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Egypt's Transition in Crisis: The Decline of Citizenship Rights

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This series of policy briefs provides a regular update of debates concerning key rights issues in three Arab states, Morocco, Egypt and Tunisia. In a first round of briefs on the three countries, we provide background on these debates since the beginning of the Arab spring.

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INTRODUCTION

Egypt's possible transition to democracy has recently witnessed its most critical moment since the revolution of 25th January 2011. The ousting of President Mohammad Morsi in July 2013 jeopardised the democratic aspirations of many liberals, despite their joining the protest against the rule of the Muslim Brotherhood. On the contrary, political and civil rights have suffered a severe downturn and the prospect of establishing democratic institutions has become more distant.

The 2014 constitution contains some improvement in the protection of rights compared to the 2012 constitution written by Islamists. But the implementation of these positive aspects remains uncertain. The changing structure of political power and alliances in the post-Muslim Brotherhood period has led to a dramatic worsening of civil and political rights. The military and other conservative political forces, including remnants of the Mubarak regime, have been significantly empowered after the ouster of the Muslim Brotherhood. The Egyptian paradox is that a majority of Egyptians look to the military and its leaders as the country's only possible saviour, despite increasing frustration over the regime's democratic credentials. Meanwhile, liberal revolutionary forces are undergoing a protracted crisis, suffering from internal divisions and coercive repression. This brief details why these trends augur badly for citizenship rights.

CITIZENSHIP RIGHTS AND THE NEW CONSTITUTION

While the new constitution gained overwhelming support in the January 2014 referendum, its capacity to heal Egypt's political polarisation is questionable. The constitution was drafted and adopted through an exclusionary political process. While the newly appointed Constituent Assembly was drafting the document, the Muslim Brotherhood and its allies, youth revolutionary forces and human rights defenders were being subjected to harsh repression and stigmatisation. The referendum demonstrated the limited space currently available for opponents. The 'No' vote campaign struggled to gain access to the state or private media. Moreover, opponents, belonging mainly to the Muslim Brotherhood, were arrested and convicted for campaigning against the vote.

With respect to citizenship rights, the 2014 constitution deals with many of the shortcomings of its 2012 predecessor. However, it contains certain limitations that dilute any improvement. The contradictory content of the new constitution reflects the ideological and political climate that preceded the work of the Constituent Assembly. Most importantly, the influence of the military in the constitution-making process is reflected in the significant status it enjoys under the new constitution. According to its provisions, for the next two presidential mandates the Supreme Council of Armed Forces (SCAF) should approve the appointment of the minister of defence, a step that places the military above other elected bodies (Article 234). The impact of this is compounded by the fact that the defence minister will be the Commander-in-Chief, rather than the President (Article 201). The military courts are mandated to try civilians if they commit certain vaguely defined offences against the armed forces (Article 204). Moreover, the military budget remains beyond proper scrutiny from civilian elected bodies, keeping the army's prerogatives untouched.

The principles of Islamic law continue to be the main source of legislation and the Supreme Constitutional Court becomes the interpreting authority of these principles. The official Islamic

establishment, al-Azhar's advisory role in the law-making process was removed but Article 7 of the Constitution determines that al-Azhar is the principal reference for religious sciences and Islamic affairs. This article leaves the door open for al-Azhar to determine the content of Islamic law. Some secularist intellectuals, the liberal Egyptian Social Democratic Party and the leftist al-Tajamu' Party hoped that the new constitution would include safeguards for the separation of the state and religion.¹ This was not possible within the new political landscape given the need to compromise with the Salafist al-Nour Party. Al-Azhar's political role was consolidated to counter the influence of Islamists. The Constitution risks creating a divide between an official, institutionalised Islam and several different Islams, supported by Salafis and Imams.

The provision on blasphemy was removed and the status of women is improved by explicitly stating that 'the state guarantees equality between men and women in political, social, cultural and economic spheres' (Article 11). The constitution also provides for affirmative action to encourage women's political participation. It obliges the first elected parliament to pass a law on the Construction of Churches, a demand that has been long made by Christians. However, the reference to Islamic law could limit the scope of these rights, depending on the tendencies of the interpretative authorities. Recent months have witnessed accusations of blasphemy and the conviction of members of unrecognised religious minorities such as Shi'a. Freedom of belief in the Constitution is absolute but the establishment of places of worship is limited only to the followers of the Abrahamic religions (Islam, Christianity and Judaism). The Constitution recognises the rights of non-Muslims to apply their own religious regulations to govern their family and religious affairs (Article 3), something rare in other Sunni-majority states in the region. This acknowledgement entrenches the sectarian regulation of personal status matters in Egypt, rather than establishing one civil legal system for all its citizens. The application of sectarian family laws is controversial; while, on the one hand, members of each religious community will be able to follow their own religious laws, on the other these regulations could be at odds with internationally recognised human rights.

Criminal defamation laws remain but the constitution abolishes prison sentences for publication offences except for incitement to violence and defaming individual honour. The publication of newspapers is guaranteed where authorities are notified. However, the regulation of private TV channels and radio stations is left to future regulations. The same regulations might also be adopted for on-line media. The constitution stipulates that the state should ensure the independence and multiplicity of views in state-owned media. However, it is ambivalent on the powers and impartiality of the media regulatory bodies, leaving the door open for restrictions on broadcast media.

Citizens have the right to peaceful assembly and to hold public meetings, after notifying the authorities. The constitution guarantees freedom of artistic expression and according to Article 67 says that 'no legal action can be taken to suspend or confiscate artistic, literary, or intellectual works or against the creators thereof except by the Public Prosecution'. This addition was intended to block direct criminal and civil lawsuits filed by Islamists against artists (known in Egypt as *hisba* cases). While the constitution improves the protection of freedom of expression it has not fully banned censorship on artistic creativity.

The constitution protects the right to freedom of information, freedom to establish political parties, NGOs and trade unions. Article 74 says that 'no political activity may be exercised or political parties formed on the basis of religion'. This provision is most likely to be applied in a selective and

¹A roundtable organised by the Cairo Institute for Human Rights Studies on 21 September 2013 with the participation of representatives of the Egyptian Social Democratic Party, al-Tajamu' Party, Socialist Popular Alliance Party the as well as three members of the Constituent Assembly and a group of human rights NGOs. For a complete list of the participants see Cairo Institute for Human Rights Studies. (2013). Available at: <http://www.cihrs.org/?p=7301>

politicised manner, particularly under a constitution that still accords superior status for Islamic law. Former President Hosni Mubarak added a similar provision to the 1971 Constitution in 2007 to prevent the Muslim Brotherhood from forming a political party. But the reference to religion is also found in the platforms of non-Islamist parties like the former National Democratic Party, the liberal al-Wafd Party and others. This article is not expected to harm Islamists aligned with the regime like the Salafi al-Nour party but it could be applied to other political parties affiliated with the Muslim Brotherhood. Article 92 of the constitution stipulates that ‘all rights and freedoms are inalienable and cannot be suspended. Any laws that regulate the practice of constitutional rights and freedoms should not restrict their substance and essence’. According to Article 93, ‘the state should comply with ratified human rights treaties, which become domestic laws after their publication’. These articles could allow for a liberal interpretation of constitutional rights.

Overall, the contribution of this document to the democratic transition and the protection of rights in Egypt is merely symbolic. The military-backed transitional government continues to monopolise powers and exclude dissenting forces, the positive provisions in the constitution have not prevented the state from encroaching on rights, drawing up legislation in discord with the Constitution, such as those allowing the persecution of journalists, civil society, political activists and trade unionists. Moreover, the restrictions on establishing trade unions and the right to strike remain in place, apparently in contravention of the new Article 15. The current structure of political power does not indicate that the new elected executive and legislature will be willing to defend constitutional rights through legislation. The judiciary is the only possible forum for implementing the constitution. Lawyers and human rights defenders can use the positive constitutional provisions in future litigation and advocacy to widen the interpretation of constitutional rights. In February, the Misdemeanour Court of Damanhur referred the assembly law to the Supreme Constitutional Court (SCC) after the lawyers of a group of workers accused of organising a demonstration without permission argued that the law violates the constitutional protection of freedom of assembly.² Litigation can help widen the political space but its effect is limited without having political forces on the ground that can change the balance of power. Egypt's judiciary is not also immune from political pressure and its positions on rights are not consistent. The worsening of rights in practice and the current deep societal divides overshadow any improvement in the new Constitution.

SYSTEMATIC DECLINE OF CITIZENSHIP RIGHTS

Since the ouster of Morsi, the military-backed government has taken far-reaching measures against the Muslim Brotherhood in a clear attempt to paralyse the organisation and its grassroots in Egypt. The use of lethal force by the military and security forces to disperse sit-ins and protests have led to the killing of more than a thousand protesters. Thousands of leaders and members of the Muslim Brotherhood have been arrested and prosecuted. Many of these are accused of violence or incitement to violence but numerous other cases are based on charges related to the peaceful exercise of freedom of expression and assembly.

The shocking recent verdict that sentenced 529 of Morsi's supporters to death after a sham trial casts doubts over due process and fair trial safeguards for defendants. Moreover, the selectivity of trials gives an additional sign for the politicisation of the judicial system.³ For three years, the military and security have been shielded from accountability for atrocities committed before and after the 2011 revolution. However, the state and its judiciary have recently been active in providing

² See al-Shuruq Newspaper. (2014). Available at: <http://www.shorouknews.com/news/view.aspx?cdate=10022014&id=3373c661-24a4-480a-bb07-38c7b7f19fbc>

³ See Human Rights Watch. (2014) ‘Egypt: Shocking Death Sentences Follow Sham Trial’. Available at: <http://www.hrw.org/news/2014/03/24/egypt-shocking-death-sentences-follow-sham-trial>

evidence to convict Morsi and his associates for killing protesters during his year in power. Due to international pressure, the interim President Adli Mansur formed an official Fact Finding Commission to investigate bloody incidents that have occurred since 30 June 2013.⁴ The report of this enquiry will be handed only to the president and will not be public. Moreover, based on similar experiences with previous official inquiries, there are fears that without strong legal powers, the commission will not be able to access official records or obtain information from the security agencies. An Egyptian court ordered the dissolution of the Muslim Brotherhood and all of its organisational offshoots and the confiscation of their assets.⁵ On 25 December 2013, the government declared the Muslim Brotherhood a terrorist organisation based on the anti-terrorism provision in the Penal Code, a provision that broadly defines the crime of terrorism. Over the past four months, the repression has expanded, targeting secular opposition, youth revolutionary coalitions, journalists and human rights defenders.

The stigmatisation of human rights defenders and liberal activists has become common in state and private media with direct support from the military and security apparatus. Critical voices now rarely appear in Egyptian media. This reflects the political preferences of a small group of businessmen who own the private media outlets. A new law was adopted in November 2013, placing draconian restrictions on peaceful assemblies and protests. The General Prosecutor and the judiciary have systematically used orders of pre-trial detention and travel bans against opponents on trumped-up charges.⁶ The Interim President decreed a law to make the pre-trial detention indefinite for persons accused of certain crimes, a step that led to the dramatic increase of detainees pending trials. The practice of torture and ill treatment of prisoners and detainees has been repeatedly reported by human rights observers.

This atmosphere threatens the competitiveness and integrity of the upcoming presidential and parliamentary elections. Moreover, the new presidential electoral law triggered controversy by shielding the decisions of the Electoral Commission from any judicial oversight, a procedure that could open the door to electoral irregularities. State institutions including the military have mobilised all sources to sponsor the candidacy of the former minister of defence, Field Marshal el-Sisi. Other potential candidates from different political backgrounds have cast doubts on the credibility of the presidential race.⁷ Without tackling the limitations of this restrictive political and legal environment, the upcoming presidential and parliamentary elections will not have any impact on the democratic transition. This decline of rights highlights the difficulty in overcoming polarisation through a purely majoritarian approach to politics in post-2011 Egypt.

EXPLAINING THE DECLINE

This dramatic downturn of rights can be explained by the changing structure of political power and the shift in political alliances in the post-Morsi era where conservative and counter-revolutionary forces have significantly advanced their powers and liberal and revolutionary forces have been undercut. The restrictive institutional and legal framework inherited from the Mubarak regime has not been reformed by the successive transitional governments; indeed, it has been repeatedly used

⁴ See Presidential Decree No.689/2013, Official Gazette no.51bis of 21 December 2013.

⁵ See a statement by Egyptian Initiative for Personal Rights. (2013) Available at: <http://www.eipr.org/pressrelease/2014/01/20/1935>

⁶ See Human Rights Watch. (2014) 'Egypt: High Price of Dissent: Journalists, Protesters, Academics Charged over Speech Offenses'. Available at: <https://www.hrw.org/news/2014/02/19/egypt-high-price-dissent>

⁷ See Al-Jazeera English. (2014) Egypt's Election Lacks Candidates. Available at: <http://www.aljazeera.com/indepth/features/2014/03/egypt-election-lacks-candidates-20143278132166580.html>

by them, including by the Muslim Brotherhood, to curtail opponents. Throughout the transition, the SCAF has exerted pressure on elected organs to preserve the mandate of military justice to try civilians and provide an exclusive jurisdiction to military courts over crimes committed by members of the military even if investigation is initiated after their retirement.⁸ President Morsi missed the opportunity, as the first elected civilian president, to align with other revolutionary forces to engage in security sector reform, judicial reform and to democratise civil-military relations.

The proactive role of the military and its leaders in ousting President Morsi and confronting the Muslim Brotherhood has significantly upgraded its powers and popularity. The violent confrontation with militant Islamists and the popular demand for stability and security have allowed the military and security apparatus to enjoy unchecked powers. Other conservative political forces equipped with organisational and financial resources, including remnants of Mubarak regime and the Salafist al-Nour Party, have advanced their status in the new political regime, benefiting from the retreat of the Muslim Brotherhood. This has coincided with strong repressive measures and media propaganda against the Muslim Brotherhood and other revolutionary forces, as well as a growing fragmentation among the revolutionary liberal and leftist camp. Some liberal and revolutionary figures were appointed in key executive posts after the removal of Morsi. For instance, the former leader of the liberal the Constitution (*al-Dustur*) Party Mohamed ElBaradei was appointed as Vice President, while Hazem El-Beblawy and Ziad Bahha-Eldin, prominent figures in the Egyptian Social Democratic Party, were appointed respectively as Prime Minister and Deputy Prime-Minister. Nevertheless, they failed to counter-balance the influence of the military, the security apparatus or the conservative forces in the government. The closest figures to revolutionary forces, ElBaradei and Bahaa-Edin, resigned from their posts and eventually al-Beblawy and his cabinet resigned in February 2014. The new cabinet appointed by the Interim-President is dominated by pro-military and figures from the former ruling party, the National Democratic Party, representing a deep rift in the political coalition formed on 30 June 2013 against the Muslim Brotherhood.

Moreover, the coalition of liberal and leftist forces struggling against the rule of the Muslim Brotherhood has fragmented over the past months. Many of these forces, such as the liberal Egyptians Free Party, the liberal al-Wafd Party and the leftist Socialist Popular Alliance Party, have supported the military's rise and are not assertive in challenging the current restrictive political rules. Some political parties, revolutionary youth movements and human rights NGOs persist in their struggle for rights, but the balance of power is not in their favour. A rapprochement between the Muslim Brotherhood and other secular revolutionary forces cannot be foreseen at this stage. Many of these forces today criticise abuses committed against the Muslim Brotherhood. But they cannot easily trust the group or the forces of political Islam as a political partner due to ideological differences. They blame the political performance of the Muslim Brotherhood over the past three years for the current crisis of democratic transition.

⁸ See El Fegiery, M. (2012) 'Crunch Time for Egypt's Civil-Military Relations'. *FRIDE policy Brief* No.134. Available at: http://www.friderg.org/descarga/PB_134_Crunch_Time_For_Egypt's_Civil_Military_Relations.pdf

International and regional dynamics allow the military-backed regime to strengthen its manoeuvrability abroad. Regionally, Saudi Arabia, the Emirates and Kuwait have provided generous political and financial support for Egypt after the ouster of the Muslim Brotherhood. These countries have strong political interests in supporting the new regime in Egypt to undermine the Muslim Brotherhood presence in their countries and contain any potential unrest in the Gulf. The US and EU have been repeatedly critical of Egypt's clampdown on dissent since the removal of Morsi but it does not seem that Western powers will go far in challenging the military-backed government – they need a strategic ally in the MENA while they are facing increasing geopolitical threats in other regions in the world. This is well understood by Egypt's military, which has recently increased its military cooperation with Russia, playing this card to pressure the US and to advance its domestic anti-Western propaganda.⁹ However, the challenge to Western actors at this stage is to maintain friendly ties with Egypt without sacrificing principles. The deep economic crisis prompts Egypt's government to continue to ask for external financial support and cooperation with international financial institutions. The US and EU can use this leverage to press the Egyptian regime for better human rights conditions, drawing also on their influence in the political and financial international organisations.

CONCLUSION

Since the fall of Mubarak, the evolution of citizenship has been constrained for certain political, ideological and institutional reasons, even as certain forms of dissent and pluralism have been tolerated by the successive transitional authorities. Following the ouster of the Muslim Brotherhood, the systematic decline freedom of expression, pluralism and political participation, as well as the increasing cases of unlawful killings, mass arbitrary detention and torture, shape the new political landscape in Egypt. The political influence of the military and security apparatus, as well as other conservative political forces, has increased. The liberal revolutionary camp suffers from a severe crisis. It has become the target of acute repression. Its constituency has retreated and its internal divisions have deepened. It will take time for revolutionary forces to establish their place again in the political regime. The formal improvements offered by the 2014 constitution are meaningless as long as the ruling elite continues its exclusionary and repressive approach towards dissenters. The low participation of youth in the referendum signifies that more young people are disillusioned with the political process and the increasing labour strikes across Egypt show the inability of the government to address pressing socio-economic needs. The current popularity of the military will not last without making significant improvements in the hard living conditions of the majority of Egyptians. The intractable economic crisis and the increasing societal divides and the continuing threats of militant groups create immense challenges to the upcoming executive and legislature and most likely undermine their ability to deliver. It would be difficult for the political regime to effectively address these challenges without an inclusive national reconciliation process that puts Egypt's transition towards democracy on the right track.

⁹ See Mandour, M (2014) 'Egypt and Russia: Strategy or Tactics'. *Open Democracy*. Available at: <http://www.opendemocracy.net/arab-awakening/maged-mandour/egypt-and-russia-strategy-or-tactics>

