

EGYPTIAN ELECTIONS: PAVING THE WAY FOR PRESIDENTIAL SUCCESSION

SUMMARY

Egypt began a significant election cycle, starting with partial elections for the Shura Council, the Upper House of Parliament, in June 2010. Next will be elections to the People's Assembly, the Lower House, scheduled for 28 November 2010. But the real prize of this cycle will be next year's presidential elections, which are expected in September 2011.

Given the flaws of the electoral framework, the results of the Shura elections confirmed the hegemony of the ruling National Democratic Party (NDP); the same is expected in the November elections. Nonetheless, the elections may be an indicator of the balance of power within the NDP itself. The outcome of these elections could also further reduce the chances of any 'outside' candidate being able to run in next year's presidential election.

The country has entered this election cycle without significantly reforming its electoral framework, which fails to meet key obligations of the International Covenant on Civil and Political Rights (ICCPR), ratified by Egypt in 1982.

The only recent important piece of electoral reform has been the introduction of a quota for women elected to the People's Assembly. However, this does not address other key shortcomings of the electoral framework.¹ Namely, the

registration of political parties is *de facto* controlled by the ruling NDP; the electoral system for the People's Assembly is flawed; the electoral administration is neither trusted nor independent; there is little transparency; and there is no legal basis for non-partisan election observation.

In Egypt, the President is the dominant political figure. Hence, the rules for the election of the President are especially sensitive. Indeed the constitutional provisions on standing as an independent candidate are so onerous that it is practically impossible for anybody to stand without the support of the ruling party. Candidates who are proposed by a party must be a member of the party's directorate for at least one year, thereby significantly limiting the field of potential candidates – including contenders in the NDP.

The main beneficiaries of these arrangements appear to be members of the NDP Supreme Council, which includes Gamal Mubarak, the current President's son. Other oft-mentioned potential NDP candidates, such as Omar Suleiman, would face much greater difficulties in registering to run for President.

¹For a detailed examination of these shortcomings, see: Democracy Reporting International (DRI)/Egyptian Organization for Human Rights (EOHR), "Assessment of the Electoral Framework of Egypt", January 2007. The report can be downloaded in English and Arabic on: <http://www.democracy-reporting.org/publications/country-reports/egypt.html>.

1. POLITICAL CONTEXT

President Hosni Mubarak and the National Democratic Party (NDP) have ruled Egypt since 1981. Invariably lacking credibility, the elections that have been held since have consistently returned a two-thirds majority for the NDP in Parliament. The Muslim Brotherhood (MB) is widely seen as the most significant challenger to the NDP, but it has never requested registration as a political party.

In the 2005 elections, candidates affiliated to the MB ran as independents and won 88 seats in the People's Assembly – the highest ever gain by an opposition group. The MB achieved these gains despite fielding candidates in less than half of all constituencies and the heavy clampdown by the state apparatus after the first of three voting phases. Since 2005, the MB has faced continued harassment and many of its members have been imprisoned. The 'legal opposition' (i.e., formally registered parties) is insubstantial: they won only 3% of seats in the People's Assembly in 2005, notwithstanding claims from some that they had been cheated.

The President is 82 years old and the media have reported serious health problems. Thus, the major political question concerns Mubarak's succession. This critical issue threatens stability because Egypt has no tradition of transferring power through elections.

The succession issue may explain the clampdown on the MB, as the group could represent the most serious competitor in any open electoral contest. In order to foster an image of pluralism, it has been argued that the government will only permit the 'legal opposition' to win more seats.

Other presidential challengers may come from outside established politics, galvanising public dissatisfaction. For example, Mohammed El-Baradei, the former Director General of the International Atomic Energy Agency, could become a challenger, but he demands that the electoral rules must be changed.

The real competition for succession is likely to take place within the NDP itself. The upcoming People's Assembly election in November will be significant as a measure of the NDP's internal power balance.² In the past, nomination of NDP candidates has been contentious within the party. NDP contenders who were not selected by the party stood in elections as independent candidates, returning to the party's fold after the elections. Thus the nomination process for NDP candidates can offer clues about the internal dynamics of the party.

Given the electoral rules, control of Parliament is also a primary requirement in controlling access to presidential nominations, which is the real prize of this election cycle. However, media coverage of the succession debate often overlooks the details of the electoral arrangements. This is crucial. On the one hand, these largely unexamined details allow for the smooth nomination of members of the NDP Supreme Council, like Gamal Mubarak. On the other, they simultaneously create great obstacles for potential NDP competitors, as is explained below (see Section 3).

The nomination rules for the presidential candidature are only one flaw in an electoral architecture riddled with shortcomings that allow the ruling power to control political competition and elections almost at will.

2. THE ELECTORAL FRAMEWORK: OUT OF LINE WITH EGYPT'S INTERNATIONAL OBLIGATIONS

Egypt ratified the International Covenant on Civil and Political Rights (ICCPR) in 1982. However, the country's constitutional-political and electoral arrangements violate central provisions of the ICCPR, including the freedom of association, the right to vote and to stand in elections, as well as a range of other rights and freedoms that are necessary for ensuring elections take place in an environment conducive to the free expression of the will of the electorate. Part and parcel of its human rights problems, it should be remembered that Egypt has been ruled under a state of emergency for 43 years.³

The last significant electoral reform took place in 2007, but lacked credibility. Approved by Parliament, these constitutional amendments were then pushed for public endorsement through a referendum. Neither the process nor the outcome furthered democracy in the country: there were a mere seven days between adoption of the changes in Parliament and holding the referendum. Consequently, there was no scope for meaningful public debate about this complex constitutional reform. The referendum was further overshadowed by the usual array of allegations of serious impropriety in the polling process,⁴ which are a regular feature of Egyptian elections. Despite a limited increase of Parliament's power, in essence the reform strengthened the President's hand and reduced the role of independent judges in the administration of elections.

Since 2007, the only significant change has been the introduction of an additional 64 People's Assembly seats reserved for women. While this is in itself a positive measure, it does not address the flaws in Egypt's electoral framework, which can be found at all stages of the election process.

² See "Gamal Mubarak and the Discord in Egypt's Ruling Elite", Stephan Roll, *Arab Reform Bulletin*, 1 September 2010, Carnegie Endowment for International Peace.

³ With one interruption for 18 months in 1980-1981.

⁴ "Charges of Vote Rigging as Egypt Approves Constitution Changes", *New York Times*, 28 March 2007.

From the outset, *political competition* is heavily restricted because party registration is *de facto* dominated by the NDP. Appointees of the ruling party can simply refuse to register potential competitors, as they have done in the past, or they can suspend existing parties. Furthermore, political parties cannot be established ‘on a religious referential authority or on a religious basis’ (Article 5 of the Constitution), but the NDP regularly uses religion in its political discourse.

The *election administration* is not independent because elections are managed by the Ministry of the Interior. The composition of election commissions for parliamentary and presidential elections is largely controlled by the Executive Branch and the NDP.⁵ In previous elections, the supervision of polling stations by judges brought a degree of credibility to the process because judges enjoy far greater confidence from the electorate than the Executive Branch does. To make it possible for the limited number of judges to cover all polling stations, earlier elections were held in stages. However, the 2007 amendments to the Constitution now stipulate that elections must be held in one day, making it impossible for judges to be comprehensively involved. Currently, judges only play a role in the general committees at the constituency level. Without being present at polling stations, they can do little to prevent intimidation and fraud in these locations.

The *registration* of voters is not effective: an estimated third of the adult population is not registered to vote. The right to *stand* in elections is restricted, for example by educational requirements.⁶

There are practically no *transparency* safeguards in the law. Provisions that have become commonplace around the world, such as frameworks for non-partisan election observation or requirements for the prompt and detailed publication of results, are absent from the electoral laws in Egypt.

There are no *effective remedies* against possible violations of the election laws, with the election administration frequently ignoring court rulings. In parliamentary elections, the newly-elected Parliament has the last word on appeals against the results, which is an obvious conflict of interest.

As far as Parliament is concerned, the *electoral system* does not guarantee that voters’ choices are respected because half of each House must be represented by workers and farmers. Candidates from either one of these categories may gain seats despite obtaining fewer votes than other candidates.

3. ARTICLE 76: CONTROLLING THE FIELD OF CANDIDATES

Article 76 of the Constitution regulates the details of the presidential election process. The importance of this article for Egypt’s power arrangements can be gauged from its length and detail. With 909 words, it may well be the longest article in any constitution. However, the matter of presidential elections should not be particularly complex. In the past, Egyptian courts have frequently invalidated election legislation. By enshrining all of these details in the Constitution, the legislature sought to remove the risk of any judicial challenges.

According to Article 76 of the Constitution, in order to register as a presidential candidate one must meet at least one of the following requirements:

- A) Secure the support of 250 elected representatives from the People’s Assembly, the Shura Council and local councils, provided that this support includes at least 65 members of the People’s Assembly, 25 members of the Shura Council and 10 local councillors of every local council in at least 14 governorates; or
- B) Be nominated by a party existing for at least five uninterrupted years before the opening of the candidacy period, and have 3% of the seats in both the People’s Assembly and the Shura Council, or equalling this total in either one of the two Houses of Parliament, provided that the candidate has been a member of the party’s directorate for at least one consecutive year beforehand; or
- C) As a transitional measure, valid until 30 April 2017, nomination of candidates by parties is open to all parties having at least one seat in either of the Houses of Parliament, provided that the candidates fulfil the aforementioned condition of membership in the directorate of the party.

Given that Option C is basically the same as Option B (but without the requirement of 3% representation in Parliament), there are essentially two avenues of registration for presidential hopefuls.

Option A

While the Constitution indicates the need for support from 250 elected officials, it also specifies that this number should be increased when the overall number of elected officials changes in any of these bodies.⁷ Given that the newly introduced women’s quota has increased the overall number of seats in the People’s Assembly, a candidate would now be required to get the support of more than 65

⁵ The High Election Commission, which administers parliamentary elections and referenda, has recently been transformed from an *ad-hoc* body into a permanent institution. Given the way appointments to the Commission are made and the central role of the Ministry of the Interior in managing elections, this change is unlikely to improve the integrity of the elections.

⁶ For a detailed analysis of restrictions related to standing in presidential elections, see Section 3.

⁷ Article 76 of the Constitution of Egypt states: “The number of members of the People’s Assembly, the Shura Council and local popular councils on governorate level supporting candidature shall be raised in pro rata to any increase in the number of any of these councils...”

members of the People's Assembly in order to secure a presidential nomination.

In theory, securing the support of more than 250 elected representatives may allow an independent candidate to stand in presidential elections, but in practice this is virtually impossible because the NDP has such a large number of elected representatives. In particular, after the controversial June elections to parts the Shura Council, this legislative body remains dominated by the NDP. Taken in combination, all of the opposition parties and independent candidates only add up to eight Deputies,⁹ which fall far short of the 25 that are required to support the nomination of a presidential candidate. It is therefore impossible that an independent candidate would be in a position to contest the 2011 election without support by elected officials of the NDP.

Option C

This option deals with the nomination of candidates by political parties. Ostensibly, the provision does not appear restrictive, but the parties with representation in the current Parliament are weak and not generally considered to be serious players in a presidential election.

The provision under Option C – that a candidate must be a member of the party's directorate – is highly relevant when considering who the NDP presidential candidate will be. The NDP Supreme Council is its 'directorate' in the sense of Article 76.⁹ Other than the current President, the only frequently-touted candidate who is a member of the NDP Supreme Council is Gamal Mubarak. Politics aside, in legal terms his nomination would be plain sailing, while other potential NDP contenders, such as the oft-mentioned Omar Suleiman or the current Minister for Aviation, Ahmed Muhammad Shafik, would not qualify under the conditions of this option. With presidential elections likely in less than one year, it would also be too late to add either of these potential candidates to the NDP Supreme Council, given that they must be a member for one year in order to be eligible for party candidature.

Thus other NDP candidates, such as Suleiman and Shafik, could only be nominated via Option A, which is a much trickier prospect fraught with political risk. Mobilising more than 250 elected officials may be feasible, but could effectively split the NDP. While it is theoretically possible that NDP leadership would agree to have a consensus candidate nominated through Option A, this is unlikely because legally this would be an independent candidature,

rather than one sponsored by the party. It would have been easier for party leadership to nominate a potential candidate to the NDP Supreme Council within the time constraints specified in Article 76, rather than planning to nominate somebody through the much more awkward route of a nominally independent candidature.

The need for membership in a party's directorate also precludes the possibility that a small party with representation in Parliament could nominate an outside candidate, such as El-Baradei. Article 76 likewise precludes any option of the MB nominating a candidate. It does not have the number of elected officials required under Option A, nor is it a registered political party.

At first glance, Article 76 may look innocuous. Indeed the theoretical possibility of an independent candidature is used by the government to suggest that the electoral system is open to genuine competition. When asked about a candidature by El-Baradei, Prime Minister Nazif claimed that 'nothing bars him from standing in the 2011 presidential elections'.¹⁰ President Mubarak stated that presidential elections would be open to all, suggesting that 'anyone who can bring benefit to Egypt and its people' could take part.¹¹ However, in the political realities of Egypt, Article 76 is a dense filter through which only a few potential candidates can pass smoothly. Others face severe obstacles and most are excluded.

The provisions of Article 76 violate Egypt's obligations under Article 25 of the ICCPR. The UN Human Rights Committee, a body of independent experts monitoring ICCPR implementation, issued an authoritative interpretation of Article 25 that notes: "The effective right and the opportunity to stand for elective office ensures that persons entitled to vote have a free choice of candidates. Any restrictions on the right to stand for election... must be justifiable on objective grounds. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation."¹²

Article 76 falls well short of these requirements. That candidature hinges on securing the support of a large number of elected members of Parliament and local councils in a context where one party dominates all of the elected bodies effectively renders candidature dependent on political affiliation. Moreover, such a provision has no objective justification: in principle, presidential elections should be open to anybody.

Electoral laws in other countries sometimes require that a candidate must document some level of public support by

⁹ The Shura elections were highly controversial, with opposition parties alleging wide-spread fraud. For example, see: "Shura election results contested", *Al-Ahram*, 17 – 23 June 2010. It is noteworthy that the specific representation thresholds for each House of Parliament and the local councils add potential veto actors into the nomination process.

⁹ The Supreme Council was created in 2007. It combines the members of the NDP Secretariat General with those of its Politburo. Some commentators interpret the establishment of this new body in light of Article 76, arguing that before the creation of the Supreme Council, Gamal Mubarak would not have been eligible to be a party candidate under Article 76 because he was not a member of the Politburo, which until 2007 was the relevant body. With the Supreme Council as the relevant body now, he would be eligible. For more on this see: "Recasting the Plot", *Al-Ahram*, 8 November 2007.

¹⁰ "Whoever God prefers", *Al-Ahram*, 27 May 2010.

¹¹ "Mubarak: Egypt presidential elections will be freer", *Egypt News*, 27 January 2010.

¹² Paragraph 15; <http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb?Opendocument>.

a minimum number of voters (not elected officials), in order to avoid frivolous candidatures. The UN Human Rights Committee accepts limitations to the right to stand for elections, but makes clear that they must be narrow: "If a candidate is required to have a minimum number of supporters for nomination, this requirement should be reasonable and not act as a barrier to candidacy."¹³

Limiting party candidatures to the membership of a party's directorate likewise lacks any justifiable grounds. Why should a political party not freely decide who its most promising candidate for office is?

4. HOSNI MUBARAK ONCE MORE?

It is also possible that President Mubarak might decide to stand for yet another term in office¹⁴ in order to silence the potentially destabilising succession debate. He could then resign at a later stage. In case of a vacancy in the Presidential office, fresh elections must be held within 60 days (Article 84 of the Constitution). The deadline for candidature registrations is likely to be well before that date, leaving potential candidates only a few weeks to decide whether they want to stand in elections.¹⁵ Such a tight time frame would make it difficult for any potential candidate (NDP or otherwise) to mobilise the support of more than 250 elected officials, leaving members of the NDP Supreme Council in pole position.

5. CONCLUSION

The electoral framework for elections falls short of the international obligations that Egypt has freely accepted. There is no possibility for genuinely democratic elections under the current arrangements.

The parliamentary elections are significant only in so far as the results frame the parameters of next year's presidential election and, as in the past, these results will provide some clues on the distribution of power inside the ruling NDP party.

It is not a foregone conclusion that Gamal Mubarak will stand and win in elections. The public mood may not be inclined to 'pharaonic succession' and parts of the ruling party are resistant. Nevertheless, the existing legal arrangements favour the candidature of someone who is a member of the NDP Supreme Council. Among the most oft-mentioned potential candidates, only Gamal Mubarak is a member of that body.

Article 76 highlights in a nutshell all that is wrong with the electoral framework in Egypt. Many of its provisions may appear innocuous, but in the reality of Egyptian politics, they are flawed in essential aspects. Without a comprehensive reform of the electoral framework in light of its international human rights obligations, Egyptian elections will not be meaningful in the sense of an open democratic exercise.

¹³ *Ibid*, paragraph 17.

¹⁴ See for example: "Egypt party official suggests Mubarak to run again", *Al-Arabiya*, 21 October 2010.

¹⁵ Article 76 of the Constitution indicates that a law on presidential elections should determine further details of the process. Such a law has not yet been adopted. It is likely to include deadlines for candidate registration.

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