

Violette Daguerre's Comments on the Military Tribunals



The ACHR (Arab Committee for Human Rights) has taken a prior decision to monitor the military tribunals of the MB due to the deteriorated conditions in Egypt and the lack of support of the MB court-martialed leaders by the international and Egyptian human rights societies; the ACHR specified certain time and effort to make the world realize the gross violations against the political and civil societies in Egypt. Unfortunately, the ACHR was denied access to the court room, as well as other international watchdogs coming to Egypt for the purpose.

Needless to mention that according to the International Law everyone has the right to be tried before a fair court.

The Egyptian constitution stipulates on the independence of the judiciary authority and that the civilians have to be tried before fair, independent, neutral, and civil courts. Since January 14th 1982, Egypt has ratified the International Compact relating to the civil and political rights. On being a member of the Human Rights Council in April 18th 2007, Egypt also asserted the adherence to active cooperation with the UN special procedures system as well as adhering to their promotion during the membership period lasting for three years.

Egypt also signed on the African Covenant for Human and People's Rights that states: "the military tribunals are specialized only for pure military crimes committed by military personnel... the military tribunals should by no means have any judicial authority over the civilians". However, 40 MB leaders were referred to the military tribunal by a decision not even signed by the president in his capacity as the military ruler.

On the other hand, Article 14 of the International Compact relating to the civil and political rights asserts that "everybody has the right to have his case settled by a fair and public court that is established under the law", this

publicity was not respected at all in this case. Not only were the international observers denied access to the sessions, but the members and representatives of the Egyptian Human Rights Organizations, media, journalists, lawyers, human right activists, and the Egyptian people were also denied access. Only few relatives (wives, brothers, and sons) were allowed to attend the court sessions.

However, the counter-pressure on the political authorities has different methods; the ACHR conducted many symposia, press conferences, TV interviews, meetings with Egyptian officials, and interventions through the UN mechanisms, because the ACHR has a consultative position in the economical and social council. In this report, we've stopped at some important points depending on what was provided by the findings of the advocates team....something making up for being denied access to watching the tribunals from inside the military court.

It is known that the military tribunals in Egypt, and under its establishment law in 1966 and amendments in 2007, isn't independent for being administered by the Armed Forces headed by the Minister of Defense. All of its officers are liable to be dismissed, administratively relocated (something against the liability of the normal judges not to be dismissed), or to have their period renewed for another two years by the Minister of Defense who is under the supreme head of the Armed Forces (The president of the Republic). Moreover, the decisions made by this court are not supervised by a higher court watching the execution of the law. The members of the military tribunal who examine the suit of the MB were appointed by a covert military statement and against the judicial principals as in the civil judiciary. The members refused the demand of the advocates to read their formation statement.

After the formation of the tribunal; 48 hours only, a decision was made to convene the first session; therefore the defendants were deprived of notifying the advocates of the session and all the lawyers were absent in the first session. Also, the advocates were denied the copies of the court sessions records that included more than 1000 pages. Moreover, a big number of the lawyers was denied access to the defendants inside the prison and sufficed with contacting them during short intervals in the court's sessions.

As for dealing with the detained and their suit, it has so many violations practiced by the state security prosecution and the military judges before and after the tribunal including:

Many officers and soldiers broke into the houses of the defendants after mid-night, terrified the kids, and robbed documents and cash. The companies managed by the charged persons were also broken into and the state security men took cash, contracts, documents, cheques, accounts records, computers, and other items. They searched the commercial stores in a barbaric way and threw the contents and caused gross financial losses without adhering to the legal regulations in force during arrest and searching. Moreover, they did not have searching and arrest permissions and did not let the arrested see the exhibits. On having permissions, they were not recorded in the official registries or stamped by the state's official seal, therefore the state security body could manipulate the records; such as writing the arrested names after capture or after confirming his job or writing down a different name. The investigation memorandum was the same for all the defendants without being signed by the captured. The identity of the force capturing the MBs is covert.

Some MB leaders were charged with money laundering without having any evidence proving the charge added later. The military prosecutor general confessed that the financial report on which the suit depended is still under preparation and was proposed to the court five months after the charge. The prosecution decided to close 68 companies including 15 stock companies without a legal authority and asked the prosecutor general to confiscate the monies relating to the arrested and their wives and minors without evidence proving the charge. However, legal material under which the arrested were referred to the military tribunal and the decision to punish them are all unconstitutional. Moreover, the military prosecutor general interrogated 16 persons of the defendants during their detention without allowing their visits or listening to their advocates. Some of the defendants were outside the country, however their names were not declared for not knowing their addresses and therefore they were considered escapees despite the law specifies 30 days at least to notify them before the tribunal.

Moreover, the provisional detention decisions before referring to the court were null due to the secrecy of the sessions stating the imprisonment and denying the relatives and media access. When the defendants proposed the appeals of the provisional detention, the same circle who stated the decision of imprisonment examined the appeal, sometimes a lower circle. The detention pending investigation was extended for five times claiming to complete the investigations (the military law doesn't specify the utmost period for the provisional detention). The charges were: using terrorism and violence, joining an outlawed group working on neglecting the constitution and law, money receiving and laundering, and possession of ammunition.

During the sessions, the advocacy lawyers recorded the 51 state security officers to be lying for saying that they have gotten faxed inspection permission from Major 'Atef Al-Husseini without showing it to the court. Moreover, 19 officers forged official records. Exhibits were replaced and damaged as well as robbing the monies from the defendants' houses during arrests or from the exhibits. They robbed some devices and replaced many with others. As for the robbery of Hasan Malik's treasury, the monies, the documents, and jewelries therein mounting one million pounds for his wife and daughters, it is known. Moreover, they did not exhibit the items with the presence of the defendants has to halt the suit and sue the state security body. But who sues who?! The tragedy has been going on for a long time with its horrible nightmare.

The military attorney General accused the 40 charged MBs and referred them to the military tribunal despite not interrogating them, despite knowing that the defendants have brought suit before the Administrative Judiciary Court to stop the decision made by the Egyptian president to refer them to the military tribunals; the session was determined to be in April 4th 2007, and despite knowing that the defendants have brought suit before the Supreme Constitutional Court to settle the dispute between the civil and military courts in examining the suit; the session was determined to be in May 6th 2007. However, according to Article 30 of the Supreme Constitutional Court Law, the examination of the suit should be halted till settling the suit and determining the relevant authority; meanwhile, all the defendants should be released instantly till the date of judging by any of the two judiciary (civil or military) is due.

Actually, the court refused to execute and implement the decision made by the Administrative Judiciary Court in May 8th 2007 of halting the president's decision of referring them to the military tribunal and releasing the defendants and after having the decision refused by the Supreme Administrative Court depending on the appeal of the government. This necessitates that the members of this tribunal should be legally reckoned for abstaining from executing the judiciary decision. The mentioned court also refused to settle the decision stating its irrelevancy and the unconstitutionality of the president's decision of referring them to the military tribunal, depending on Article 6 of the military law appealed of its unconstitutionality.

The tribunal sessions went on despite denying the charged persons' documents that remained in the closed companies and denying their issuance upon the demand of the advocates. The tribunal refused to arraign the defense witnesses demanded by the advocates and refused to arraign the witnesses for prosecution who did not stand before the tribunal including those who robbed the monies; only one witness for the prosecution; (Major `Atef Al-Husseini), stood before the tribunal. Within 30 hours from interrogation, he failed to prove any charge or present evidence despite alleging that he was the only one to watch the 40 persons including those living in eight countries, three continents, and nine governorates in Egypt .

Notably, the military tribunal repudiated to summon the minister of Interior for testimony along with the state security specialists and the head of public intelligence to be asked about the suspects outdoors. Add to this, summoning the president to be asked about his potentials to refer the defendants to military justice.

As well, the court refused to group the investigation and action-related records or even submit a photocopy or video tape on the session minutes to the defense. The court also slipped the computer technicians who checked the contents of the confiscated PCs of their right to testify as well as its repudiation of all appeals submitted by the defense panel. Violations were rampant as it became very familiar to find a state officer who drafts a proces-verbal in two locations in one stroke, two different signatures of the same officer, correspondences to send the case reservations backdated to the time of the defendants' arrest. Although the defense panel leveled the accusation of forgery on some state security prosecutors in events of forgery ascertained by the military tribunal, the military prosecution did never investigate them on these matters. Also, the tribunal refused to refer the justice ministry experts to military prosecution with forgery charges. Note-worthy, the illicit gains administration in the justice ministry was nominated to formulate the financial report committee, in contradiction with the law which assigns the money-laundry unit in the central bank to do this job.

On the other side, the military tribunal did not give a permit to reopen the 68 wax-sealed companies, although the financial report of the illicit gains experts cleared the defendants of money-laundry. Instead, the military tribunal redrafted the indictment bill and added other charges with no proof. In this case, the law relates that: when the proofs become absent, then the court decision on the continuation of the defendants' seizure and closure of their companies becomes also null and void; especially after the statement of the financial report coordinator in the 17th trial that the companies has nothing to do with the Muslim Brotherhood movement, as the defendants did never fund student activities, receive money from outdoors or even involved in money-laundry. He, instead, reiterated the contributions of those businessmen in propelling the national economy onward.

New Detentions

Now, we are awaiting to see the consequences of this irrational situation and this travesty of justice. After the unexpected adjournment of the pronouncement session, the possibility of other adjournments still on the table until the municipal elections be finished in the coming April; the elections which witnessed fierce clampdown against the group members and sympathizers who disclosed their appetite for candidacy. Notably, about 830 of the Brotherhood members and sympathizers have been detained within 30 days from Feb. 14th to March 15th, among whom 60 activists were nominated in 4500 constituencies. As it did before, the regime deliberately shuts off all possible ways and legitimate channels for candidacy and electioneering as much as it could to get a corner on political decision.

Being the first municipal election after the re-amendment of the 76th article of the Egyptian Constitution, which stipulates the acquirement of 250 signs of the parliament and municipalities' members, these detentions almost warrant monopoly of decision-making to the ruling regime. The Egyptian executive authority saber-rattles with the tactic it invested to foil the MB participation in the latest Shura council elections 2007 and referred some of the group's prominent members to military tribunals. Nowadays, the regime managed to revoke the judicial supervision on the elections while blitzkrieging the MBs shall thwart their endeavors to the municipal councils. Actually, the Muslim Brotherhood enjoys a political weight not to underestimate. Despite the harassments the regime exercised against them, the Muslim Brotherhood prospered in saving 88 seats in the 2005 parliamentary elections; pushing 60% of the group candidates to the legislative chamber. They represent the real opposition of the ruling party in the Egyptian parliament, especially after the role they adroitly played in the political mobility after the announcement of the constitutional amendment of the constitutional article 76, dealing with the norms of presidential candidacy.

These constitutional amendments prevents the formation of parties with religious backgrounds, taboos political activity and paves the way for the issuance of Counterterrorism Act to play in lieu of the notorious Emergency Law which rules the country for more than a quarter century and targets all spectra of political opposition. These amendments smoothly prepares for ratifying the power inheritance portfolio with no opposition to mention. Most evidently, the regime invests its crackdown on the Muslim Brotherhood as a method for intimidating the opposition and the whole Egyptian people.

The Example of Khaled Hamza

By the same way, many people have been held in custody to encounter dishonoring behaviors and have their possessions confiscated or sometimes plundered by the state officers. Among these detainees was Khaled Hamza (born in October 28th 1963), Ikhwanweb chief editor, who hosted all international watchdogs came to Egypt to monitor the military tribunal sessions. It's significant to mention that Khaled has been seized after a meeting with me, in the same day I met with government officials in the ministries of justice and foreign affairs. As done with his inmates, no subpoena offered. After demanding it, the detectives told Khaled that they have nothing to do with these writs. Then, he have been led eye-folded and handcuffed to the state security headquarters, where he subjected to interrogation for several hours. The police did not observe Khaled's deteriorating health conditions, who suffers cardiac dysfunctions, hypertension and slipped disk. Of course, his office and house have been searched without a warrant, where the office assets, documents, books and PCs seized as some of his personal belongings which have been spoiled from house. After interrogation, Khaled Hamza was thrown in a criminal prison at Torah prison complex, where his health conditions worsened. His worsened health conditions compelled the administration to refer him to Kasr Al-Aini hospital in March 9th.

Being a sample of the victims of arbitrary detention, Khaled Hamza's arrest is regarded a blatant violation of the International Covenant on Civil & Political Rights, especially its ninth articles regarding arbitrary arrests. All the accusations leveled against Khaled Hamza, including the affiliation to the Muslim Brotherhood, criticizing Pres. Mubarak policies and denunciation of human rights violation in Egypt, affirms the encroachment of the Egyptian authorities with the Int'l covenant's 9th & 19th articles on the political and rights activists' rights of expression.

So, we call the Egyptian authorities for an instant release of him, his inmates, the court-martialed MBs, especially the patients whose lives are endangered by the worse conditions in their confinement as Hassan Zalat, protecting their right in material and moral damages. Certainly, the Arab Commission for Human Rights will condense its

activities for releasing all prisoners of conscience in Egypt and work for the Egyptian citizen to restore his right in prosperous life and right in decision-making with no fear, to enjoy the blessings of their motherlands, monopolized by the ruling minority, to restore the Egyptian people its pioneering position. This is the citizens' rights and should not be retained by any authority.

There's a notable connivance by the western democratic idols on the flagrant and reiterated violations against the group, under the aegis that the Muslim Brotherhood and its court-martialed members invested terror to create a status quo. But, we do understand the western sensitivity in dealing with the issues of Islam the Muslims. On the Arab level, there are comprehensive decisions executed in different mechanisms in all country aside; with a main aim to muzzle all mouths and even cut heads if needed. So, every day witnesses new security innovations for violating human rights. It's well manifest that the last amendments of the martial law deemed as an attempt to broaden the competence of military justice.

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