

# What Kind of Transition for Egypt?

On 1 April, 67 days after Hosni Mubarak was toppled, tens of thousands of Egyptians gathered in Cairo's Tahrir square for a "march for the salvation of the revolution." Their chief complaints were directed at the Supreme Council of the Armed Forces (SCAF) that had been ruling the country since 11 February. They complained that SCAF had acted too slowly and hesitantly in arresting

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the leading figures of the fallen regime, in addressing corruption, and that it had failed to give a clear blueprint for the transition to democracy. Some protestors even, for the first time, voiced calls for the resignation of Field Marshall Mohammed Hussein Tantawi, the head of SCAF and Mubarak's long-serving minister of defense.

The protest is illustrative of the extent to which Egypt's revolution remains unfinished, and the final destination of an ongoing transition process uncertain. The country is divided between a large number of ordinary Egyptians who, while desiring a real break with Mubarak's regime, are growing weary of continuous protests, massive disruption to economic life, and the possibility of that the relationship between political forces and the military will sour. Some are also becoming

obsessed with the previously dormant forces the revolution unleashed, such as the revival of a debate about the role of religion in public life and whether or not previously banned Islamist movements should be allowed to assume a role. Others are concerned that, without a focus on the economy, Egypt is headed for a crisis that will render the question of political reform moot. Meanwhile, the political activists who kicked off the uprising that began on January 25 worry that the revolution that they fought for (and at least 840 Egyptians died for) is being subverted by what they call "counter-revolutionary forces".

## A Divisive Referendum

It has taken SCAF over two months to finally clarify its blueprint for transition back to civilian rule. The process by which it came to it was, for most Egyptians, unclear and haphazard. SCAF made much a deal of the 19 March referendum on amendments to the 1971 constitution, yet did not restore that constitution. —Instead, it chose to create a 63-article constitutional declaration to partially assuage the fears of those who had opposed the amendments on the ground that a new constitution altogether was a preferable choice. The debate over the referendum itself turned out to be largely about other things than the content of the amendments, and gave an early taste of some of the emerging divisions in an Egypt where for the first time in a long time politics matter again. For many, this ended the moment of national unity that followed the departure of Hosni Mubarak and the country celebrating its revolution. It also precipitated a shift in debate, away from defining what the end-goal of the revolution — a democratic state — might look like.



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Instead, it became dominated by questions of stability — defined as the transition process chosen by SCAF, even though the range of alternatives remained unclear — and the question of Islam’s role in public life. Among the “yes” voters in the referendum, most mobilized in support of the army and in favor of a return to normal life after almost two months

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of disruptions, during which many suffered from a drop in income and from insecurity. A substantial minority, driven by campaigns by the Muslim Brotherhood and Salafist Islamists, saw the referendum as a debate over Article 2 of the 1971 constitution, which stipulates that “Sharia is the source of legislation”, even though this was in fact not part of the proposed amendments. The fact that the Muslim Brotherhood endorsed the constitutional amendments and called for a “yes” vote alone led many, including leaders of the Coptic Orthodox Church, to see the vote as a debate over the role that Islam should play in Egypt’s political life. Yet, the Muslim Brotherhood’s motivations appeared to be entirely secular, particularly since the relationship between Sharia and state law was not in fact at stake: the movement of the Muslim Brotherhood, facing for the first time in its 80-year history the prospect of full legalization and integration into political life, decided to back the position of the military. That it, along with other Islamists, encouraged voters to understand the “yes” vote as a backing for a religious state was in fact an (arguably dishonest) electoral maneuver, and not about the fundamentals of the poll.

On the “no” side, many decried the referendum process itself. One initial complaint was the appointment of the respected but culturally conservative jurist Tareq al-Bishri as the head of the constitutional committee tasked with drafting the amendments. There was also concern regarding other members of the committee. For many, the inclusion of a former Muslim Brotherhood MP, Sobhi Saleh, was puzzling. Saleh, although a practicing lawyer and professor of law, has no particular constitutional expertise. Other judges on the committee were seen by some activists as being too close to the former regime. The scheduling of the referendum was also contested. Some argued for more time to discuss the content of the amendments and to inform the public about what they would be voting for. Others argued that too quick a transition would be to the advantage of the two strongest existing political forces: the Muslim Brotherhood and the remnants of the National Democratic Party (NDP). Indeed, only two days before the referendum was held, many newspapers still speculated that it would be canceled. The rush to hold the referendum may be in part explained by the military authorities being alarmed by how quickly the “no” position was spreading among the political and intellectual elite, and on television. It appears that the “no” side —mainly representatives of liberal and leftist trends within the political spectrum, including prominent political leaders and presidential hopefuls such as Secretary-General of the Arab League Amr Moussa and former Director-General of the International Atomic Energy Agency Mohamed El Baradei — would have preferred an alternative to what the military proposed, namely an amendment to the 1971 constitution which would lead to new parliamentary and presidential elections under the same electoral system, but with limitations to the office term and to the powers of the president.

A national feeling of elation prevailed, now, that after the deeply flawed election of November 2010, Egypt was finally holding what was perceived by most as a free and fair

election: the referendum was held peacefully, with only few reports of irregularities; an important turnout in which 41% of eligible voters cast their votes (while not a high percentage in absolute terms, it is the highest turnout seen in decades of polling under Mubarak). Even among activists who said that they had witnessed irregularities — unstamped ballots,

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the presence of campaigners inside the polling station, the absence of judges who monitor the process and lack of privacy for voters — there was a sense that the sanctity of the referendum had to be accepted, and that the debate had to move on.

### A Blueprint for Transition?

For SCAF, the referendum was an endorsement of its transition plans. Within a week of the results, SCAF announced that it would set the constitutional framework that would lead to new elections and a return to civilian government. Yet, the messages it sent were muddled. Although the referendum had been about amendments to the 1971 constitution (and the opposition vote was mainly motivated by the preference of a new constitution), SCAF arbitrarily decided to issue a “constitutional declaration” that included the amended articles as well as others inspired from the 1971 constitution, rather than to restore the old text outright. This raised the question of why it had not been made clear what the vote in the referendum was about, why the “constitutional declaration” had not been submitted in its entirety for referendum, and why consultations with political forces on the whole process had not taken place. From SCAF’s point of view, not restoring the 1971 text may have been a concession to the “no” voters

for whom this text, so frequently violated by the old regime, no longer had authority. But if so, this concession backfired and made the legal logic by which SCAF acts ever more baffling.

Nevertheless, there is a general consensus that the “constitutional declaration” is a good enough interim document to regulate political life. It includes positive measures, such as making a renewal of the Emergency Law (which SCAF says will remain in place until the parliamentary elections) subject to a referendum. It also grants the right to establish free unions, associations and political parties. It restricts the authorities’ power to conduct surveillance or arrests without judicial consent; and it specifies the right of detained or arrested citizens to be free from torture, and stipulates that a confession extracted under duress is null and void. Further, freedom of the press, of expression, of assembly and freedom of religion are guaranteed. All of these steps send a positive signal, even if the military’s practice (notably its use of military tribunals and torture of protestors) falls short of this. The constitutional declaration also stipulates that Egypt is a democracy, another positive signal intended to assuage the fears of “counter-revolution” among the protest movement. Likewise, it includes a reference to Sharia being the source of legislation, in line with the previous constitution, as a move towards reassuring conservatives.

The confirmation that parliamentary elections will be held in September 2011, and presidential elections within the following two months, also settled the debate over whether more time should be given to new parties to prepare. Again, this was a compromise between those who wanted a return to civilian government as soon as possible, and those who were alarmed by the thought that if parliamentary elections were to be held as initially planned in June 2011, the NDP and Muslim Brothers would overwhelm newer parties. And yet again, the decision-making process of SCAF was inscrutable, confirming for many that the military is essentially operating

without a plan and is making decisions mostly based on what it believes the public will tolerate. The dismissal of Prime Minister Ahmed Chafiq after a disastrous appearance on a television show and the late replacement of the ministers of information, justice and foreign affairs in February — which was the result of mounting public outrage that they remained in their posts— had suggested this already, . There are other signs that SCAF is being guided by a sense of what it can get away with rather than by a clear blueprint.

After the referendum, SCAF also issued (by decree) two new important regulations for political life. One was a modification of the political parties law setting out the rules for the formation of new parties. Again, there was criticism that these rules were concocted without consultation with political forces, and that these rules included unusual changes, such as banning Egyptians holding a foreign passport from leading or funding a party, or such as raising the number of signatures needed to form a party from 1,000 to 5,000 (a rule that could hurt smaller parties.) Another decree, raising grave concerns, seeks to criminalize strikes and protests that are held “against the national interest.” This decree provoked a series of protests, culminating in the biggest demonstration since the clearing of Tahrir square in February. At a time when new independent trade unions are forming, and strikes are taking place at many public

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sector institutions with the aim to get rid of the former regime cronies who head them, the vaguely-worded ban was seen by many activists as a “counter-revolutionary” move. They worry that, even though this decree has

not been implemented thus far, it will hang as the Sword of Damocles over the activists, who have decided to continue contesting SCAF’s arbitrary decisions.

Other, less important, decrees also showed that SCAF was eager to be responsive to public opinion. The 1 April demonstration was largely one against corruption. The day before, the military had announced that the assets of three key political figures of the Mubarak regime — former chief of presidential staff, Zakariya Azmi, former Secretary-General of the National Democratic Party, Safwat al-Sherif, and former Speaker of the People’s Assembly, Fathi Surour — were frozen, and that they were banned from traveling. For critics, this move only reinforced the impression that SCAF was dragging its feet on combating corruption. Similarly, SCAF, on the day following the protest, appointed four judges to help hasten investigations into corruption. The decision yet again showed that the military is willing to be responsive to public pressure, but also that it is struggling to remain ahead of it.

### No Systematic Approach

Egypt now has the basic framework for its political transition back to civilian rule: an interim constitution and rules for political participation. The referendum showed that religion may become a major point of contestation in the coming elections, especially so because the next parliament will be tasked with drafting the new constitution; Islamists have built on the fear that secularists would remove references to Sharia from the constitution as a rallying point. Moreover, the political scene is undergoing a major structural shift. The Muslim Brotherhood, forming at least one “new” party (some dissidents could form another) finds itself, for the first time, faced with potential opposition from other Islamists, whether ultra-conservatives such as the Gamaa Islamiya (a former terrorist group that has renounced violence), or the previously apolitical Salafist movement. Liberals and leftists, on the other hand, are in the process of overhauling existing parties and expanding their

grassroots presence, in addition to forming new parties and coalitions. They must also develop a strategy for competing with Islamists and overcoming the latter's reliance on religion as

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a rallying point. Meanwhile, the NDP could still be banned (a lingering demand of activists) and its remnants may form new formations that will seek allies either with secularists or Islamists. The military, for its part, could be tempted in creating a new party in the NDP mold to ensure it has a political counterpart to its executive power. In short, Egypt is about to undergo a political gestation period and the new political landscape may not be entirely clear for several months.

In the meantime, many questions related to transitional justice remain unresolved. There is no systematic approach to handling corruption cases, and those of abuse by officials of the former regime, or even to preparing for an overhaul of the security sector — despite demands for this from the general public and activists. SCAF has thus far ordered trials of

individuals on ad hoc basis, but is not carrying out any public accounting for the system as a whole. This is partly understandable, since the military — particularly senior officers such as Minister of Defense, Tantawi, or Chief of Staff of the Armed Forces, Sami Enan — was part of that system. Nor is SCAF taking any measures towards establishing any kind of truth and reconciliation commission to deal with the decades of abuse practiced by the police state through its different institutions such as State Security, whose Cairo headquarters were raided by activists in February. The question of what will happen to the Mubarak family will have to be addressed too.

It could be argued that these issues can be tackled at a later point, for instance by a freely elected parliament and president. But it would also be naive to expect that the military will not impose “red lines” on what the parliament and president can do, be it with regard to policy issues (such as foreign policy and the peace treaty with Israel) or to transition issues (such as limiting investigations into corruption, so that military corruption is not tackled.) This is why many Egyptian activists prefer to continue pushing now, having seen that the military is responsive (and indeed may be internally divided on how to proceed). The debate has now shifted to the question on how far to push, and whether pushing too hard could alienate the substantial part of the population for which the stabilization of the economy and ending insecurity is more important than the abstract issues of democratic transition.