

## Egypt:

# Constitutional Amendment and Prospects for Change

May 25, 2005



### Brief Analysis

**E**gyptians today are voting in a referendum on a constitutional amendment that would, for the first time, allow multicandidate, direct presidential elections. The amendment, approved by Egypt's parliament on May 10, was presented amid growing internal and external pressure on President Hosni Mubarak to enact much-needed political reform. This measure also comes as a surprise, since Mubarak has in the past been reluctant to amend Egypt's constitution. The amendment requires only a simple majority to pass, but opposition parties have voiced their discontent, objecting that the new measure does not meet their expectations for a truly democratic system. Presidential elections are due later this year, when Mubarak will likely seek a fifth mandate.

### Background

The last constitutional amendment passed in 1980, allowing the president to run for an unlimited number of terms, rather than one term as was initially stipulated in Egypt's 1971 constitution. This amendment was widely viewed as undemocratic.

Article 76 of Egypt's constitution grants the lower house of parliament -- the People's Assembly -- the power to nominate a presidential candidate by a two-thirds vote. The people then vote on that candidate in a referendum. Earlier this year, Mubarak expressed his wish to amend Article 76 to allow for multicandidate presidential elections. This reform would give political parties the opportunity to nominate their leaders as presidential candidates. Independent candidates would need the backing of a total 250 elected members from parliament and municipal councils combined. The judiciary would supervise elections, with a committee of judges and public figures monitoring the electoral process. Presidential candidates would not have the right to question the makeup of the supervising committee or the committee's findings.

### Political Party Reaction

All of Egypt's major opposition parties claim that this amendment does not guarantee free and fair elections. Three major opposition parties -- the liberal al-Wafd Party, the leftist Tagammu Party, and the Arab nationalist Nasserite Party -- have called for a boycott of today's referendum, which the banned Islamist Labor Party has also joined. In addition, the al-Ghad Party, led by the democratic activist Aymen Nour, has expressed discontent with the amendment.

- One major issue has been a provision for oversight of the electoral process by a committee of judges and "public figures." Under the amendment, parliament would make these appointments, but there is no legal definition of who qualifies as a public figure. The consensus among opposition parties is that the government-appointed monitoring committee would not be neutral, and that instead independent judges should oversee the electoral process. The Tagammu Party has even asked the courts to stop the referendum.

- The new amendment would limit eligibility for presidential candidacy to the executive bodies of political parties, excluding party members who hold no leadership positions.

- Under the amendment, parties would not be guaranteed freedom of assembly, and would still have to seek government permission to hold rallies; such requests are often denied.

- The amendment would not restrict the unlimited use of state-owned media by the ruling National Democratic Party and the use of government resources for organizing Mubarak's campaign.

- The amendment would make it almost impossible for independent candidates such as Saad Eddin Ibrahim and Nawal Saadawi to run for president. With elected bodies dominated by the ruling National Democratic Party, it would be almost impossible for independent candidates to secure the 250 signatures required to run.

#### Reaction of Other Political Forces

Other significant political movements, tolerated but not recognized by the state, are also protesting the amendment. The Muslim Brotherhood (MB) and the secular Kefaya movement have called for a boycott of today's referendum. MB parliamentarians supported opposition members of parliament in their protests against the amendment, describing it as not conducive to free and fair elections. The MB has organized demonstrations calling for more political freedom and expressing its discontent with Egyptian political reform. Several MB activists and leaders were arrested in recent weeks, including the organization's secretary general.

Kefaya, which takes its name from its rallying cry of kefaya mesh kafaya, or "enough is enough," is the fastest-growing political movement in Egypt. It began as an elite attempt at political reform and has become an opposition front and grassroots movement uniting secularists, moderate Islamists, Christians, liberals, leftists, and other political activists from various opposition parties. Kefaya has organized most of the demonstrations calling for political reform in the last few months. Still a fluid movement, Kefaya, which has vowed to carry on with protests until real political reform takes place in Egypt, has successfully organized in twenty of the country's twenty-six provinces.

#### Enter the Judges

On May 13, the general assembly of the Judges Club, an official entity that works as a de facto judges syndicate, took an unprecedented decision to abstain from supervising the forthcoming presidential and legislative elections. With no judicial supervision, the elections will lack the guarantees of fairness and independence.

This decision came amid growing tension between the government and the judges over a new law on judicial authority, with judges asking for greater independence from the executive branch of government. Currently, the Ministry of Justice controls judges' salaries, bonuses, and promotions. The Judges Club states that the judiciary cannot be neutral if the minister of justice controls the pay and promotion scales of the judges; the power of the executive branch over their careers acts as a pressure on the justices when they issue verdicts, and discourages them from ruling against the government. Accordingly, the judges want the judiciary to supervise its own budget and personnel. The judges claim that if judicial supervision of elections is a constitutional duty, then fulfilling that duty requires judicial independence from government pressure. Judges have also protested the inclusion of government-appointed public figures in the election-monitoring committee.

Days after the refusal of the Judges Club to monitor the elections, the Supreme Council of the Judiciary -- an official body appointed by the government -- declared that it will not abide by the Club's decision and that it is unconditionally ready to supervise elections. The Supreme Council of the Judiciary will also use civil servants from the Ministry of Justice to supervise the electoral process, further jeopardizing the neutrality of electoral supervision.

The lack of judicial supervision in today's referendum and the boycott by political forces of the electoral process will certainly reinforce a traditionally low rate of voter turnout, despite government claims that Egyptian elections usually boast reasonable participation.

#### Prerequisite for Free Elections?

Prime Minister Ahmed Nazif has declared that Egypt will, in principle, allow international observers of its elections, but not international monitors. As a matter of fact, Egyptian elections have been "observed" during the last two decades by international media that have often reported irregularities. What Egyptian elections need is the supervision of an independent judiciary that will not fear the additional observation of international monitors.

The ruling National Democratic Party maintains that the proposed constitutional reform is a first step toward a more democratic system. However, opposition political forces and the judiciary see the amendment as a maneuver to perpetuate the Mubarak regime's grip on power. They are asking for measures that would comprehensively liberalize the political system: amending the constitution in a truly democratic manner, abolishing the emergency law, instituting freedom of the press, permitting freedom of assembly, allowing citizens to create political parties, and granting greater independence to the judiciary. These are the reforms that could lead to free and fair elections.

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