

# NOREF Policy Brief

## Transitional justice in Egypt: one step forward, two steps back

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### Introduction

The dominance of neo-patriarchal, semi-authoritarian regimes with little interest in justice, accountability or other values associated with democratic governance has meant that, until recently, the Arab region has had limited experience with transitional justice (TJ). Several states have started down the TJ path since the emergence of the “Arab Spring”, but their progress is uneven. In Egypt, much depends on the nature and speed of the transition, whose outcomes remain uncertain. Whether and how Arab transitional states embrace TJ – especially how they manage the fates of their deposed rulers and essential institutional reforms – will indicate whether they intend to break with the past and build public institutions that inspire civic trust.

Preliminary research findings indicate that Egyptians strongly support due process and the rule of law, but face countervailing forces invested in the status quo. Many Egyptians are poorly informed about how other states have promoted justice and accountability during transitions (including recent initiatives in the Arab region, such as Morocco’s truth

commission), but are eager to learn more. Only two Arab countries (Tunisia and Jordan) are signatories of the 1998 Rome Statute that created the International Criminal Court. In April 2011 Egypt’s then-foreign minister, Nabil al-Araby, signalled the country’s intention to join, but nothing more has happened on this front. Research indicates, however, that Egyptians desire “local” justice and believe that seeking justice from an outside court would undermine national sovereignty, so any foreign assistance must be carefully considered.

Human rights NGOs and independent media are under duress in Egypt, but are playing essential roles. Some civic initiatives have resulted in detailed proposals to promote criminal accountability for torture, strengthen judicial and media independence, and ensure security sector accountability through reform. Parliament has already taken up some of these issues, indicating a thirst for reform even before the Supreme Council of the Armed Forces (SCAF) makes good on its promise to return to barracks by July 1st.

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## The current state of play in promoting transitional justice in Egypt

### *Criminal accountability*

There is keen (but not universal) interest in holding key figures accountable for past crimes. Detentions and trials of high-level officials, businesspeople and police are ongoing, but have not completely satisfied the public's desire for justice, for the following reasons:

- *The nature of the charges and sentences:* While happy to see Hosni Mubarak and his co-defendants in the dock, many Egyptians ridicule the charges against him and other key figures (limited primarily to events occurring during the 18-day uprising) because they do not encompass larger abuses of power or address a longer record of torture and illegal detention of political opponents. There is also consternation about the verdicts rendered thus far in trials of police and other security officials.
- *The speed and scope of criminal investigations and trials:* Many view the slowness of the trials of high-level officials in civil courts as an effort to manipulate the outcomes behind the scenes. Swift trials and long sentences for some 12,000 Egyptians tried by military tribunals provide a disturbing contrast. Thousands of security officials believed to be guilty of crimes continue in their posts. Legal specialists remain concerned about the limitations of the Egyptian criminal code that restrict options in the prosecution of some crimes.
- *The independence and capacity of prosecutorial and judicial authorities:* Deeply compromised under Mubarak, these institutions now face an overwhelming demand for prosecuting thousands of cases. Their ability to gather forensic evidence (a task entrusted to police officials perceived to have a conflict of interest) and deliver justice is thought by many to be weak and/or problematic. Unless their competency and capacity expand, it will be difficult for victims to receive adequate remedies.

- *Amnesties:* Various former regime figures have offered monetary payments in exchange for release from prison or protection from prosecution, but only Suzanne Mubarak appears to have succeeded in this so far. Behind the scenes, there is much speculation about a potential deal between the dominant Islamist party in parliament (the Freedom and Justice Party of the Muslim Brotherhood) and the SCAF to ensure the latter's exit at the end of June 2012.

### *Truth seeking*

A commission of inquiry into the 18-day uprising in January/February 2011 issued a report in April 2011 that documented the number of dead and injured, named the police as responsible for most deaths, implied premeditation through their use of snipers, and implicated some members of the then-ruling National Democratic Party. But the commission was neither transparent nor participatory, and civil society calls for open inquiries around other events (including the "Maspero massacre") have been ignored by the SCAF, which has organised internal investigations.

### *Reparations*

Victims' groups have formed and demanded symbolic and material reparations. The National Council of Care for the Revolution Martyrs' Families and Wounded has provided some compensation, but victims and survivors are so unhappy about the way in which the council has operated that demonstrators have called for its closure. The SCAF also claims that free medical care has been provided to victims, and has announced that the wounded and all armed forces personnel in service since the uprising began will receive government jobs and bronze medals.

### *Institutional and constitutional reform*

- *Security sector reform:* In March 2011 the Ministry of the Interior announced that it had dissolved its State Security Intelligence branch

and created a department known as Egyptian Homeland Security. Several hundred officers were also dismissed in July, but a substantial overhaul of police and intelligence services remains an important unmet challenge and a top priority of reform-minded Egyptians. To some extent demands for reforms have emanated from inside the Ministry of the Interior itself. Low-level police have engaged in extended strikes and demonstrations throughout the country to address wage demands and to seek protection from trials conducted in military courts.

- *Constitutional reform:* Efforts to form a Constituent Assembly to draft a new constitution foundered when some delegates resigned, protesting that it was dominated by Islamist members of parliament and failed to include adequate representation of women, Nubians, Copts, syndicates, youth and other important groups in Egyptian society. The SCAF has reiterated its determination that the constitution be finished before its scheduled departure from the transitional government, but this now seems unlikely.
- *Vetting:* In November 2011 the SCAF issued a lustration law banning former leading members of Egypt's National Democratic Party from running for public office, but not in time to affect People's Assembly elections. In April 2012 parliament amended and the SCAF ratified the November vetting law to prevent former high-level Mubarak associates and appointees from running for president.

## *Memory projects*

Victims' groups have organised marches, created memorial graffiti and wall art, and built informal memorials to remember and honour the dead and injured. Virtual, online platforms have proliferated

to store testimonies, pictures and materials seized from torture centres, government offices and police stations after reports of government shredding of documents, but there is real concern about protecting materials essential for prosecutions and other TJ initiatives. The Egyptian government invited a prominent historian to establish an archive of the January 25th revolution in the National Archives, but the project stalled over questions of public access and other problems. The government has not yet engaged in formal apologies or the building of memorials honouring victims. A decree issued in March 2011 to erase the Mubaraks' names from public places has been imperfectly implemented. The Ministry of Education announced in February 2012 its intention to revise middle-school history textbooks to rewrite the history of the Mubarak era.

## *Looking forward*

Societies that embrace TJ signal their interest in providing justice to victims and facilitating the end to authoritarian rule. A highly politicised, negotiated process, TJ often takes years or even decades to implement fully. The contested nature of Egypt's transition (especially the future role of the military in politics and the economy) and the country's preoccupation with other urgent matters (notably, the proliferation of labour strikes and the country's economic decline) are clearly affecting the onset of convincing efforts to implement TJ in Egypt.