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Q&A: Accountability in Tunisia and Egypt

Eight months after popular uprisings ousted the long-ruling presidents of Tunisia and Egypt, both former leaders are being held to account in criminal trials. Egypt's former President, Hosni Mubarak, is due to appear in court on 3 August in Cairo to answer charges ranging from murder, arising from police shootings of anti-government demonstrators, to corruption and profiteering. Meanwhile, a court in Tunis has tried and convicted former Tunisian President Zine El Abidine Ben Ali of corruption and other offences – he was prosecuted *in absentia* after fleeing to Saudi Arabia.

What are the charges against Mubarak?

Mubarak and his former Interior Minister, Habib El Adly, are charged with responsibility for the murder and attempted murder of hundreds of people shot by security forces during the January uprising – the official death toll is 840. The former President is also accused of corruption and abuse of power. Two of his sons, Alaa Mubarak and Gamal Mubarak, and businessman Hussein Salem, also face corruption charges.

Mubarak could face the death penalty if convicted. Many of his victims support that. What is Amnesty International's position?

Amnesty International categorically opposes the death penalty in all cases, whatever the magnitude of the crime. The death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment. A majority of states at the UN General Assembly have repeatedly called for a worldwide moratorium on executions, which Amnesty International supports in addition to universal abolition of the death penalty.

Can someone be tried if they are in poor health?

If there are concerns about a defendant's health, in the interests of justice it is essential to carry out an independent and impartial medical assessment. This should determine whether the defendant is mentally and physically capable of standing trial and, crucially, whether they can participate in their own defence. A trial should be abandoned or postponed only if the defendant is judged incapable of participating.

There have been contradictory reports about former President Mubarak's health; if deemed necessary, the Egyptian authorities must set up an independent commission of medical experts to assess his mental and physical fitness to stand trial. This is especially important given a wide public distrust of government institutions in Egypt and victims' families concern that questions about the former President's health could be used inappropriately to prevent or delay the trial.

Was Ben Ali's trial *in absentia* in Tunisia fair?

No. It was unfair because he was denied the right to be present. His lawyers had requested a postponement to allow time to prepare an adequate defence. The current Tunisian government must follow due process and fair trial standards, otherwise it risks replicating the unfair justice system that was a hallmark of Tunisia under Ben Ali.

The charges against Ben Ali so far have not related to major human rights violations. Could he be tried for more serious crimes under international law?

Anyone who may reasonably be suspected of committing crimes under international law, such as torture, enforced disappearances and unlawful killings, should generally stand trial in the

country where the alleged crimes were committed. In the case of former President Ben Ali, it would be preferable if he were to be returned to Tunisia and prosecuted there, so long as he can receive a fair trial without facing the death penalty. However, under the concept of international jurisdiction, any state may legally try suspects for such crimes, regardless of where they were committed. Moreover, every state has a responsibility to investigate such crimes, prosecute them if there is sufficient evidence and offer assistance, including through the extradition of suspects.

How have victims of abuses been treated since the fall of Mubarak and Ben Ali?

Families of demonstrators killed earlier this year have been able to file complaints in both Egypt and Tunisia. Trials have begun for some of the officials allegedly responsible for the killings. However, in Egypt, limited access to the court rooms has meant that many victims' families have not been allowed in, leading them to feel that their complaints were not being heard. This was exacerbated by the authorities' failure to remove or suspend accused security officials from their posts until recently. Delays and lack of progress in these trials have prompted demonstrators to return to the streets in both Egypt and Tunisia.

Should these former heads of state also be tried for older human rights violations?

In the context of the trials under way, suspects can only be tried for recent crimes, but they must also be held criminally responsible for those committed during their past years in power. Amnesty International regrets that while investigating Commissions have been set up in both Egypt and Tunisia, their mandates have been limited to violations committed during the popular uprisings. In both countries, the authorities have so far failed to take concrete steps to address the crimes of the past. The charges currently facing former President Mubarak do not cover the decades when security forces under his control committed numerous serious human rights violations and documented crimes with impunity. Similarly, the charges that have been brought against former Tunisian President Ben Ali to date have largely ignored the systematic and widespread human rights abuses that sparked the public demonstrations in the first place.

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