

# Egypt's Transition: One Step Forward, Two Steps Back

[\*Dina Guirguis\*](#)

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March 29, 2011

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Ten days after millions of Egyptians voted in the first post-Mubarak election to approve nine constitutional amendments, the country's Supreme Military Council (SMC) has announced it will soon issue its own "constitutional declaration," effectively superseding the existing constitution. This raises the question as to why Egyptians were asked to vote in a referendum in the first place.

## A Flawed Vote

The referendum on the constitutional package passed overwhelmingly, with 77 percent support. Ostensibly, the amendments, drafted by a constitutional committee chosen by the SMC, were designed to remove restrictions on presidential contestation and to implement judicial oversight of the election process. And, indeed, the ten-member committee, which includes two members with Islamist affiliations, instituted presidential term limits and restored judicial supervision of elections.

To the degree that the amendments opened the electoral process, they represented a positive step. But many argue the changes did not go far enough. They left intact, for example, Egypt's presidential system, still granting the president power to decree laws through Article 112, and limiting a genuine system of checks and balance among the branches of government. The amendments also retained the constitutional requirement that 50 percent of the parliament consist of workers and farmers, a socialist construction that many analysts argue is incongruent with Egypt's contemporary economic realities. Moreover, the rush to hold a nationwide vote a mere month after Mubarak's departure was questioned by many as inconsistent with the notion of a free, fair, and transparent process encompassing Egypt's 40 million eligible voters simply due to the vast organizational task associated with such an undertaking. These and other difficulties, including insufficient measures to prevent double voting, marred what was otherwise a vast improvement on past Egyptian elections.

## A New Constitution?

More problematic than the voting process, however, was the complete lack of clarity with regard to what precisely Egyptians were choosing to do. Many Egyptians believed understandably that the amendments would be incorporated into a changed 1971 constitution, which in turn would guide the transition to civilian government through

parliamentary and then presidential elections in June and August 2011, respectively. However, the amended Article 189, which permits the president or the parliament to call for the creation of a new constitution, now additionally states, in a "repeated provision," that the new parliament, in a joint conference of unappointed members of the Shura Council and People's Assembly, "shall appoint a hundred-member committee" to draft a new constitution. This added to the confusion regarding the process to draft a new constitution and even left uncertain the question of whether the drafting of a new constitution by the next parliament is mandatory or not -- confusion that was compounded by contradictory views put forth by legal "experts" in various media outlets.

Alongside the contested prospect of a new constitution, both proponents and opponents of the amendments based their arguments largely on ideas unrelated to the amendments' substance. Those in the "yes" camp advanced two main arguments, the first promoting the concept of "stability," according to which acceding to the amendments would enable the country, and its ailing economy, to move forward and the military to retreat to the barracks. The second argument, promoted heavily by the Muslim Brotherhood and various Islamist movements, including hardline Salafists, inexplicably stated that a "no" vote would endanger Article 2 of the constitution, which cites sharia (Islamic law) as the main source of legislation. This argument was advanced even though Article 2 was not the subject of the amendments. The sectarian card proved powerful, especially in rural areas, and mosques throughout Egypt unified their sermons on the Friday preceding the Saturday referendum to strongly urge a "yes" vote to "salvage Islam in Egypt."

Meanwhile, many liberals, as well as Coptic Christians, took to the streets distributing "no" leaflets based on their conviction that only a new constitution would fulfill the principles of the revolution. Implicit in their rejection of the amendments was a rejection of the SMC's proposed transition plan and the opaque manner in which it was being pursued. This plan, which among other moves viewed with suspicion by the liberal and leftist camps, initially called for June parliamentary elections, followed by presidential elections in August. A few days after the vote, the SMC officially announced the postponement of parliamentary elections until September. The fear driving Copts and liberals alike was that early elections would favor antidemocratic forces, including former regime elements and Islamists, and entail a return to the status quo, particularly if the new parliament, according to amended Article 189 "repeated," drives the content of the new constitution through its selection of its drafting committee.

Proponents and opponents alike were caught off guard, however, by the post-referendum announcement of the "constitutional declaration" to be issued by the SMC, establishing the legal parameters framing forthcoming elections until a new permanent Constitution is in place and replacing the current constitution altogether. This announcement cast doubt on why a constitutional referendum should have been held in the first place.

## **Implications of the "Yes" Vote**

As the military has taken on an increasingly stressful governance role, and revolutionary forces take differing views of that role, the military understandably sought to gage public views. As labor strikes and protests have proliferated in Egyptian daily life for example, the military has increasingly taken a hardline stance, reflected in a proposed law to prohibit strikes and protests, with violators subjected to draconian punitive measures. On March 23, the military stormed Cairo University to break up a sit-in at which protesters

demanded the resignation of deans associated with the Mubarak regime; the military used sticks and Tasers and detained students and professors alike. In the same vein, the military recently announced a prohibition on discussing the military in the media without first "coordinating" such material with the armed forces "Morale Office." Serious human rights violations committed by the military are also beginning to surface and be documented by international human rights organizations. The violent clearing of Tahrir Square on March 9, for example, saw the protesters arrested, tortured, and prosecuted in military courts. Amnesty International recently decried such measures, as well as humiliating torture techniques such as subjecting women to "virginity tests."

If before the military was keen on preserving its credibility in society by issuing public apologies when abuses were committed, after the referendum they are becoming more self-assured even as public criticism of the military becomes more muted.

The developments just described have caused liberal and leftist voices in Egypt and elsewhere to question the military's commitment to a genuine democratic transformation, which, in their view, would entail civilian oversight of the military's budget. Maj. Gen. Michael A. Collings, a retired air force officer who was the top ranking U.S. military representative in Egypt from 2006 to 2008, gave voice to these concerns when he told the *New York Times* recently that "Americans were not able to track the for-profit arm of the Egyptian military -- a conglomerate that runs factories, farms and high-tech corporations" and described "endemic corruption in the upper ranks of the Egyptian military." "My concern is for the Egyptian people who have suffered enough," he said. "They deserve better."

Clearly, the military's pursuit of a mandate through the referendum for its proposed transition is rooted in interests it wishes to protect in the new Egypt. Less clear is why the military is contributing to growing sectarian tension. Several weeks ago, army elements stormed two Coptic monasteries, for instance. They have also seemingly encouraged the proliferation of Salafist preachers in the media and beyond. Beyond this, the military continues to tolerate key National Democratic Party (NDP) regime symbols representing the party "old guard," such as the head of the presidential *diwan* (chief of staff), Zakaria Azmy, who recently stated publicly that he continues "to go to his office every day." At the same time, strengthening Islamist trends, including the Salafists, are allying themselves with the SMC, giving rise to theories of a web of complicity among the military, the old regime, and the Islamists. This very network governed Egypt for the past thirty-plus years.

For their part, former regime elements are clearly seeking new "front" parties to contest the upcoming elections. The NDP's current secretary-general has even stated openly the former governing party's intent to contest these elections. Meanwhile, Islamists are working to consolidate and expand their grassroots base, using both the mosque and well-funded media to promote their discourse. Liberal forces, on the other hand, remain fragmented and are at a considerable financial and organizational disadvantage. By design or not, the Egyptian armed forces stand poised to reap the benefits of a return to the status quo, while pro-democracy forces have everything to lose during this period if they do not close ranks to compel fundamental change that matches the sacrifices of the revolution.

## **A Role for the United States**

During this transition period, the Obama administration should continue to use its leverage with the Egyptian military to promote respect for fundamental human rights, as it did during the Mubarak era, showing and raising concern at every opportunity. The administration should also follow through quickly on its commitment to make \$150 million available in technical democracy assistance. Finally -- and perhaps most important -- the Pentagon should continue to press the Egyptian military to ensure that a genuine democratic transition occurs. The SMC has only one chance to get the transition right. The United States should do everything it can to support the council in its effort to do so.

*Dina Guirguis is the Keston Family research fellow in The Washington Institute's Project Fikra.*