihadiya").

The violence started after Mohamed Morsi's supporters broke up a peaceful protest by his opponents in front of the palace. The two opposing sides then fought in the streets around the palace, using stones, Molotov cocktails and shotguns. Riot police failed to intervene effectively to end the violence and later withdrew entirely. Hundreds were injured and at least 10 people died, most of them supporters of Mohamed Morsi as documented by Amnesty International. During the fighting, the president's supporters also caught some of their opponents and tortured them.

An Amnesty International team in Cairo observed the fighting and later interviewed some of those injured at field hospitals.

The Public Prosecution launched an investigation into the incident, with lawyers for both sides filing criminal complaints against the other.

What was the court's decision in the case?

The court handed down 20 year sentences against all but two of the men after convicting them of charges of “showing force” and “arbitrarily arresting protesters and torturing them”. The men will also face five years of probation (police surveillance) following their release.

The court sentenced two other defendants, Abdelhakim Abdel Rahman and Gamal Saber, a teacher and an activist respectively, to 10 years in prison and five years of probation.

The court acquitted all the defendants of charges of killing protestors and possessing weapons.

Does Amnesty International think Mohamed Morsi had a fair trial?

No. The Egyptian authorities had violated Mohamed Morsi's right to a fair trial even before he had reached the courtroom.

Following his ousting on 3 July 2013, the security forces detained Mohamed Morsi and several of his aides incommunicado, in conditions that amounted to an enforced disappearance.

Egyptian media later published what they claimed to be leaked phone calls between top officials, including the interior minister and the public prosecutor, about building a prison in a navy base to hold Mohamed Morsi.

In the recordings, the officials expressed concern that holding Mohamed Morsi in an unofficial place of detention may jeopardize the criminal cases against him. Amnesty International is not able to verify the veracity of the recordings but if true it would indicate that the Egyptian authorities were aware of the unlawful detention of Mohamed Morsi and were determined to try him.

What is clear is that the authorities held the ousted president in a military facility that was not an official place of detention and which was not subject to judicial oversight, denying the ousted president his rights under Article 54 of the Egyptian Constitution to see a prosecutor within 24 hours and to challenge the legality of his arrest before a court and have it rule within a week.

The authorities also violated Mohamed Morsi's right not to be subjected to arbitrary arrest or detention, as well as his right to challenge the lawfulness of his detention under Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Egypt is a state party.

In mid-November 2013, the UN Working Group on Arbitrary Detention ruled that the Egyptian authorities were detaining Mohamed Morsi and his staff arbitrarily because they had not observed the international norms relating to the right to a fair trial. The group called for his release.

During this initial period of arbitrary detention, prosecutors questioned Mohamed Morsi without the presence of a lawyer. Article 54 of Egypt's Constitution provides that investigations may not begin with a person unless their lawyer is present.

The ousted president was also unable to appoint defence counsel, or to communicate with a defence team formed to represent him ahead of his trial which opened on 4 November 2013.

The lawyers were only able to obtain a copy of the 7,000 page case file on 30 October 2013, severely restricting the amount of time they have had to prepare their defence. In addition, they had to pay a fee of 15,000 EGP (US\$2,177) for the full case file.

In these respects, the authorities also violated Mohamed Morsi's right to have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing under Article 14 of the ICCPR.

By violating these fundamental due-process safeguards, the authorities undermined the fairness of all subsequent criminal proceedings against Mohamed Morsi.

Defence lawyers had argued that the violations of due process were such as to render his trial null and void, under the principle in Egyptian law that "what is built on null procedures is null".

Does Amnesty International think his trial is politically motivated?

Yes, after reviewing the case Amnesty International has concluded that Mohamed Morsi's trial was politically motivated.

When a head of state is deposed by the military and then put on trial there is bound to be an assumption that any such case against them has a strong political element. In such instances, it falls to the authorities to prove that any investigations into the alleged offences were conducted effectively, independently and impartially.

Amnesty International's research into the events of 5 December 2012 had established that both Mohamed Morsi's supporters and opponents had committed human rights abuses.¹

However, the Public Prosecution has focused its investigations and criminal charges solely on Mohamed Morsi and his supporters. The prosecution has largely ignored evidence that Mohamed Morsi's opponents were responsible for human rights abuses on the night of 5 December 2012, including the unlawful

¹ Amnesty International, "More protestors are killed since President Morsi's advent to power", *Egypt: Rampant impunity: Still no justice for protestors killed in the '25 January Revolution'* (Index: MDE 12/004/2013), 25 January 2013: <https://www.amnesty.org/en/documents/MDE12/004/2013/en/>

killings of Morsi supporters. This selectivity in investigations and trials is increasingly a pattern.

Amnesty International has not said that the case itself has no merit. However, the prosecution of Morsi and his associates on these charges appears to be selective and the process has been fundamentally flawed. The organization believes that one-sided justice is not justice at all. All those responsible for committing human rights abuses during the “Ittihadiya events” should face justice, regardless of their political orientation.

What does Amnesty International think should happen now?

Amnesty International is urging the Egyptian authorities to release Mohamed Morsi or to fairly retry him before a civilian court in full compliance with international standards, and without recourse to the death penalty.

In this respect, the organization notes that the ousted president is facing several other criminal cases (see below).

Does Amnesty International think Mohamed Morsi could get a fair trial?

Egypt’s criminal justice system is increasingly proving itself incapable of delivering due process and fair trials in politically charged cases involving the government’s critics or political opponents.

Since Mohamed Morsi’s ousting in July 2013, the Public Prosecution has hauled hundreds of his alleged supporters before the courts on charges of “protesting without authorization” and a catalogue of criminal offences ranging from murder to vandalism.

In most cases documented by Amnesty International, prosecutors failed to establish individual criminal responsibility for the alleged offences. In many instances, the Public Prosecution based its cases almost entirely on the testimonies of the security forces, with little material or forensic evidence to substantiate them.

Courts have in turn sentenced hundreds of alleged Morsi supporters to death or lengthy jail terms following proceedings that did not uphold international standards.² In the last few months, civilians have also increasingly faced unfair trials before military courts.

At the same time, the Public Prosecution has ignored rampant human rights violations by the security forces, including the deaths of hundreds of protesters who have died since July 2013 as a result of excessive force, while courts have acquitted alleged perpetrators.

² See for example Amnesty International, Egypt sentences a further 183 people to death in new purge of political opposition, 21 June 2014:
<https://www.amnesty.org/en/articles/news/2014/06/egypt-sentences-further-people-death-new-purge-political-opposition/>

Can Mohamed Morsi appeal his sentence?

Yes, before Egypt's highest court of law – the Court of Cassation. The court would then review the case and may overturn the verdict if it rules the court that tried him violated Egyptian law and legal procedures.

Is Mohamed Morsi facing charges in other cases?

Mohamed Morsi is facing criminal charges and trials in several other cases.

Courts are trying the ousted president on separate charges of escaping from prison during the 2011 uprising and committing espionage against Egypt with Hamas and Hizbullah. The courts have said they will hand down their verdicts on 16 May.

Mohamed Morsi is also facing a separate, ongoing trial on charges of committing espionage on behalf of Qatar. He has also faced charges of insulting the judiciary.

Who else is facing trial in the same case?

Lawyers for Mohamed Morsi have told Amnesty International the defendants in the case are:

1. Mohamed Morsi
2. Assad al-Shikha (Mohamed Morsi's deputy chief of staff)
3. Ahmed Abdelaty (former head of the President's Office)
4. Ayman Abdelraouf Ali Hodhod (former presidential advisor)
5. Alaa Hamza Ali (reported to be an acting inspector in the Department of Civil Administration)
6. Gamal Saber (an activist in the "Hazemoun" group)
7. Mohamed al-Beltagy (the General Secretary of the Freedom and Justice Party)
8. Reda Mohamed (reported to be a petrol engineer)
9. Lamlom Mekawy Goma (occupation unknown)
10. Abdelhakim Ismail Abdelrahman (reported to be a teacher)
11. Hani Said Tawfik Said (occupation unknown)
12. Ahmed Almoghaier (occupation unknown)
13. Abdelrahman Ezz Eldin (a prominent Muslim Brotherhood supporter)
14. Issam al-Aryan (Deputy Chair of the Freedom and Justice Party)
15. Wagdi Ghoneim (Muslim Brotherhood member)

The court tried several of the defendants in their absence (in absentia).

What's happened to the Muslim Brotherhood and Mohamed Morsi's supporters?

The authorities launched a sweeping crackdown on their political opponents, targeting the Muslim Brotherhood. In December 2013, the Egyptian government announced it considered the Muslim Brotherhood to be a "terrorist entity".

The government has not published official figures on the numbers of those arrested, detained and prosecuted as part of the crackdown. Security forces had detained at least 16,000 people by March 2014, according to estimates by government and security officials published by the Associated Press.

However, human rights activists claimed that the true figure is likely to be much higher and in May 2014 published a list of over 41,000 people who were detained or facing criminal charges.³

Since then, courts have jailed or sentenced to death hundreds of people for taking part in protests. The first execution of a Morsi supporter took place in March this year.

Some members or supporters of the Muslim Brotherhood might have been involved in acts of violence or incitement to violence. However, Amnesty International is concerned that many individuals are being pursued solely for their membership or support of the Muslim Brotherhood, and their peaceful exercise of their rights to freedom of expression and assembly.

³ Associated Press, *Egypt crackdown brings most arrests in decades*, 16 March 2014: <http://bigstory.ap.org/article/egypt-crackdown-brings-most-arrests-decades>; and Wiki Thawra: <http://wikithawra.wordpress.com/2014/01/09/sisi-mansour-detainees/>