

## Appendix 1 - Recent Political and Historical Background

In October 1981 Hosni Mubarak gained the presidency of Egypt and ruled the country for thirty years. In early 2011 a popular uprising led to his removal. Mubarak resigned as the Egyptian President on 11 February 2011. On 12 February 2011, Egypt's top military body, the Supreme Council of the Armed Forces (SCAF) took control of the government, dissolved the Egyptian Parliament and suspended the constitution. SCAF promised a transition to democracy. However, the "transition" that followed has been bloody and the struggle for democracy in Egypt remains.

Between November 2011 and January 2012, parliamentary elections were held in Egypt and the Muslim Brotherhood, through the Freedom and Justice Party, won the greatest share of the vote. In June 2012, the Supreme Constitutional Court declared the elections unconstitutional and called for fresh elections. Parliament was dissolved and the Upper Chamber of the Parliament assumed legislative power.

On 30 June 2012, the candidate of the Freedom and Justice Party, Mohammed Morsi was sworn in as the President of Egypt. However, discontent against his presidency grew rapidly. This was particularly so after 22 November 2012, when Morsi passed a decree which stated that his decisions were "final and unchallengeable by any individual or body until a new constitution has been ratified and new parliament has been elected."

Masses of Egyptians took to the street in protest. Egypt's most senior judges condemned Morsi's decision, saying that the new powers amounted to an "unprecedented assault" on the independence of the judiciary. On 10 December 2012, Morsi agreed to rescind most of his decree, save his decision to hold a referendum on Egypt's new draft constitution. On 15 and 22 December 2012, this referendum took place and the new constitution was passed.

In April 2013, Tamarod (rebellion or revolt) was founded and by 29 June 2013, Tamarod claimed to have gathered twenty two million signatures demanding that Morsi step down as President. Millions of Egyptians took to the streets on 30 June 2013, the first year anniversary of Morsi's appointment, and he was given until 2 July 2013 to step down. If he did not step down, a campaign of civil disobedience was threatened.

On 3 July 2013, SCAF intervened and removed Morsi from office. Abdul-Fattah al-Sisi, the General Commander of Egypt's Armed Forces, said the military had no interest in politics and a "road map" for a post-Morsi government was announced. SCAF declared the constitution suspended, and said that plans would be expedited for new parliamentary and presidential elections under an interim government. Adly Mahmoud Mansour, head of Egypt's Supreme Constitutional Court, was appointed Egypt's interim President.

In July 2013, a committee of ten legal experts were appointed with the task of amending the Constitution. Their proposed changes were sent to a larger group of fifty, made up of politicians and representatives from various different groups. A final draft constitution was sent by this Committee to the President in December 2013. A referendum on this draft constitution took place on 14 and 15 January 2014. It passed, but against a backdrop of fear.

Since July 2013, the repression of political dissent and opposition has been significant. Thousands of Morsi supporters were arrested following his removal from power and in August 2013, a large number of people were killed when the authorities stormed and dispersed two protest camps, at Rab'aa al-Adawiya Square and al-Nahda

Square.

It did not take long for the state's repression to move from Muslim Brotherhood supporters to other opponents of SCAF, including human rights activists like Alaa Abd El-Fattah, and those who dared to criticise the authorities' decisions and its manner of rule. On 23 November 2013 a presidential decree was issued, The Arab Republic of Egypt Law No.107 for 2013 for Organising the Right to Public Meetings, Peaceful Processions and Protests ("Protest Law"). It is set out in full in Appendix 3. This law gives extensive powers to the police and governors in Egypt to circumscribe and prevent varied forms of public protest and the assembly of civil society.

On 26-28 May 2014, Egypt's second presidential election since the fall of Mubarak, took place and on 3 June 2014, Sisi was confirmed as the new President of Egypt. The country's electoral commission announced that he won the presidential election by 96.1% with only one candidate having stood against him. The Commission estimated that 47% of those eligible to vote, did so. To date, no parliamentary elections have taken place.

The repressive crackdown on political dissidents has continued since Sisi's election. Independent NGOs currently estimate the number of political detainees in Egypt at the highest level in its modern history. The Ministry of Interior estimates the figure at 16,000; independent estimates put the figure at over 41,000. Sisi has continued to issue laws which directly threaten the freedom of assembly. On 27 October 2014, Sisi issued a presidential decree extending the jurisdiction of military court's to civilians who attack or obstruct "vital" public facilities and in February 2015, Sisi issued a decree which broadens the state's definition of terrorism to include anyone who threatens public order "by any means".

### **The Egyptian Judiciary and Prosecution**

The general principle of judicial independence has been constitutionally guaranteed in Egypt for many decades. Article 184 of the 2014 Constitution provides that "[t]he judiciary is independent". The same article makes interference in judicial affairs a criminal offence to which the statute of limitations does not apply.

However, there are a number of challenges to this "on paper" judicial independence. The Ministry of Justice has wide powers over judges which provides scope for abuse. These include the right to assign judges to particular courts, an ability to decide which judges are seconded to work in government ministries and the right to initiate disciplinary action against judges. These powers threaten the judiciary's independence as they allow a government minister to reward or punish serving judges, and provide an incentive for judges to please the executive.

The legal framework also gives a role to the executive branch in the judicial appointment system, particularly at the higher levels, allowing for politicised decision-making. Recent months have seen a number of disciplinary actions being taken against judges who are seen as supportive of the Muslim Brotherhood while a blind eye is turned to those who openly support President Sisi. According to the IBA Minimum Standards of Judicial Independence, "[t]he power to transfer a judge from one court to another shall be vested in a judicial authority and preferably shall be subject to the judge's consent". The current system does not comply with this recommendation.

A similar "on paper" independence can be found regarding Egypt's Prosecution. The 2014 Constitution states that the Prosecutor-General in Egypt must be appointed by the judge-led Supreme Judicial Council (SJC). However, the 2014 Constitution also allows the Minister of

Justice to have a role in the appointment of investigating judges and transferring prosecutors to other posts. And graduates of Egypt's Police Academy are automatically granted a law degree and can move easily from police station to the Prosecutor's Offices. Experience in Egypt's police force is not an appropriate training ground for public servants, such as independent, state prosecutors.