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Assessment Report

Challenges Confronting Legislative Elections in Egypt

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CHALLENGES CONFRONTING LEGISLATIVE ELECTIONS IN EGYPT

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The call for the organization of legislative elections in Egypt on November 28 comes in the midst of sharp political and social tensions being exhibited by a state of popular discontent after a long transitory period that has not witness any progress regarding several vital issues. The most prominent indications of this discontent was the return of demonstrations, sit-ins, and protests that are taking place in Cairo and throughout the Republic, especially during September, when teachers, doctors, college professors, employees in the textile and petroleum sectors, as well as air traffic controllers, employees of the endowment (*awqaf*) ministry, and Cairo's metro all went on strike.

This state of congestion reached its apex with the bloody events of October 10, when the peaceful protests by Coptic demonstrators turned into clashes that resulted in the death of 25 people and the injury of hundreds, according to the statements of the Ministry of Health. This total includes 17 citizens and three soldiers from the military police; armored vehicles belonging to the army were also burned. Groups of Coptic protestors had organized demonstrations outside of the Television Headquarters in protest over the demolishing of an unlicensed church in the village of Barniab in Aswan. The destruction of the church took place through a local mob with the blessings of the governorates' authorities. This incident shed light on the extent of sectarian mobilization through which Egyptians have been subjected to by Salafi groups and some populist orators.

The incident also exposed the scale of deterioration in the management of the entire transitional phase, reasserting the consensus of the Egyptian national elite on the necessity to hasten the transfer of authority to an elected civilian administration; considering the foot-dragging in making decisions and the "strategy of minimum action" that is adopted by the military council (which holds the effective reins of power in the country) was the leading cause for this dangerous turn, which almost took the country to the break of civil war.

Broad sectors of the Egyptian patriotic community are hopeful that the elections will constitute a pressure valve for the political congestion witnessed in Egypt since the flaring of the January 25 revolution; the street has become one of the most effective actors in the Egyptian political scene. Therefore, one of the recommendations presented by the head of the Higher Elections Committee to the Supreme Council of the Armed Forces advised changing the date of the elections to "the nearest possible time due to the instability in the country and the citizens' concerns of a state of security breakdown". The report suggested that the elections for the People's Assembly be held on November 21, 2011, and the elections of the *Shura* Council (Consultative Council) on January 22, 2012. This recommendation, however, was not adopted and the military council, which in the decree calling for legislative elections decided that the first stage of elections would take place on November 28.

These elections derive their extreme importance from the fact that they will bring about a legislative council that will be tasked with the formation of a Constitutive Assembly of one hundred members to draft a new constitution for the country. The March 30 constitutional declaration solved the debate over the committee that should be charged with the writing of the new constitution and the manner of its appointment. The constitutional declaration gave that right to the elected People's Assembly and the *Shura* Council, with its sixtieth article declaring that "the non-appointed members of the first People's Assembly and *Shura* Council congregate following an invitation by the Supreme Council for the Armed Forces to elect a constitutive committee of one hundred members within six months of their election. The constitutive committee is to be tasked with the preparation of a draft for a new constitution within six months of its formation; the draft is to be put to referendum by the people within fifteen days of its formulation, and the constitution enters into effect from the date of the announcement of its approval by the people in the referendum."

The voting bloc that is eligible to vote through their national identification number is estimated to be 49,970,000 Egyptian voters. This would be the second time during which Egyptians will vote using their national identification number cards, the first being the referendum over constitutional amendments in March 2011.

The Military Council as a Political Governor

The Supreme Council for the Armed Forces, according to the February 13 constitutional declaration, became the first political institution to attain effective rule in the country and lead the political process through this transitory stage after being handed the powers of the Legislative and Executive. According to the Declaration, the military council assumes the management of the transitory phase for six months, or until the elections of the People's Assembly and the *Shura* Council, and the election of a president of the Republic.

Article 56 of the March 30, 2011 constitutional declaration gave the Supreme Council of the Armed Forces "the attributes and powers given to the Head of the State according to laws and regulations".

The fact is that the performance of the military establishment in managing the transitional phase and the process of democratic transition has occupied an important share of the public debate in Egypt during the eight months in which the army assumed power. This debate was dominated by suspicions and concerns regarding the true objectives of the army, its position regarding the process of democratic transformation, and the degree of its support for the demand of the revolution for change in the political system, especially that its performance, as well as its response to the demands of the revolution for change, has been largely "cumulative" and not

revolutionary, a pattern based on the reformation of some of the former regime's defaults, rather than the adoption of new standards. Criticism was directed at the army by numerous sections of the elite, who accused it of reproducing the *ancien régime* without Mubarak.

These critiques pertained to the political performance of the military council and its monopolization of decision making and exhibition of a despotic approach in using its legislative authorities through the publishing of a series of decrees, such as: the criminalization of strikes and peaceful gatherings, in addition to the reactivation of the emergency law. The last of these decrees were the elections' laws that came against the national consensus over the necessity of adopting a closed list system while the military council insisted on devoting two-thirds of the seats to a closed party list, while the other third will be for individual candidacy. This has stirred sharp debate with a number of the elite, who felt that the Council was seeking to produce a weak, fragmented Parliament that will not be capable of passing the necessary legislation to achieve the process of democratic transformation, or monitor and hold to account the military council itself. In the same vein, some wondered: how can voting be valid under the restored emergency law? It became impossible to ignore this paradox consisting in the fact that a part of the regime – practically, its main pillar (i.e., the military council) – has been the one tasked with the preparation of the first elections after the revolution; everyone knows, however, that the military elite in Egypt also controls one of the economic sectors, and, therefore, has interests to be defended. It is, in any case, capable of pressuring the political elite to preserve these interests. In other words, there is a large question mark over the extent of the neutrality of the army in the political game in post-revolutionary Egypt.

It is doubtless that some of these critiques are valid because the army is indeed part and parcel of the regime preceding the revolution, but some of those critiques offer uninformed explanations of the behavior of the army based on mere suppositions. Parties compete in the spreading of such assumptions.

Legislation Regulating the Electoral Process

The coming legislative elections in Egypt can be read as part of a package of legislations and legal amendments that will regulate the electoral process; these are:

1. The March 30, 2011 Constitutional Declaration, which included explicit articles aiming to support the integrity of the electoral process, including:
 - Banning the formation of parties along a religious basis, or based on gender or origin.
 - Half of the Parliament's members must be workers and peasants.

- The law, and not the constitution, determines the electoral system to be adopted, and whether it should be according to the closed party list system or the individual candidacy system, and whether women should have a specific quota in the Parliament.
 - The conduct of elections under full judicial supervision.
 - The Court of Cassation decides on the validity of membership and not the Parliament (as was the case previously).
2. The Political Parties' Law was amended in March 2011, and two important texts were added:
- The formation of political parties through notification, and not by the approval of the *Shura* Council or any other participant.
 - The Parties' Committee is to be chosen completely from among the judicial body.

Until October 3, the list of registered parties included 47 parties, in addition to another group of parties under constitution, the most important of which may be “the Socialist Popular Coalition Party,” which was the first leftist party, headed by Ibrahim Al Issawi, Abdel Ghaffar Shukur, and Abu El Izz Al Hariri. Sections from the Revolution Youth Coalition are also seeking to register their own party.

Electoral Law

The electoral law was a result of many concessions and accommodations between the military council and the political powers and parties. According to the decree-law, a mixed electoral system including the party list system as well as the individual candidacy system was adopted. This is the first time such an electoral system has been selected since the 1987 elections. The individual candidacy system was used in all legislative elections in Egypt for the last 23 years (1987, 1990, 1995, 2000, 2005, 2010). In the first iteration of the draft of the law in 2007, elections were to be waged with a mixed system where one-third of the winning candidates are chosen from party lists, and two-thirds by the individual candidacy system with no female quota, while the workers and peasants' quota (50%) was maintained.

The patriotic Egyptian community, with all its diversity, rejected the draft law, arguing that such a law would have ignored the demands of the different parties and political powers, bringing about a formula that combines the defaults of both party list and individual candidacy systems, opening the door of the Parliament to the return of the elements of the – dissolved – former

ruling National Democratic Party that belongs to locally influential capitalists, “thugs,” and representatives of familial and tribal links. It was affirmed that such a system marginalizes politics at the level of the electoral district to the benefit of “local” power centers. After months of debate, the government decided on September 25, 2011 to include amendments to the draft law, and the military council issued a decree to that effect. The amendments included the following:

- The Assembly is composed of 498 instead of 504; two-thirds of the members are to be elected through the party list system and a third is to be elected according to the individual candidacy system.
- The fifth article of the draft law decreed that candidates for the membership of both the People’s Assembly and the *Shura* council, according to the individual candidacy system, cannot be a member of any political party. It was conditioned that members of both houses who were elected according to the individual candidacy system remain without affiliations with any political parties or they would lose their membership following a vote by a two-third majority.

Parties and political powers protested the law decree, considering that the law in its current form does not conform to the minimum ceiling of demands that were raised in multiple meetings with the military council. These parties demanded the reactivation of the “Treachery Law” (i.e., excluding members of the dissolved National Democratic Party from running in the Parliamentary elections). Parties and political powers also accused the military council of ignoring the demands of the revolution and seeking to produce a “fragmented” Parliament, a third of which is composed of independents without a party identity, with the aim of not making the Parliament strong enough to have a sovereign will that is independent from the military council and making it incapable of drafting a constitution that subjects military and security institutions to the supervision of civilian authorities, and guaranteeing the transfer of authority to the civilians according to a clear time table. The parties of the National Bloc threatened in a September 26 statement that “appropriate measures” will be taken in the absence of a response, while other parties threatened to boycott the elections. In September 28, 2011, the military council called the parties to a dialogue regarding the election’s law; then, it submitted to the demands of amending the fifth article, allowing independent candidates to join political parties and blocs in the Parliament following their election.

Election Law: “The Worst Alternative”

Observers unanimously agree that the proposed system is “the worst of alternatives” because it assimilates the defaults of the individual candidacy system: the independent candidates most

qualified to win are the members of the dissolved National Democratic Party who have mastered the electoral game over three decades of employing electoral money, clannishness, and thuggery to decide electoral results in their favor, especially since the law of political corruption approved by the government permits the revoking of membership only in the case of those convicted with the charge of corrupting political life, requiring a judicial judgment, which is a matter that may take a very long time the current conditions.

On the other hand, the party list system has no effectiveness since these parties remain in their early phase of formation. Individual interests will dominate, taking the place of competition over political programs and visions.

The other, and more important, matter is that the law regulating the electoral process has neglected to place restraints on organizing the most important matters relating to the integrity and transparency of the electoral process, including, for instance, matters relating to electoral funding and the necessity of placing a ceiling for electoral spending. Until the present moment, the Higher Commission for Elections, composed of judges to manage the electoral process in all its details, has failed to resolve this issue; as a result, there is not a clear and concrete text relating to the matter of electoral financing and rules of transparency forcing candidates to expose the sources of their funding. Among the first steps approved by the Commission was the banning of any slogans with religious content during the electoral process. Despite the fact that the constitutional declaration and the law have included texts preventing the exploitation of religion and sectarianism in electoral advertisement, it is not clear how this could be applied on the terrain of reality, especially in the absence of clear restraints or punishments for those doing so. Given the state of sharp sectarian tension, this matter appears important to avoid the occurrence of a sectarian vote, as was the case with the constitutional amendments' referendum of March 19, 2011; this is also so that the safety and validity of elections is not jeopardized.

The Coptic and Female Quota

Among the demands of the Coptic demonstrators in front of the Maspero building (the state radio and TV building) was the allocation of a Coptic quota in the Parliamentary elections. In fact, there are serious concerns that the sectarian tension in the country may affect the decision of voters, or lead to sectarian voting in some districts, especially with the strong presence of groups with extreme religious leanings. It is clear that the allocation of a percentage of seats to a specific group maybe help in weakening discrimination, even if it does not lead to abolishing societal discrimination, especially if this were to come in tandem with laws criminalizing discrimination and punishing it severely. Since there is no clear picture as of yet (the window of candidacy is between November 12 and 22) regarding the percentages allocated by parties on their list to Copt, women (the law mandated that each list must contain at least one female candidate), and

the youth, it may be crucial to require parties to maintain a just and effective representation of these groups on their list; otherwise, representation would be symbolic or a matter of formality. Qualitative and just representation of citizens, including Copts, in the lists of parties and political factions is among the foremost means to lessen the scale of sectarian tension.

Here, we could point to the results of a recent poll conducted by the Center for the Support and Decision Making in the Council of Ministers on the influence of religious leanings over the decision of voters: 58% of Egyptians expressed their opposition to the election of a president from a different religion than theirs, as opposed to 36% who approved the idea. The poll showed that 60% of Egyptians are willing to vote for a candidate of a different religion in their electoral district, against 37% who rejected the notion.

These are stances that cannot be taken as givens in a revolutionary situation; instead, it's a negative political culture that was bred in specific historic conditions and that can be changed; it should not be adopted as a constant fact of life because these are variables that are subject to evolution and change under the influence of the political regime, which is supposed to favor the culture of equal citizenship.

Electoral Districts

According to the decree-law, Egypt is divided into 30 districts for closed party list voting, and 30 districts for individual candidacy voting. However, districting in the manner that has been announced – even if not officially yet – suffers several problems, the first of which being the inconsistency in the size of electoral districts, with some being extremely large to the point of not permitting real electoral promotion (the number of voters in one district could reach a million), while others are extremely small. In both cases, there is no clear logic for the districting. Many fears are confirmed since the districts of independence candidates have become vast in a manner permitting those with large funds and belonging to familial and tribal clannishness to monopolize most of the independent seats; thus, concerns increase that the elections may bring the elite of the Mubarak regime back into the forefront of legislative action in Egypt after the revolution.

The Map of Party Alliances

It remains too early to speak of a map of electoral coalitions in the current situation. Some have claimed the necessity of formulating a unified national list surpassing the alignments that have divided the political scene between two major blocs, and are capable of facing up to the elements of the counter-revolution. This, however, remains a matter of wishful thinking with no serious steps to realize such an alliance (until the writing of this paper).

Two blocs currently dominate the party scene, each representing several parties and political powers:

1. “The Democratic Coalition for Egypt” is a coalition of 24 parties, headed by the Wafd party, the Freedom and Justice Party (the Muslim Brothers), the Center Party (*Wasat*), the Dignity Party (*Karama*), the Nasserist Party, the Labor Party, and the Socialist Egypt Party. This alliance was the first bloc to form after the revolution, and it included most of the newly-formed parties with Islamic leanings, including the Light and Authenticity Party (*al-Nour wal Assala*), which has a Salafist inflection. The largest electoral alliance was expected to take place between the parties of the Wafd and the Freedom and Justice Party; however, the Wafd’s declaration of its intention to include a number of candidates on its electoral list who were previously affiliated with the National Democratic Party or members of it led to a debate within the coalition, with the other parties rejecting the move, prompting the Wafd to announce that it will present an independent list from the coalition, and that they will have candidates in all electoral districts. The Center Party also decided to wage the coming elections with an independent list, which poses questions regarding the fate of the coalition, and whether electoral alliances will be limited to parties with Islamist leanings under the banner of the Freedom and Justice Party.
2. “The National Bloc” joins 14 parties with a liberal and leftist character headed by the National Assembly for Change, led by Mohammad Al Baradi, the Party of Free Egyptians, the Democratic Front Party, led by Osama Al Ghazali Harb, the Party of Free Egypt, the Tajammu’ Party (the communist party), and a party with a Sufi background which is the Tahrir Party (liberation party).
3. “The Revolution Youth Coalition,” which is considered as the only non-party entity representing the youth of the revolution, and which announced waging the elections with a unifying list that includes 200 candidates. The Coalition presented an electoral program focusing on issues of social justice and the fighting of unemployment and poverty. However, major challenges are facing the Coalition candidates, particularly their lack of experience in popular mobilization for elections, their organizational weakness, and the incoherence of their electoral discourse. The Coalition was formed in the midst of the revolutionary movement and has not yet been able to establish regular communication with the popular bases, present a coherent electoral discourse, or learn the ropes of the complex electoral game in Egypt, which requires, for instance, the choice of candidates who are known in their local environment, the development of the electoral and financial “machine,” and the announcement of a strong electoral program. The same thing may

apply to the majority of new parties founded after the revolution, providing great advantages to the parties and forces that have experience with the electoral process and are well aware of its rules. The Coalition, however, remains a promising movement that may introduce a number of the young candidates to the Parliament. They, along with colleagues of the same generation, will form an engine for democratic transformation in future Egypt.

Thus, on November 28, Egyptians will cast their votes in the first legislative elections after the revolution, under full judicial supervision, with a mixed electoral system, and in the midst of a state of security and societal instability. While the challenges facing the electoral process are numerous, the main challenge remains the confrontation of electoral traditions that have been established over more than six decades, and that transformed the electoral process from a competition over programs and ideas into a competition between the individuals and families with traditional influence, money, and the ability to mobilize. As such, the main challenge consists in the writing of new rules for the electoral process, where money and clannishness are not employed, and where the resources of the state are not used in favor of the rich and the powerful, which prevents the reproduction of the political elite that the revolution has come as an expression of its rejection by the people.

It's crucial that efforts are exerted to make the first elections an edifying step in the building of the Second Egyptian Republic, which is a democratic republic.