Egypt's New Constitution: Bleak Prospects

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Brief Analysis

As Egypt prepares to vote on a constitution that could prove economically ruinous or, at best, ineffectual, Washington and its regional allies should discuss ways of encouraging Cairo to pursue much-needed reforms.

Egypt's new draft constitution reflects the coalition of leftist political parties and entrenched state actors that helped oust President Muhammad Morsi from power in July. In the short run, the strength of this coalition -- and its ability to achieve a convincing mandate in the January constitutional referendum -- will determine whether the political transition can move forward. In the longer run, however, Egypt's outlook remains bleak: either the massive state spending that the new constitution mandates will be enforced and thereby wreak economic havoc, or the charter will not be enforced, in which case the country will continue to be governed by an unreliable legal system.

BACKGROUND

In December 2012, following mass outcry over a constitutional declaration that placed his own edicts above judicial scrutiny, Morsi ordered the Islamist-dominated parliament to complete a new draft constitution within forty-eight hours and then put it to a referendum two weeks later. Although that constitution passed with 64 percent of the vote, the low 33 percent turnout undermined its popular legitimacy, and the noninclusive nature of the drafting process catalyzed a mass opposition movement that eventually culminated in Morsi's July 3 ouster.

As a result, the military-backed government that replaced Morsi made amending the charter a first-order priority. A July 8 declaration suspended the constitution and outlined a new process under which a ten-member committee of legal experts would amend it. Afterward, a fifty-member committee "representing all categories of society and demographic diversities" reviewed, amended, and approved the draft. While the latter committee drew from across the social spectrum, it was ideologically consistent with the coalition that ousted Morsi: it contained only two Islamists, neither of which were Muslim Brothers, and a plurality hailed from non-Islamist parties that have

historically won very few votes in elections.

TO THE REBELS GO THE SPOILS

The current draft constitution reflects the anti-Morsi coalition in three respects. First, it is far less Islamist than its predecessor. While it maintains that "the principles of the Islamic sharia are the principal source of legislation" (Article 2), it erases Article 219, which delineated the specific sharia sources on which to base legislation. It also removes Article 44, which prohibited "Insult or abuse of all religious messengers and prophets," and modifies the article regarding al-Azhar, the country's preeminent Islamic institution of learning, which no longer must be consulted "in matters pertaining to Islamic law." Most notably, the new constitution bans religious parties (Article 74).

Second, the new draft grants broad autonomy to the security services, military, and other state institutions that participated in Morsi's ouster. For example, it establishes a Supreme Police Council, which must be consulted on all laws pertaining to the police (Article 207). And in addition to granting each judicial body "an independent budget" and the autonomy to "administer its own affairs" (Article 185), it empowers the Supreme Constitutional Court's General Assembly to select the court's leadership (Article 193). It also empowers the Supreme Judicial Council to appoint the government's prosecutor-general (Article 189), an authority granted to the president under the previous constitution.

The new draft is particularly generous toward the military. The preamble emphasizes that the military has been the state's "pillar" since nineteenth-century ruler Muhammad Ali, and hails "our patriotic army" that "delivered victory to the sweeping popular will in the January 25-June 30 Revolution." Like the previous constitution, the latest draft mandates that the defense minister be a military officer (Article 201), protects the military's autonomy over its budgets by empowering a security-dominated National Defense Council to review them (Article 203), and allows civilians to be tried before military courts (Article 204). But the new charter goes even further, requiring less legislative oversight for military trials, mandating that the defense minister can only be appointed with the approval of the Supreme Council of the Armed Forces during the next two presidential terms (Article 234), and empowering the state to fight "all types and forms of terrorism" (Article 237) -- a virtual carte blanche for the military in its ongoing crackdown against pro-Brotherhood forces.

Third, the new draft reflects leftist parties' insistence on a more expansive government role in providing social services. In addition to the many state responsibilities envisioned in the previous constitution, the charter now commits the government to "achieving social justice" (Article 8), providing "food resources to all citizens" (Article 79), and guaranteeing the elderly "appropriate pensions to ensure them a decent standard of living" (Article 83). It also mandates an exorbitant level of specific state spending: at least 3 percent of gross domestic product must be spent on healthcare (Article 18), 4 percent on education (Article 19), 2 percent on higher education (Article 21), and 1 percent on scientific research (Article 23) -- all of which must be put into effect by fiscal year 2016/2017 (Article 238).

MOVING EGYPT'S TRANSITION FORWARD?

The fact that the new draft reflects Egypt's current governing coalition is neither surprising nor novel. The previous constitution similarly embodied the coalition that governed only a year ago, giving Morsi and the ruling Islamists a substantial foothold for instituting their theocratic agenda while securing the military's buy-in by granting it unprecedented autonomy (**see PolicyWatch 2001 (http://www.washingtoninstitute.org/policy-analysis/view/egypts-theocratic-future-the-constitutional-crisis-and-u.s.-policy)**). Still, the immediate future of Egypt's transition hinges on whether the current coalition is more durable than the previous one, which collapsed barely six months after the constitution was approved via referendum.

In the short run, the answer depends on the new referendum scheduled for January 14-15. Although it is expected to pass -- no Egyptian referendum has ever yielded a "no" vote -- a wide "yes" margin with high turnout and low voter suppression would likely solidify the current coalition and legitimize the parliamentary and presidential elections that will follow. Alternatively, a narrow "yes" vote would undermine the viability of the current process significantly, especially if accompanied by low turnout and/or widespread repression. Those rejecting the transition would be encouraged to intensify their protests, and some leftist party leaders might defect from the governing coalition. Both scenarios are plausible at the moment: polls suggest that the military, the key institution backing the current constitutional draft, retains strong support, but frustration with the transition has mounted in recent months, and participation in demonstrations against the military-backed government has broadened beyond the Brotherhood, particularly on university campuses.

Even if a successful referendum allows the political transition to move forward, the massive state spending that the new constitution entails is unsustainable in the long term, suggesting that the current government has no intention of fully enforcing the charter. In particular, if the government fulfills the constitutional requirement to spend 10 percent of GDP -- not merely 10 percent of its budget -- on specific social services, it could catalyze a severe cash crunch that would jeopardize food and fuel subsidies, angering large sectors of the population and potentially broadening support for antigovernment demonstrations. The latest economic data highlights the substantial risk of such massive state spending: Egypt's cash reserves fell from $18.6 billion to $17.8 billion between October and November, and the government does not expect indefinite generosity from the wealthy Persian Gulf states that pledged $12 billion to Cairo following Morsi's removal. Yet if the government tries to avoid these outcomes by not following the new constitution, Egypt will continue to lack the legal rationalism that any stable political system requires.

Given the U.S. interest in a stable Egypt moving toward effective civilian rule, Washington's response to the upcoming referendum should emphasize both short- and long-term goals. This means encouraging a fair and clean voting process by pledging to lift the post-Morsi suspension of U.S. military aid if the referendum is conducted properly. But since even a successful referendum will saddle Egypt with a constitution that either sinks its economy or remains largely unenforced, Washington and its regional allies should begin examining strategies for encouraging Cairo to undertake much-needed economic and political reforms.

Eric Trager is the Wagner Fellow at The Washington Institute. ❖

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