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Will Egypt's New Constitution Take the Country Backwards?

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The battle over Egypt's constitution has reached a critical juncture. Before the constituent assembly's mandate expires in December—and in the face of a pending court case that threatens to dissolve the body altogether, allowing President Mohammed Morsi to handpick a new one—its members are rushing to finalize a charter that will be put up for a yes/no referendum. The current fight is the culmination of a struggle that has been at the forefront of Egypt's troubled political transition for the past twenty months, during which the Muslim Brotherhood has emerged as the most powerful organized political force in the country, accompanied by a sudden rise of ultraconservative Salafi groups in formal politics.

Under particularly intense negotiation—and media scrutiny—are several key provisions in the constitution that will define the role of religion in the state. The constituent assembly is dominated by Islamists, largely from the Muslim Brotherhood and the main Salafi political party. The Salafis have long advocated revising Egypt's constitution to make clear that Sharia law itself—rather than the “principles” of Sharia, as the constitution has read in the past—is the main source of all legislation. Facing widespread opposition to this change, which would allow for a stricter interpretation of Islamic law, many Salafi members are pushing for an additional provision granting Al-Azhar—Egypt's premier Islamic institution—the final say in determining whether laws conform to the principles of Sharia. This would essentially make it the final arbiter on legislation, giving Supreme Court style powers to an unelected, unaccountable religious body. With a small voting bloc in the constituent assembly, some liberal members have threatened a mass walkout over provisions they consider non-negotiable if the civil nature of the state is to be preserved.

The amount of attention devoted to the battle over religion has largely eclipsed other essential aspects of Egypt's forming constitution—among them, how it will define the balance of power between the branches of government, impose oversight of the military and extend protection of civil rights and freedoms. Rights groups and other stakeholders have pointed to serious drawbacks in the current draft when it comes to civil rights and liberties. “The draft provides for some basic political and economic rights but falls far short of international law on women's and children's rights, freedom of religion and expression, and, surprisingly, torture and trafficking,” Human Rights Watch said in a statement.

Such criticisms have been dismissed by senior members of the constituent assembly, among them Amr Darrag, its secretary-general and a senior official in the Muslim Brotherhood's Freedom and Justice Party. “We have a lot of articles referring to the right for education, health care, the right for housing, the right of a clean environment, and the state is committed to make sure that these rights are really achieved,” he says. “Those who are saying that the draft does not represent the revolution actually did not read the document.”

But civil society groups monitoring the drafting process point to specific provisions that limit certain rights or severely narrow their scope, representing—in a number of cases—a step backward compared to the previous 1971 constitution. “It seems they're aiming towards a very restrictive perspective on basic human rights,” says Soha Abdelaty, associate director of the Egyptian Initiative for Personal Rights.

For example, despite the fact that widespread police brutality and torture were among the central grievances that sparked the January 25 uprising that ultimately overthrew Hosni Mubarak, the drafted constitution makes no reference to “torture,” instead outlawing lesser forms of physical harm. When it comes to press freedom, the latest draft revives the government's authority to close a newspaper or publication by court order, a power canceled under Mubarak in 2006. The constituent assembly's own spokesman, Wahid Abdel Meguid, delivered a strongly worded memo to the drafting committee asking, “Is this possible in a constitution that comes after a revolution that aimed to free Egyptians?”

He also called on the committee to restore a provision barring imprisonment for publishing offenses, a widespread demand among journalists and freedom of expression advocates.

Also attracting criticism is a line stipulating that Egyptians are free to form associations and parties “as long as they respect national sovereignty.” Human Rights Watch warns that such a caveat recalls persecution under Mubarak, when “human rights organizations documenting and exposing torture were accused of violating national sovereignty.” While the same provision dictates that associations can only be disbanded by the judiciary, it does not say on what basis, giving a free hand to judges, who may not be sufficiently independent.

Civilian oversight of the military is another crucial aspect of the constitution that has received little media focus. For decades, the Egyptian military has functioned as a state within the state, enjoying vast autonomy and controlling an economic empire that accounts for up to 20 percent of the economy. The drafted articles fail to give any legislative oversight of the military's budget. Instead, the constitution stipulates that a fifteen-member National Defense Council,

headed by the president and including at least eight members of the military, will determine the total amount the military will receive and provide it as a single figure in the national budget. The council will also have a say in drafting laws relating to the Armed Forces.

“If you have a majority of military generals on the council then you can ensure the military budget will remain in their domain and there won’t be any transparency or oversight,” says Heba Morayef, a researcher with Human Rights Watch.

“Injustice Upon Injustice”

For all the focus on religion, the drafted constitution actually curtails religious freedom, extending the right to establish places of worship only to the Abrahamic religions—Islam, Christianity and Judaism—while discriminating against the country’s other religions, such as the Bahai. It also provides no guarantee that citizens will be protected from gender, income or class discrimination. For example, “the language is not strong enough in imposing the obligation upon the state to ensure that healthcare is available and affordable to all citizens,” says Abdelaty. This will allow government health institutions to continue such common practices as turning away patients diagnosed with HIV.

Other rights that have been overlooked include such things as adequate housing and access to clean water and food. While they are briefly mentioned, Abdelaty argues that each one merits its own article and explanation. “We have to keep in mind this is a constitution that’s being drafted in 2012 after the beginnings of a great revolution,” Abdelaty says. “We had really high expectations that this would bring about all of the new and emerging areas in human rights to be included in it.”

The question of women’s rights has been one of the most high-profile and controversial issues. In its current form, Article 36 of the constitution ensures the equality of women with men “insofar as this does not conflict with the rulings of Islamic Sharia.” The caveat is the only reference to the rules rather than the less-rigid “principles” of Islamic Sharia.

“This means that certain provisions of Sharia law will be applied to women and not men,” says Nazli Shaheen, co-founder of Voice of Egyptian Women, which helped organize a protest last week outside the building where the constituent assembly convenes. “It basically removes women’s rights completely from the whole constitution and puts an article specifically for women where it should not be there in the first place.”

The clause has also come under criticism for language that could be used to jeopardize work opportunities and the economic independence of women by saying the state “will ensure a balance between the women’s family duties and work in society.”

“Article 36 heaps injustice upon injustice with regards to what will happen to women in Egypt,” says Sania Sharawy, granddaughter of pioneering Egyptian feminist Hoda Sharawy and author of her biography, *Casting Off the Veil*. “Women are afraid Article 36 would restrict their opportunities to work and leave women sitting at home. This takes us back to the era of Hoda Sharawy, whose first demand was the right to work.”

Senior members of the assembly have dismissed these criticisms as unfounded and detached from Egyptian social norms. “It’s very difficult for me to understand where the objection is, to be honest,” says Darrag, who maintains that Article 36 “calls for complete equality between men and women in all aspects.”

“Where it refers to Islamic Sharia is for very limited cases that you cannot have absolute equality,” he adds, pointing to such issues as inheritance and marriage. “This is the widespread acceptance of the whole society. If you want to remove it you are going to have turmoil in the society.”

An Uncertain Future

The current assembly is the second body tasked with drafting Egypt’s constitution since a national referendum in March 2011—the first post-Mubarak vote—put a set of constitutional amendments regarding the country’s political timetable up for a vote. Heavily supported by Islamists, the amendments passed with an overwhelming 77 percent of the vote. A year later, the Brotherhood, having won nearly 50 percent of seats in parliament, again allied with the Salafis—who garnered 25 percent—to push through a constituent assembly heavily stacked with Islamists and their sympathizers. The move sparked outrage and a mass walkout by liberal parties, the Coptic Church and even Al-Azhar. A lawsuit challenging its constitutionality was upheld by a court, which suspended the assembly.

The new assembly was formed in June after Islamist and non-Islamist parties broke through months of deadlocked negotiations. Yet the current body, too, has been heavily criticized for being dominated by Islamists. The Brotherhood and the main Salafi party hold at least fifty-two seats and their majority is bolstered by unaffiliated Islamists. The assembly includes eight women, several of them are affiliated with the Brotherhood, and eight Christians.

Last month, human rights activist Manal El-Tibi sparked a firestorm when she publicly withdrew from the assembly with a scathing resignation letter. “It became clear that the constitution was being prepared to serve one particular group, entrenching the idea that the religious state might obtain power in such a manner,” she wrote. El-Tibi was also critical of non-Islamist members of the assembly whom she accused of cutting deals with the Brotherhood and Salafis. “I realized I was one voice against 99 because I count the civil groups that have done deals with the Islamists,” she says. “If they really reflected the Egyptian people they would refuse what is happening with this constitution.”

The Brotherhood has steadfastly denied that the Constituent Assembly is dominated by a particular group, arguing that it is reflective of Egyptian society. “The representation is not just bound in the 100-member body,” Darrag says, pointing to “consulting committees” that solicit public input, as well as documents posted online, where Egyptians can post feedback. “We are open to the whole society.”

Last week, the constituent assembly held its first “public hearing” on the latest draft of the Rights, Freedoms and Public Obligations section of the constitution. But the event was announced at the last minute and fewer than fifty people showed up. Assembly member

Mohamed El-Beltagy, the influential secretary-general of the Brotherhood's Cairo branch, chaired a four-member panel that listened to comments and criticisms from the attendees.

"We want to listen to people and get opinions from all levels of society on this latest draft," El-Beltagy said in his introductory remarks. "This is the most important period. We want to say 'yes' to this constitution in the referendum but we want to say 'yes' in the right way and pass it by a high margin."

Yet human rights and civil society groups say their consultations with constituent assembly members have been of little consequence. "Any one of us who's been to the constituent assembly meetings came out with the same impression," Abdelaty says. "That these are just checklist items that they needed to get done but that they would never take into consideration any of the comments or observations we've given them."

With nearly forty lawsuits filed calling for the assembly to be disbanded, the future of the group hangs in the balance even as it continues to draft the constitution. In the meantime, Darrag says, "we don't pay attention to all that is going on in court and to those that want to disband the assembly." But if it does happen, he says, "we will respect the ruling and deliver our work to whoever is coming next."

As it stands, however, civil society groups have little faith the constitution drafting process. "It's sad but it's true—a lot of the articles in the constitution are going to be challenged," says Abdelaty. "What we had hoped would be the constitution as the beginning of a new phase for Egypt will be just more uncertainty and more division."