

Egypt Prepares Its Next Constitution

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ABOUT THE AUTHORS



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Brief Analysis

Although the new constitution is unlikely to catalyze upheaval in the short term, the changes being contemplated could have major implications for the role of religion and the military in Egypt's political life.

Egypt's fifty-member constitutional committee will soon release a final draft of the new charter, providing important indicators about the country's domestic political trajectory. Reports from the committee's deliberations highlight two issues that will be particularly crucial in defining the character of the newly emerging order: how the constitution frames the relationship between religion and politics, and how it envisions the role of the military.

BACKGROUND

On July 8, following the mass protests and military intervention that forced President Muhammad Morsi from office, the interim government released a constitutional declaration outlining a transitional "roadmap." Among other articles, the declaration called for the formation of a ten-member committee of legal experts to draft a new constitution, after which a fifty-member committee would examine, amend, and approve the text. The latter committee reportedly completed its first draft last week and aims to approve a final draft within thirty days. A national referendum is to be held thirty days thereafter, which means the people will likely vote on the new charter in December or early January.

While the July 8 declaration stipulated that the fifty-member committee must represent "all categories of society and demographic diversities," the actual committee includes only five women and two political Islamists, with a plurality hailing from non-Islamist parties that have historically won very few votes in elections. Nevertheless, this composition appears consistent with the country's current political mood. According to a recent survey by Egyptian polling firm Baseera, a 35 percent plurality supports the committee's makeup while only 12 percent oppose it -- though it is worth noting that polls of Egyptians frequently undercount Islamists.

RELIGION RELATIVELY RESTRAINED

According to reports from the constitutional committee's proceedings, the revised charter will likely reflect the backlash against Islamist rule that partially catalyzed the rebellion against Morsi. Article 2 of the previous constitution (which stipulated that the "principles of sharia are the primary source of legislation") will likely be retained, but the new draft is expected to dispense with the controversial Article 219, which narrowed the set of possible sources from which interpretations of the sharia could be drawn and thus catalyzed fears of theocracy. The draft is also expected to amend Article 3, which singled out Jews and Christians as religious minorities whose laws could be applied in personal-status matters. According to the most recent reports, the revised article may give these rights to the more inclusive category of "non-Muslims," perhaps addressing concerns regarding Bahais and Shiites.

In addition, al-Azhar -- the preeminent institution of Sunni learning that was granted consultative authority on Islamic legal matters under the previous constitution -- is expected to have a less robust role. The new constitution will reportedly commit the state "to providing sufficient funds to achieve [Al-Azhar's] purpose," which will include responsibilities for "*dawa*, Arabic language education, and religious studies." The draft will also likely include a ban on religious parties, though it is not clear whether or how this will be enforced given that such parties have participated in elections despite similar bans in the past.

The Salafist Nour Party has been the most vocal opponent of these de-Islamizing measures within the constitutional committee. It has called the ban on religious parties "selective and punitive," rejected amendments that explicitly grant communal rights to "non-Muslims," and opposed using the phrase "civil state" in Article 1, which delineates the state's identity. But the party's most significant objection involves the deletion of Article 219, which was among its major achievements under the previous constitution that passed under Morsi. Spokesman Sherif Taha recently warned that "deleting this article will make many feel that what happened on June 30 was a move against the Islamic identity of Egypt, something that nobody wants."

Despite these objections and the party's substantial potential for mobilizing against the constitution during the referendum, Nour members have repeatedly signaled that their priority is political participation. As such, they will likely accept dilution of the constitution's pro-Islamist language so long as they are permitted to participate in elections. The party is also intent on avoiding a clash with the military, at least for the time being, given that the latter's power will likely expand under the new constitution.

A BOLSTERED BRASS

Military leaders are reportedly pushing to capitalize on the ecstatic public support that allowed them to remove Morsi from power. In seeking to expand their authority under the new constitution, the top brass have focused on two issues, both of which are still being negotiated.

First, they hope to increase the autonomy they received under the 2012 constitution, at least temporarily. The previous charter mandated that a military officer be chosen as defense minister, and the military is now requesting veto power over appointments to that post during the next two to three presidential terms; on a seemingly related note, there are indications that current (and perhaps future) defense minister Abdul Fattah al-Sisi is seeking immunity from potential prosecution. Although the details are still being debated, leading constitutional committee members have expressed their support for this type of temporary veto power.

The military's second request has been thornier, however. The generals are pushing for the right to continue prosecuting civilians before "autonomous" military courts "for crimes that harm the armed forces," a power granted under the previous constitution. Yet committee members have resisted such trials, and although a complete ban is no longer being seriously considered, a number of counterproposals have been floated. Under one plan, the new constitution would narrow the class of crimes that can be tried before military courts to those representing "a direct

assault against the armed forces." Another proposal would create special courts for trying individuals accused of attacking military facilities, using military trials only for those suspects accused of terrorism or assaulting servicemen. The military has rejected these ideas and sought a compromise under which the constitution would delineate the specific crimes that could be tried before military courts, but this has been ruled out as well.

Initially, committee leaders attempted to address this dispute by forming a subcommittee that included military officials, but this effort has failed to yield a compromise. Negotiations are reportedly ongoing, but given the military's power and the current environment in which its critics are being targeted, the final draft will probably be to the generals' liking.

POLICY IMPLICATIONS

Some have noted that the new constitution -- like the one before it -- is being composed in a secretive and noninclusive manner, with the most consequential components decided via negotiations between civilian politicians and the military. This raises the possibility that, as in 2012, the new charter could become a lightning rod for protests, perhaps escalating into the kind of political instability that preceded Morsi's ouster.

Yet the constitutional process is unlikely to catalyze upheaval in the short term for two reasons. First, whereas Morsi pushed the 2012 charter through ratification in a deeply polarized political environment, the current committee is completing its work at a moment of substantial political disillusionment, indicating less likelihood for large-scale demonstrations. Second, the 2012 constitution further empowered an increasingly unpopular Islamist president without any new elections scheduled; in contrast, ratification of the current charter will be followed by parliamentary and presidential elections, providing an immediate institutional channel for contentious politics and likely keeping the masses from taking to the streets in the near future.

For these reasons, the United States should encourage the Egyptian government to complete its work on the constitution and hold an orderly referendum so that the post-Morsi roadmap can proceed on track. It should further encourage Cairo to permit international observers to monitor the referendum -- which Morsi did not allow -- since this would bolster the transition's credibility. Finally, so long as the constitution is completed in an orderly and timely fashion, the Obama administration should lift the suspension on military aid that was announced earlier this month.

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

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