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## **Mubarak's Trials and Legal Status**

### **Q&A**

By: Hoda Nasrallah, EIPR lawyer

**Q: What were the charges against Mubarak?**

A: The Public Prosecution has leveled official charges at Mubarak and others in four cases so far:

1. The killing of demonstrators in 2011, influence peddling and profiting from the export of gas to Israel.
2. Illicit gain (his wealth is not commensurate with his income).
3. Presidential palaces case (he appropriated for himself, his wife Suzanne Thabet and his sons Alaa and Gamal funds allocated annually for the upkeep of the presidential palaces).
4. Receipt of gifts from state-owned press institutions.

**Q: Have judgments been issued against Mubarak in any of these cases?**

A: The cases involving illicit gain, the presidential palaces and the receipt of gifts from press institutions are still pending; Mubarak has not yet been acquitted or convicted in these cases. For the charge of killing demonstrators, he was sentenced to life imprisonment on 2 June 2012. Following an appeal, the Court of Cassation overturned the judgment on 13 January 2013, and the retrial is currently underway.

**Q: Is Mubarak still held on remand in connection with any of these cases?**

A: No. In the killing of demonstrators case, Mubarak spent two years in pretrial detention, the maximum period allowed under the Code of Criminal Procedure for defendants accused of committing a crime that carries the death penalty. He received a release order in this case on 15 April 2013, while being held in connection with the other corruption cases.

On 20 June 2013, during the tenure of Mohamed Morsi, a court order was issued for Mubarak's release from pretrial detention in the illicit gains case. The Public Prosecution appealed this order, but the Court of Appeals rejected the appeal and upheld the release.



On 19 August 2013, another court order was issued for Mubarak's release in connection with the presidential palaces case, although his children remain in detention in connection with this case. At this point, Mubarak was held only for allegedly receiving gifts from press institutions. The value of the gifts was repaid, after which his lawyers contested the pretrial detention order. That petition was heard today and the court ordered his release.

**Q: Does this mean Mubarak will be released?**

A: Yes. After the petition against pretrial detention for the press gifts case was accepted today, Mubarak can no longer be held in custody in connection with any of the four cases pending against him, which means he will be released.

**Q: Does this mean that Mubarak has been acquitted in the corruption cases?**

A: No. The three corruption cases in connection with which the court ordered Mubarak's release are still pending; no conviction or acquittal has been issued. Mubarak has simply been temporarily released until the trials are concluded.

**Q: Can the Public Prosecution order Mubarak's continued detention?**

A: After the court accepted Mubarak's petition today against his pretrial detention and ordered his release, the Public Prosecution can appeal this ruling. At this point, it is up to the court: either accept the prosecution's appeal and overturn the previous order to release Mubarak or reject the prosecution's appeal and uphold the temporary release order.

**Q: Does Mubarak's release mean that he cannot be placed in pretrial detention again?**

A: No. The judicial investigating bodies in the cases still pending against Mubarak may issue new pretrial detention orders if the proper conditions are met. However, the prosecutor cannot order him detained beyond the maximum term of pretrial detention allowed in these cases, as illustrated by the killing of demonstrators case.

**Q: What conditions must be met for the courts to place Mubarak in pretrial detention in the future?**



A: Under the Code of Criminal Procedure, the court may remand a defendant while the case is pending in the following cases: If the defendant, accused of a felony or misdemeanor carrying prison time, has no known residence in Egypt, or if the defendant is accused of a felony or misdemeanor that carries a sentence of at least one year imprisonment, the evidence against him is sufficient and any of the following conditions apply:

- If the crime is apprehended while being committed, in which case the sentence must be executed immediately upon issuance.
- If there are fears that the defendant might flee the jurisdiction.
- If there are fears that the investigation will be harmed, either through influencing the victims or witnesses, evidence tampering or collusion with other perpetrators to change or suppress the facts.
- To prevent a breakdown in public security and order that may result due to the gravity of the crime.

**Q: Why has Mubarak’s trial lasted for more than two years?**

A: Egyptian law sets no time limit for trials, and they may go on for several years. The law only defines the maximum period for which defendants may be held in pretrial detention, setting limits on these terms in consideration of the violation of personal liberties it entails.

**Q: Have the investigating bodies played a role in extending the length of the trial?**

A: Of course. The Public Prosecution files criminal charges and brings the evidence to support the defendant’s conviction. The Public Prosecution was slow to charge Mubarak. The public prosecutor at the time, Abd al-Megid Mahmoud, only ordered an investigation into Mubarak on 10 April 2011—that is, two months after he stepped down—after massive popular pressure in the form of huge demonstrations dubbed the Friday of Prosecution and Purging. Until that date, all charges had been filed against Mubarak’s interior minister, Habib al-Adli, and his deputies and other ministers and regime leaders in financial corruption cases.

When the Public Prosecution charged Mubarak with participating in the murder of demonstrators in the January 2011 events, influence peddling and profiting from gas export to Israel, all these charges were joined in one case. The other cases were opened later and have not yet been



brought to trial.

**Q: Did the Public Prosecution play a role in the way the prosecution of Mubarak was handled?**

A: Yes. The Public Prosecution has jurisdiction over investigations; based on its investigations, it either charges the defendant, closes the case or rules that there are no grounds for a case. The Public Prosecution is also the charging authority. As such, if it files formal charges, it must present all the substantiating evidence on which the court will base its judgment. The more hard evidence the prosecution submits, the easier it is for the court to issue its judgment. Conversely, the weaker the evidence, the more likely the defendants are to escape punishment.

The Public Prosecution only brought criminal cases against Mubarak on largely trivial charges in four cases, although many citizens submitted numerous complaints with supporting evidence. Moreover, as the representative of the people, the Public Prosecution can file a criminal case without any citizen complaint. Nevertheless, it did not charge with Mubarak with further crimes beyond these four cases.

As EIPR learned when representing some victims in the murder of demonstrators case, the investigations were severely flawed and the evidence brought by the prosecutor was tenuous. As a result, the grounds for conviction were weak and the conviction was overturned.

**Q: What role did state agencies play in the course of Mubarak’s trial?**

A: In the case of the killing of demonstrators—in which EIPR represented some martyrs’ families—state agencies did not cooperate with the Public Prosecution in obtaining conclusive evidence. For example, General Intelligence sent the Public Prosecution videotapes devoid of evidence, telling the prosecution that other tapes relevant to early February had been “taped over.” Similarly, the police destroyed important criminal evidence in the same case: a CD containing incoming and outgoing telephone calls from the operations room of the Central Security Forces. The Public Prosecution brought a criminal case against the officer responsible for destroying the evidence, and he was sentenced to two years in prison.



**Q: Will the current events have an impact on the prosecution of Mubarak for the murder of demonstrators?**

A: It is well established that the judge does not rule based on his personal knowledge, but rather based on the case file. After the fall of Muslim Brotherhood rule, Mubarak's defense will likely shift the blame to them, especially after the verdict issued in the prison escape from Wadi al-Natron Prison. The judgment in that case is consistent with and buttresses the testimony given by Omar Suleiman, the former vice-president, in the Mubarak trial, when he stated that demonstrators were killed by "foreign elements" cooperating with the Muslim Brothers.

As for the financial corruption cases, often these cases are settled when the amount in question is returned.

**Q: When will Mubarak's trial for the killing of demonstrators resume?**

A: The next session is scheduled for 25 August. Mubarak will be obligated to attend, even if he has been released.

For more information, see:

EIPR's report on the Mubarak trial (Arabic):

[http://eipr.org/sites/default/files/pressreleases/pdf/mubarak\\_trial\\_report-13jan13.pdf](http://eipr.org/sites/default/files/pressreleases/pdf/mubarak_trial_report-13jan13.pdf)

EIPR statement on the overturned conviction of Mubarak:

<http://eipr.org/en/pressrelease/2013/01/13/1581>