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Egypt: Pending Charges Against Mohammed Morsi

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SUMMARY Former Egyptian President Mohammed Morsi and his aides are currently facing four main criminal charges: inciting a militia to kill peaceful protestors, insulting the judiciary, collaborating with foreign governments and entities to harm national security, and breaking out of prison. The former president refutes the accusations against him. If Morsi and his advisers are found guilty of the alleged offenses, they could be punished by long-term imprisonment or the death penalty.

I. Background

On June 30, 2013, millions of Egyptians took to the streets to protest what they considered the failed policies of former President Mohammed Morsi. On July 3 the army removed the president from power and announced what it called "a Road Map for Democracy." The purpose of the road map was to write a new constitution and to conduct presidential and parliamentary elections.[1]

After removing President Morsi, the army detained him in secret locations from July 3, 2013, for several months until state prosecutors announced he would stand trial on criminal charges, after which he was transferred to a civilian prison.[2] Former President Morsi and his aides are currently facing four main accusations—inciting a militia to kill peaceful protestors, insulting the judiciary, collaborating with foreign governments and entities to harm national security, and breaking out of prison.[3]

II. Alleged Facts

The General Prosecution has accused former President Morsi of escaping from Wadi al-Natron prison on January 28, 2011. Morsi is charged not only with prison break, but also with collaborating with the foreign militant forces—the Palestinian Hamas and the Lebanese

[1] *Egypt's President Says Road Map on Track*, AL JAZEERA, Sept. 4, 2013, http://www.aljazeera.com/news/middleeast/2013/09/20139431253464290.html.

[2] *Profile: Egypt's Mohammed Morsi*, BBC NEWS, Dec. 18, 2013, http://www.bbc.com/news/world-middle-east-18371427.

[3] A number of members of the Muslim Brotherhood have also been charged with homicide and carrying out acts of terrorism in relation to the August 2013 protests in the province of Al-Maniya, south of Cairo. For more information about the trial proceedings and sentences, *see* George Sadek, *Egypt Defense Lawyers Try to Appeal Death Sentences for Muslim Brotherhood Defendants*, GLOBAL LEGAL MONITOR, Apr. 2, 2014, http://www.loc.gov/lawweb/servlet/lloc_news?disp0_l205403919_text.

Hezbollah—to break out of the high-security prison, damage and set fire to prison buildings, and loot the prison's weapons depot.[4]

The General Prosecution has charged Morsi with damaging national security by revealing classified information to Iran and the militant entities Hamas, Hezbollah, and the Iranian Revolutionary Guards.[5]

The General Prosecution also alleges that Morsi and his aides, including top advisers, incited the militia of the former Justice and Freedom Party to kill peaceful protestors standing before the Presidential Palace on December 5, 2012.[6]

Finally, one of the most important accusations that Morsi faces is the defamation of the judiciary. The General Prosecution claims that in his speech of June 26, 2013, former President Morsi falsely accused the judge supervising the 2005 parliamentary elections and twenty-two other judges of falsifying those elections.[7]

III. Charges and Penalties

As mentioned above, the General Prosecution has accused former President Morsi of committing an array of offenses under the Penal Code,[8] including (1) escaping from a high-security prison, (2) defaming the judiciary, (3) murder, (4) attempted murder, and (5) collaborating with foreign entities to harm national security.

Morsi could be imprisoned and fined if he is found guilty of violating articles 80(b), 138, 184, and 186 of the Penal Code. Under article 80(b), any public official who reveals classified information is to be punished by imprisonment.[9] Article 138 punishes any individual who escapes from prison with a term of imprisonment not to exceed two years and a fine of not more than EGP500 (about US$71).[10] According to article 184, any individual insulting the House of Representatives, the army, the courts, any branches of the government, or public entities is to be

[4] *Morsi's Prison Break Trial Resumes*, BUSINESS STANDARD, Feb. 22, 2014, http://www.business-standard.com/article/pti-stories/morsi-s-prison-break-trial-resumes-114022200626_1.html.

[5] Erin Cunningham, *Egypt's Mohamed Morsi Accused of Espionage, Plotting Islamist Takeover*, WASHINGTON POST, Dec. 18, 2013, http://www.washingtonpost.com/world/middle_east/egypts-mohamed-morsi-accused-of-espionage-plotting-islamist-takeover/2013/12/18/328052f6-681b-11e3-a0b9-249bbb34602c_story.html.

[6] Adam Withnall, *Egypt Investigates Complaints Against Ousted Morsi Including Inciting Killing of Protesters*, INDEPENDENT, July 14, 2013, http://www.independent.co.uk/news/world/africa/egypt-investigates-complaints-against-ousted-morsi-including-inciting-killing-of-protesters-8707351.html.

[7] *New Charge against Egypt's Morsi: Insulting Judges*, AL ALAM, Sept. 7, 2013, http://en.alalam.ir/news/1514314; *see also* Gregg Carlstrom, *Explainer: Why is Morsi on Trial?*, AL JAZEERA, Jan. 9, 2014, http://www.aljazeera.com/indepth/features/2014/01/explainer-why-morsi-trial-20141912215173954.html.

[8] Law No. 58 of 1937 (Criminal Code of 1937, *reformed in* 1952, *as amended by* Law No. 95 of 2003 and Law No. 147 of 2006), *Al-Waqa'i' Al-Rasmiyya* [*Official Gazette*], 1937, *available at* http://www.mohamoon.com/montada/Default. aspx?action=ArabicLaw&ID=20 (in Arabic).

[9] *Id.* art. 80.

[10] *Id.* art. 138.

punished by either imprisonment or a fine of EGP5,000–10,000 (about US$713–1,426).[11] The court has discretion to impose both penalties on violators. Similarly, article 186 imposes on any individual insulting a judge or his authority a penalty of imprisonment not to exceed six months and a fine of EGP5,000–10,000.[12]

In addition to the imprisonment and fines, former President Morsi could face the death penalty or life imprisonment if he is convicted under articles 230, 40 and 235 of the Penal Code. Under article 230, any individual who murders someone deliberately is to be sentenced to death or life imprisonment.[13] Article 40 provides that any individual who incites a felony is considered a main culprit.[14] Article 235 imposes on any individuals who contribute to a crime the same sentence as the offender.[15] Moreover, Morsi could face the death penalty if he was found guilty of crimes under provisions 77(b), and 80. Article 77(b) states that collaborating with a foreign country or conducting espionage with someone who works in the interest of a foreign country to commit hostile acts against Egypt is punishable by death.[16] Finally, under article 80, an individual who provides, in any form, classified information concerning Egyptian defense to a foreign country or to anyone working in its interest is to be punished by the death penalty.[17]

IV. Trial Procedures

After taking his statement about the aforementioned charges, the General Prosecution decided to refer former President Morsi for trial before the Cairo Court of Appeal.[18] The court consists of a chief judge and two assistant judges.[19]

In case of conviction, Morsi has the right to appeal before the Court of Cassation. This court is considered the highest judicial body in the Egyptian court system.[20] It consists of criminal and civil sections. Morsi's defense lawyers may access this court only if a breach of law is claimed as the basis for his appeal. The court's main objective is to provide a comprehensive and uniform interpretation of the law.[21]

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[11] *Id.* art. 184.

[12] *Id.* art. 186.

[13] *Id.* art. 230.

[14] *Id.* art. 40.

[15] *Id.* art 235.

[16] *Id.* art 77(b).

[17] *Id.* art 80.

[18] *Egypt Suspends Morsi Trial at Lawyers Request*, PRESS TV, Mar. 6, 2014, http://www.presstv.ir/detail/2014/03/06/353528/egypt-court-suspends-third-morsi-trial/.

[19] Code of Criminal Procedure of 1937, *amended by* Law No. 95 of 2003, art. 366, *Al-Waqa'i' Al-Rasmiyya*, 1937, *available at* http://www. mohamoon.com/montada/Default.aspx?action=ArabicLaw&ID=27 (in Arabic).

[20] *Id.* art. 12.

[21] *Id.* art 230.

V. Conclusion

Former President Morsi and his aides, including his top advisers, deny the accusations of killing the peaceful protestors and collaborating with foreign governments and entities to harm national security. If Morsi and his advisers are found guilty of such offences, they can be punished by long-term imprisonment or the death penalty. The former president also refutes the criminal charges issued against him concerning insulting judges and the judiciary. If Morsi is convicted of these charges, he may face imprisonment, fines, or both penalties.