



Egypt: New Law Keeps Military Trials of Civilians ^[1]

12,000 Tried by Military in 2011, Hundreds More Cases Pending

May 7, 2012

(New York) – Egypt’s parliament on May 6, 2012, approved amendments to the Code of Military Justice that failed to end the unprecedented expansion of military trials of civilians, despite pleas for reform from the legal and human rights communities, Human Rights Watch said today. In 2011 more than 12,000 civilians, including children, faced unfair military trials which fail to provide the basic due process rights of civilian courts, more than the number of military trials of civilians during 30 years of rule by former president Hosni Mubarak.

The military has continued to try civilians before military tribunals in 2012 despite promises to limit the practice. More than 300 civilians arrested since May 4 in Cairo during the clashes near the ministry of defense in Cairo are now also scheduled for military trials.

“It’s shocking that this elected parliament has failed to take the basic step of protecting Egyptian civilians against an inherently unfair military justice system,” said Sarah Leah Whitson, Middle East and North Africa director at Human Rights Watch. “Parliament’s failure to ban a major abuse of the military government betrays campaign promises to deliver justice to all Egyptians.”

International human rights law bans trials of civilians before military courts. Despite this, until now Egypt has maintained its 1966 Code of Military Justice (CMJ), which permits military trials of civilians in various circumstances set out in Articles 5 (civilians present in an area where the military are deployed), 6 (presidential referral) and 7 (if one of the parties is military personnel). In addition, Article 8 (bis) (1) allows military tribunals to try juveniles when accompanied by an adult who is subject to military jurisdiction, while Article 48 gives the military justice system sole competence to determine its jurisdiction.

The amendments parliament passed on May 6 limit only the right of the president to refer civilians to military tribunals and fail to address the broad discretion given to the military in Articles 5 and 7 to try civilians, Human Rights Watch said. Parliament also only changed a few words in Articles 8 and 48, without addressing the extremely problematic substance of the two provisions, which allow children to be tried before military tribunals.

The legislative and constitutional affairs committee of the People’s Assembly, Egypt’s lower house of parliament, had during the past three months discussed reforming the CMJ based on proposed amendments drafted by SCAF General Mamdouh Shaheen, who represented the government in parliament. Two members of the committee, Mohamed al-Omda and Hussein Ibrahim, had submitted proposals with additional suggested amendments that would allow sentences issued by military courts to be appealed before civilian courts. But parliament’s rules of procedure, which date from the Mubarak-

era parliament that was dominated by one party, give precedence to government-proposed drafts, and the committee failed to adopt the members' proposals.

Shaheen's proposed amendments only limited the right of the president to refer civilians to military tribunals. He told the legislative committee on March 19 that this provision had been "imposed on the military by former president Hosni Mubarak" and that the SCAF "had frequently tried to change it." Shaheen rejected [4] MPs' demands to amend Article 48, which states that the military justice system is solely competent to determine its own jurisdiction, saying in a televised debate in parliament that "the provision just needs to be narrowed to guarantee the security of the armed forces against [civilians] who try to blow up a tank or steal ammunition because this would destroy the military justice system."

Over the past year the SCAF has consistently stated that it has the right to try civilians before military courts on the basis of the Code of Military Justice. In a live television interview on a local station, ON TV, on April 11, General Ismail Etman, the military's head of Morale Affairs, said that "in cases where it affects the security of the armed forces or the security of the country, such as thuggery, looting, or destruction of property, theft, and especially if one of the parties is a military officer, we transfer it to military trials to be looked into immediately."

"The SCAF-proposed amendments were the usual half-hearted, cosmetic attempts by the military to respond to criticism without limiting the military's discretion," said Whitson. "The failure of MPs who were the primary victims of military trials under Mubarak to end such a system undermines faith in their desire to push for reform."

In the first eight months of its rule, the SCAF tried 12,000 civilians [5] before military courts, more than the total number of trials of civilians before military courts under Mubarak. Under the Mubarak government, military trials of civilians were reserved for high-profile political cases, such as the 2008 conviction [6] of the former deputy guide of the Muslim Brotherhood, Khairat al-Shatir [7], and 24 others; and these were usually on the basis of referrals by the president.

"The Egyptian people sacrificed their lives and security for a government that would safeguard their rights, but apparently the parliament they elected is interested only in protecting the military," said Whitson.

Human Rights Watch strongly opposes any trials of civilians before military courts, where proceedings do not protect basic due process rights or satisfy the requirements of independence and impartiality of courts of law. It has called [8] upon Egypt's new parliament to amend the code of military justice to restrict the jurisdiction of military courts to trials of only military personnel charged with offenses of an exclusively military nature.

Human Rights Watch has also recommended that the CMJ be amended to explicitly state that the public prosecutor shall be competent to investigate complaints regarding military abuse and to allow members of the military to be tried before civilian courts in cases of abuse and ill-treatment. Otherwise, Human Rights Watch said, there will never be full accountability for serious human rights abuses committed by the military over the past year, including torture [9], virginity tests [10] and the killing of protesters at Maspero [11].

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