



# **Pending Charges Against Former President Mubarak and Potential Legal Ramifications**

June 2011

LL File No. 2011-005891  
LRA-D-PUB-000279

This report is provided for reference purposes only.  
It does not constitute legal advice and does not represent the official  
opinion of the United States Government. The information provided  
reflects research undertaken as of the date of writing.  
It has not been updated.

# PENDING CHARGES AGAINST FORMER PRESIDENT MUBARAK AND POTENTIAL LEGAL RAMIFICATIONS

## Introduction

After the fall of Egyptian President Hosni Mubarak and his regime on February 11, 2011, political activists and the Egyptian public have not stopped protesting in downtown Cairo's Tahrir Square. The main purpose of these ongoing protests is to pressure the caretaker government to put the main figures of the Mubarak regime on trial, including the former Ministers of Interior, Tourism, Information, Finance, Industry, Trade, and Housing. Protestors are calling for the trial not only of these people but also of former President Mubarak and his family.

Under the pressure of these continuous demonstrations, the caretaker government arrested all the aforementioned ministers as well as other individuals loyal to the regime. The government is investigating whether these individuals are guilty of embezzlement of public funds, abuse of power, and illegal profiteering. This article discusses the charges of abuse of power and illegal profiteering against Mubarak, his wife, and two sons.

## Investigation

The caretaker government adopted a number of legal measures to investigate the charges against Mubarak's family. The General Prosecutor banned Mubarak and his family from traveling outside of Egypt. Further, he prohibited them from having access to their personal bank accounts in Egypt and abroad.<sup>1</sup>

The government created a judicial commission to investigate the real property owned by Mubarak and his family in foreign countries. Officials from the Egyptian ministry of justice, judges, and law professors comprise this committee. According to news accounts, the General Prosecutor requested that the Egyptian Ministry of Foreign Affairs work through diplomatic means in conjunction with the commission to inquire about the controversial wealth of Mubarak's family and all family accounts in foreign banks. The commission is also cooperating with the Ministries of Justice in European Union countries and the Department of Justice in the United States to track any money-laundering operations and hard currency smuggling outside Egypt.<sup>2</sup>

The government also established a fact-finding mission to investigate who authorized police forces to use live ammunition against peaceful protestors. This mission consists of human rights activists and magistrate judges. As a result of these shootings, over 800 people were killed

---

<sup>1</sup> *Banning Mubarak and His Family from Traveling Abroad*, AL JAZEERA, <http://www.aljazeera.net/NR/exeres/FBE0E235-3D4D-43FE-85B8-27F1CCBC9722.htm> (in Arabic; last visited May 16, 2011).

<sup>2</sup> *Commission to Retrieve Egypt's Money Abroad Discussing the Procedures Necessary to Freeze the Foreign Accounts of Mubarak and 18 Former Officials*, AL MASRY AL YOUM, <http://www.almasry-alyoum.com/article2.aspx?ArticleID=296301&IssueID=2131> (in Arabic; last visited May 16, 2011).

and thousands were wounded. The mission is investigating whether Mubarak, as the Supreme Commander of the Armed Forces, used his powers to order the killing of demonstrators. Mubarak denies that allegation, claiming that the former Minister of Interior made that decision without Mubarak's authorization.<sup>3</sup>

The government also adopted another initiative in the investigation process. The Minister of Justice assigned what is known as the "Illicit Gains Authority" to summon Mubarak and his sons for interrogation. The Authority is headed by a chief justice and investigates reports sent from the Administrative Control Authority (a financial monitoring apparatus) and the Public Funds Prosecution (a judicial body specialized in financial crimes) on claims of embezzlement of public funds, including cash and gold.<sup>4</sup>

Mubarak's sons are currently detained in Cairo's Tora Prison, while Mubarak is detained in a hospital for health reasons. On April 23, 2011, the General Prosecutor extended the incarceration of Mubarak's two sons based on the results of an additional investigation, alleging that they had taken commissions on gas exports to Israel and that they manipulated Egypt's debt payments for personal gain. The prosecution also extended Mubarak's detention on charges of killing anti-regime protesters during the January 25 revolution.<sup>5</sup>

## Charges and Penalties

Mubarak and his family are charged with two types of crimes: first, corruption crimes, which include the embezzlement of public funds and illegally acquired wealth; and second, the killing of demonstrators.

Article 18 of Law 62-1975 on "Combating of Illicit Gain" stipulates that every individual who gained, for himself or for someone else, illicit revenue should be punished by imprisonment. The same article calls for the designated authorities to confiscate the revenue that the convict gained through illicit means. Mubarak's wife and his two sons are charged under this provision. Under article 18, there is no dismissal of the case if the accused is deceased. Article 18 grants the court the right to summon the immediate family of the accused who benefited from the illicit revenue and demand them to return that revenue. If Mubarak is convicted, the court or the Illicit Gains Authority has the right to ask his wife, children, and their spouses to return all the revenue obtained through illicit means. The former first lady was detained for fifteen days in the women's jail of Cairo on the ground of abusing her husband's position to gain revenue from illicit transactions.<sup>6</sup> She was later released after relinquishing her assets to the government of Egypt.

---

<sup>3</sup> *The Fact-Finding Commission: Mubarak is Responsible for the Killing of Protestors Whether By Contributing to the Crime or By Being Silent*, AL SHROUK (Apr. 20, 2011), <http://www.shorouknews.com/contentdata.aspx?id=435944> (in Arabic).

<sup>4</sup> *The Illicit Gains Authority Orders Mubarak To Disclose His Secret Bank Accounts*, AL YOUM 7 (Feb. 28, 2011), <http://www.youm7.com/News.asp?NewsID=360387> (in Arabic).

<sup>5</sup> *Extending the Detention of Gamal and Alaa Mubarak*, AL YOUM 7 (Apr. 26, 2011), <http://www.youm7.com/News.asp?NewsID=399195> (in Arabic).

<sup>6</sup> Law 62-1975 art. 18 (Combating of Illicit Gain), *Al Jarida Al Rasmiya*, July 31, 1975, <http://www.mohamoon.com/montada/default.aspx?action=Display&ID=108457&Type=3>.

Mubarak is also charged with submitting a forged financial statement that understates his wealth. In this case, if Mubarak is found guilty, article 112 of the penal code must be applied. Article 112 provides that any public servant involved in the embezzlement of public funds by committing forgery on official papers may be sentenced to a term of life in prison.<sup>7</sup>

Additionally, Mubarak is accused of using his powers to transfer money to foreign bank accounts abroad. In addition to article 112 of the criminal code and article 18 of Law 62-1975, Mubarak may be charged under article 116 of the criminal code, which states that any public servant who damages the economic reputation of Egypt by abusing his powers is sentenced to a period of imprisonment of one to six years.<sup>8</sup>

According to the current Egyptian Minister of Justice, Mubarak could face the death penalty if he is convicted under articles 40, 230, and 235 of the Criminal Code. He is charged with inciting the killing of the protestors by giving direct orders to the police forces to use live ammunition against them. Article 40 provides that any individual who incites a felony is considered a main culprit.<sup>9</sup> Under Article 230, any individual who murders someone deliberately is sentenced to death.<sup>10</sup> Article 235 also imposes upon any individuals who contribute to the crime the same sentence as the offender.<sup>11</sup> If Mubarak is found guilty of the deliberate assassination of anti-regime protesters, he may face the death penalty.

With respect to Mubarak's criminal charges, the Office of the General Prosecutor announced on May 25, 2011, that Mubarak had been referred to the Criminal Court of Cairo to begin the process of his trial. The General Prosecutor assigned the Ministry of Interior the task of transferring Mubarak from a hospital in Sharm-al-Sheik, East of Cairo, to the Tora Prison hospital to stand trial for the deliberate killing and attempted murder of protestors.<sup>12</sup>

## **Burden of Proof**

Concerning the corruption charges, Mubarak denies that he abused his power to acquire illegal wealth, and also denies claims concerning illicit profiteering and facilitating the acquisition of public funds. He defended himself in an audio speech broadcast by Arabic media outlets. In his speech, Mubarak dismissed what he called "false allegations" that he and his wife have foreign accounts or property abroad. He also refuted the accusation that he is responsible for the killing of anti-regime demonstrators.

---

<sup>7</sup> Law 58-1937 art. 112 (Criminal Code of 1937, reformed in 1952), *available at* <http://www.mohamoon.com/montada/Default.aspx?action=ArabicLaw&ID=20>.

<sup>8</sup> *Id.* art. 116.

<sup>9</sup> *Id.* art. 40.

<sup>10</sup> *Id.* art. 230.

<sup>11</sup> *Id.* art. 235.

<sup>12</sup> *Hosni Mubarak to Stand Trial, Prosecutors Say*, LOS ANGELES TIMES (May 25, 2011), <http://articles.latimes.com/2011/may/25/world/la-fg-egypt-mubarak-20110525>.

With respect to financial crimes and corruption, the Court of Cassation, the highest judicial body in the Egyptian court system, ruled in a landmark 2004 decision that the burden of proof shifts from the accused to the prosecutor in crimes related to illicit gains. The court said in its ruling that article 2 of Law 62-1975 contradicts article 67<sup>13</sup> of the Constitution stating that all citizens are innocent until proven guilty before a court of law. If this legal tenet is applied to Mubarak's case, he does not have to prove himself and his family innocent. On the contrary, the General Prosecutor and the Illicit Gain Authority would be obligated by law to prove the involvement of Mubarak and his family in all the illicit gains crimes.<sup>14</sup>

It is impossible to know how long it will take to locate any hidden accounts in foreign banks. The important question that must be addressed is the extent of Mubarak's wealth. The investigative Egyptian agencies do not have an actual numeric figure for either Mubarak's alleged secret bank accounts or wealth. According to law scholars and forensic accounting experts, the process of investigating and locating these accounts is a very difficult endeavor. The Egyptian General Prosecutor sent a legal memorandum to the U.S. Department of Justice and other countries where Mubarak's family owned assets. The purpose of the memorandum was to request a trace to locate any funds or secret accounts owned by Mubarak. Anti-Mubarak activists have submitted documents alleging that in 1982, Mubarak deposited 19,000 kilograms of platinum into a personal account with UBS in Switzerland. However, the bank dismissed this allegation, stating that the document is forged. Also, the General Prosecutor accused Gamal Mubarak, Mubarak's son, of withdrawing 75 tons of gold held by the U.S. Federal Reserve. In response, the U.S. Federal Reserve refuted that allegation, saying that it does not hold gold for foreign countries.<sup>15</sup>

Likewise, Mubarak rejects the criminal charges accusing him of inciting the deliberate killings of anti-regime protestors. During the interrogation stage, however, the former Minister of Interior stated that Mubarak, as the Supreme Commander of the Armed Forces, gave orders to use live ammunition against demonstrators.<sup>16</sup>

## Conclusion

Former President Mubarak and his family, including his wife and two children, deny accusations of the abuse of power and embezzlement of public funds. Under Egyptian law, the designated authority is obligated to prove illegal enrichment. If Mubarak and his family are found guilty of corruption charges, they will be punished by imprisonment. The former president also refutes the criminal charges issued against him concerning the killing of anti-

---

<sup>13</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Sept. 11, 1971, *as amended*, May 22, 1980; May 25, 2005; March 26, 2007, art. 67, available at <http://www.mof.gov.eg/MOFGallerySource/Arabic/PDF/DESTOR2007.pdf> (in Arabic).

<sup>14</sup> Case No. 30342-2004, Apr. 28, 2004, The Egyptian Court of Cassation (Supreme Court).

<sup>15</sup> *Egypt Prosecutor Alleges Schemes by Mubarak Family*, WASHINGTON POST (Apr. 9, 2011), [http://www.washingtonpost.com/investigations/egypt-seeks-help-to-find-mubarak-family-assets-abroad/2011/04/07/AFCMkZ9C\\_story.html](http://www.washingtonpost.com/investigations/egypt-seeks-help-to-find-mubarak-family-assets-abroad/2011/04/07/AFCMkZ9C_story.html).

<sup>16</sup> *Mubarak is Responsible for What Happened Because He Was the Supreme Chief of Armed Forces*, AL SHROUK (Mar. 19, 2011), <http://www.shorouknews.com/contentdata.aspx?id=412078> (in Arabic).

regime protestors. According to the testimony of the Former Minister of Interior, however, Mubarak is complicit. If Mubarak is convicted of the murder charge before the Egyptian criminal court, he may face the death penalty.

Prepared by George Sadek  
Senior Legal Information Analyst  
June 2011