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IS EGYPT ON THE JUDICIAL SKIDS?

Well over two decades ago, one of my favourite university tutors in Family Law often delighted in reminding me of an expression that Charles Dickens had popularised in *Oliver Twist*. Was it not Mr Bumble who had professed to Mr Brownlow that the law is an ass - or to be more faithful to 19th century diction, “the law is a ass - a idiot”?

As an international lawyer, I have over the years become increasingly more convinced that the executive, legislative and judicial organs of a state should remain independent from each other. Much as I know this is not always the case *stricto sensu* in many parts of the world, I do fret in case Egypt is now slowly joining this unpalatable league too.

Let us simply examine the facts summarily! In one case, a judge in a court in El Minya, Upper Egypt, confirmed death sentences for 37 people and imposed terms of life imprisonment on another 491. In a second case, he ruled that 683 individuals - including the Supreme Guide of the Muslim Brotherhood - should be sentenced to death. Those criminal charges included, *inter alia*, an attack on a police station on 14 August 2013 and the tragic death of a policeman, belonging to the banned Muslim Brotherhood movement, inciting violence as well as participating in a gathering of more than five persons with the intention of committing crimes.

Once the death sentences are delivered by the court, the custom in Egypt is that they are referred to the Grand Mufti who either endorses or rejects them. This then opens up a sixty-day window to lodge an appeal, or else to ask for a retrial in the case of sentences delivered in *absentia*. Of course another customary approach is to commute those sentences to life.

But in the present instances, are we perhaps witnessing the case of an overzealous judge who somehow metes out justice in painfully brief sessions without necessarily perusing all the affidavits, often without defence lawyers, let alone family or journalists, present during the court proceedings? The anachronistic legal term ‘hanging judge’ creeps into mind here.

Mind you, I can also see another context for those verdicts. According to government figures (and there are other figures too), at least 496 people, including 57 civilians, have died in attacks by armed groups between July 2013, when President Mohamed Morsi was deposed, and March 2014. Such violence is detrimental to the hopes of a country that wishes to restore peace and order in order to re-build its infrastructures. But as leading organisations such as Amnesty International or Human Rights Watch have opined, wholesale judgments are certainly not an answer to violence. After all, it is the respect of human rights, not the trampling on fundamental rights, which can ultimately help render a country safer.

Reacting to the sentences by Judge Saeed Youssef, High Judge Ahmed El-Meraghy from the Court of Appeal in Cairo defended the judiciary in Egypt by suggesting that they are independent from any political influence or interference. However, I cannot square such a statement with the reality of a criminal justice system that in my opinion seems neither fully independent nor fully impartial. If anything, wholesale sentences at an almost industrial scale raise many legal hackles and suggest that those could well be flawed procedures and unfair trials exhibiting a painful lack of due process.

One irony here is that Mohamed Badie - the leader of the Muslim Brotherhood now sentenced to death himself - is the same man who reputedly said that silmiyyatouna aqwa min al rasass or that 'our peacefulness is stronger than the bullet' although it is also undeniably true that some Muslim Brotherhood supporters across the country have resorted to violence as a tool of protest.. But in that penumbra where the political and judicial tiers overlap, the judicial authorities have now also allegedly outlawed the secular April 6 Movement that actually spearheaded the popular uprisings against both Mubarak and Morsi - with two of their leaders in gaol. Add to this the opacity of charges against all those young men and women who are sadly languishing in jails - whether because they flouted the protest laws or spoke out against the system - or else all detained journalists. No wonder my legal levels of concern - inevitably, understandably - mount up.

However, let me also come clean. I have in the past opposed the rule of the deposed president Morsi because I deemed it inimical with the overall long-term and future interests of Egypt. In my opinion, the Muslim Brotherhood simply misruled Egypt. But the answer is neither to ban them outright nor to have the judiciary act willy-nilly as a tool for angry vengeance on behalf of those who represent a current ideology or political force in the country. All Egyptians deserve a robust judiciary that upholds those rights and freedoms guaranteed under International law.

Egypt today is not only in the cross hairs of fresh presidential elections. It is also at a critical crossroads. It needs stability and a sense of social cohesion if it were to overcome its dire economic woes. But it also needs the support of all those democratic forces that can help strengthen and consolidate its future. None of this can truly be achieved by polarising the country with sentences that seem to lack the requisite forensic due diligence or any genuine independence.

So is the law an ass after all? I think not! But we lawyers at times misapply, misuse and even - dare I add - abuse the law when we besmirch it with our own political considerations. If Egypt were to avoid the lurking dangers of being viewed as a country that is contemptible of the rule of law as much as of its rich traditions, it should overturn those sentences and redress those lapses. Otherwise, it is alas not inconceivable that Egypt could well wake up one day and find itself - hazardously - on the judicial skids.