What future awaits Egypt’s political parties? Analyzing new legislation for the House of Representatives

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This paper analyzes a new legislative election law, issued on June 5th 2014 by then-President Adly Mansour, which endangers the functioning of Egypt’s political parties and parliament. The paper outlines the most important characteristics of the new law, particularly those relating to the political positions and constitutional benefits put forward in the 2014 constitution for select social groups (women, Christians, young people, workers and farmers, those with disabilities, and Egyptians living abroad). The paper explains the most significant shortcomings of the new system, especially its bias towards the individual electoral system and the marginalisation of the list system. It analyzes the use of a completely closed list system which, while proportional, empties the list of any meaningful content and removes its most important characteristics.

The paper then analyses the most significant negative effects expected to result from this new system on the functioning of political parties, the House of Representatives and on Egyptian political culture. Finally, the paper suggests an alternative electoral system that would achieve a balance between the list system and the individual system while maintaining the constitutional benefits put forward in the 2014 constitution for select social groups. This suggested alternative system is put forward in the hope that Egypt’s political parties will use this paper to offer an alternative and to exert pressure on decision makers to change the new electoral system and avoid the closing down of political space in Egypt.
On 5 June 2014, a few days before General Sisi became president, temporary President Adly Mansour issued a law covering the issue of elections to the Egyptian House of Representatives. Mansour had consulted the state council, discussed the resolution in the minister’s council and a few days before it was issued, submitted the draft law for public debate. This debate, however, had not been completed and had been limited to brief, secret meetings with a small number of the political elite. The law was then issued in an even worse form than the draft law of a few days before. As soon as he issued the law, a number of public figures, intellectuals and political activists expressed their deep anxiety and resentment of the law, which puts the future of parliamentary and party activity at stake.

The new law in the context of the 2014 constitution

Before reviewing the most important features of the new law for the House of Representatives, we should acknowledge three major changes made to the parliament’s activity since the 2014 constitution came into force. The first change is introduction of a unicameral system after more than three decades with a bicameral system. While the short-lived 2012 constitution had restored some authority and legislative powers to the upper house, renaming it the Shura Council, for most of Egyptian history the bicameral system was not of great benefit, with a weak upper house that was more consultative than legislative.

The second change is that the unicameral House of Representatives has wide ranging powers in creating a government, with the participation of the president, so that for the first time parliament calls upon the president in case of forming a government, in accordance with Article 146 of the 2014 constitution. In this way, the 2014 constitution takes a significant step towards finishing what was begun in the 2012 constitution: the creation of a mixed system that allows the majority party or coalition to form a government with its leader, the prime minister, as the second head of executive authority next to the president of the republic.

The third and final important change comes in Article 161 which has given the House of Representatives the right to withdraw their confidence from the government. This is a big development in Egypt’s constitutional history since the Egyptian parliament has never been able to withdraw its confidence from the government. This is in addition to a number of powers granted to the House of Representatives in relation to the government, developing its supervisory and legislative powers.

However, these powers are all conditional upon the existence of strong parties within the House of Representatives, since Articles 161 and 146 will be suspended in the event of fragmentation of political parties within the parliament or their bias towards the interest of independents. This is because the formation of a government, faced with either the participation of the president or with a withdrawal of his confidence, requires a strong party or coalition to form a parliamentary bloc that can exercise these powers rather than their remaining merely ink on paper.
Key features of the new law

- The law stipulates in Article 1 that there should be 540 elected members in the new parliament, which will be formed after the election of the president of the republic. The president will be responsible for appointing 5% of the members (27 members), according to his constitutional powers, for a total of 567 members, one of the largest parliaments in the era of the republic.

- Similarly, the law stipulates in Article 3 that there should be a mixed system for electing members. It gives the greater share to the individual system with 420 members, or 74.1% of seats, and only 120 members for the closed lists system, or 21.2% of seats. Independent candidates and parties may put themselves forward as candidates in either system.

- Article 4 stipulates only four districts at the national level and leaves the formation of lists for these districts to a subsequent special law, which will be concerned primarily with representation for population densities in the governorates.

- Article 5 outlines a very complicated system for closed lists, making them conditional. It has created two small lists, each consisting of 15 candidates, and two other big lists, each consisting of 45 members, and each list has a different condition. The two small lists are required to have the following composition: three Christians, two workers and farmers, two young people, one candidate with a disability, one candidate from among Egyptians abroad, and at least seven should be women. The large lists must have nine Christians, six workers and farmers, six young people, three disabled people, and three Egyptians living abroad, while the whole list should have at least 21 women.

- Finally, Article 5 also put forward the condition that each member should maintain the characteristics that they put themselves forward with. They should not change their party or independent affiliation and cannot lose membership without a two thirds majority in the House of Representatives.

The most important criticisms directed at the law

The law has some features that which were put forward in the 2014 constitution, where positive discrimination was introduced for a number of groups. For the first time, women will have at least 56 seats (9.9%), Christians will have at least 24 seats (4.2%), young people (aged between 25 and 35) will have 16 seats (2.8%), those with disabilities and those living abroad will each have 7 seats (1.3%). For the first time, the number of workers and farmers will fall to only 16 seats (2.8%), a significant drop from the 50% of seats they controlled according to the constitutions before the revolution. People tried to use this past requirement by faking their characteristics, and therefore this decrease is a good change in any case. However, these features are constitutional benefits provided by the 2014 constitution in Articles 243 and 244 (in the paragraph on transitional rules) and they are all temporary benefits. The constitution guarantees them only for the first House of Representatives after the ratification of the
constitution, meaning that these benefits could be lost in the following parliamentary elections.

The law suffers from a number of defects, which will greatly limit party and parliamentary activity in multiple ways:

- The law is clearly biased towards the individual electoral system, which is given 420 seats. Electoral systems greatly influence the political system, and the individual system usually leads to control by one or two important parties, marginalizing small or new parties. In the Egyptian case, we see that in the previous decades it suffered from the dominance of the individual system which was merely a tool to consolidate the power and hegemony of the former National Democratic Party. In the Mubarak era, this system usually allowed individuals with social or financial privilege, or with the support of the regime, to dominate the seats, while formal parties were marginalized and had to be content with symbolic representation and a cartoon opposition. One of the most important gains of the revolution was the creation of a mixed system in which the list system receive a greater share (two thirds list system and one third individual system), and which led to a temporary recovery allowing political parties to arrive in parliament. With the new law, however, Egypt is returning once more to the old systems which decisively block party pluralism. It does not allow parties to obtain a significant number of seats in parliament, undermining the relationships between parties and their members, so that party membership becomes merely politically interesting – useful for social prestige and nothing more.

- The dominance of the individual system will also likely influence very much the form of the coming government. It is expected that that the future House of Representatives will have two negative characteristics. First, there is expected to be a splintering of parties with perhaps 10 or 15 entering parliament, but none will be able to obtain enough of a majority to form a government. Second, this system will strengthen opportunities for tribes and businessmen to control seats in parliament. This ultimately means that we could see a parliament composed of fragile alliances which will be weak in contrast the powers of the president. Parliament would be weak and controlled by the executive authority, an issue which Egypt has suffered from greatly in the past and which would completely undermine the parliamentary experience, especially given the unicameral parliament.

- The dominance of the individual system will lead to the strengthening of the voting culture of the Egyptian elite which treats its representation in the parliament as a service to mediate between itself and the government to obtain personal, familial or tribal benefits, rather than as a representative in policy making or in overseeing the work of the government. There is no doubt that we are on the way back to the approach which channels the voting considerations of the elite, pushing them to act in favour of links related to fame and blood. This system opens the door to the political money and clientilism that have long afflicted Egypt. It is strange that through a hysterical media campaign that has accompanied the discussion and issuance of the law, the idea has spread that the reason for this system is a desire to exclude the
Muslim Brotherhood from the scene. This is close to the thinking of the political elite and the state apparatus, and is a dangerous phenomenon because it is not permissible in a democratic system to exclude a specific faction deliberately without just laws for doing so, and because this issue does not apply to the members of the former National Democratic Party. It seems that the new system will offer them the kiss of life to return to parliament and perhaps participate in forming the government once more. This premise of exclusion is mistaken, however, since the Brotherhood and others were to obtain significant parliamentary representation able in the election of 2012 through individual seats. There is no statistical evidence linking the form of electoral system with opportunities for the Brotherhood to arrive in parliament.

- The law is also wrong with its limited conditions for representation of groups with particular characteristics (Christians, women, young people, those with disabilities, Egyptians living abroad). These requirements ensure that only six of fifteen candidates in small districts will be freely chosen representatives (without conditions attached), and even among these there will probably be women included as a condition. The rate of free representation (without conditions) in the larger districts reaches only 18 seats, while 27 seats will be conditional and, again, even these free seats are not guaranteed because women could be represented in them on account of the condition that the list should include at least 21 women! This means that the formation of the list will be mainly limited by category characteristics, and will not permit the party the freedom to decide its candidates. The launching of the ‘free lists law’ is perhaps not significant because it is in fact conditional.

- The most serious problem with this law is that it has made limited conditional lists of the closed lists! In other words, it has stripped the list system of one of its most important characteristics: proportional representation. With the conditional list, the list either entirely succeeds or entirely fails, and the condition of its success is that it obtains at least 50%+1 of valid votes. If it does not obtain this proportion in the first round, the first two lists enter a second round for a re-run. This results in the copying of the individual system with all its faults and entirely empties the list of all its meaning. This could result in the removal of parliamentary and party activity, allowing domination by the state apparatus and connected businessmen, which could have huge reverberations for the Egyptian political system.

- Finally, the small number of districts (two large and two small), and the widening of the geographical distance to form one district, affects the homogeneity of the candidates and weakens their relationship to their voters. A densely populated area comprising 19 governorates is thus divided into only 4 districts, one of which has 40 seats. This means that we see the representation of all of the governorates of Upper Egypt in one district and all the governorates by the sea in another district. This means that there is no homogeneity in electoral districts and removes any rational determinant for voting, especially since the door has been opened for independent candidates to compete in the regional lists too!
Is there an alternative?

This law means that we are facing a targeted operation to damage political and party life by nationalizing the parliamentary process. The law is an attempt to make the electoral process one of the means by which the regime can pursue a policy of carrot and stick with its opponents, marginalizing small, medium-sized and new parties, and preventing any large party from becoming established outside the heart of the system. It is expected that on the basis of this law, huge electoral alliances will be created, financed by businessmen and controlled by the state apparatus with the cooperation of a limited number of parties and in alliance with traditional networks of interest. Consequently, the political parties should resist this law through all means at their disposal to pressure the regime to bring in essential changes, with the goal of restoring the path to democracy in the country once more. In this context, the writer of these lines suggests, in light of the conditions of the 2014 constitution, the following system as a substitute for the system that the law of the House of Representatives has established:

- Parliament should be composed of 600 seats, of which the president would appoint 30, according to the constitution, while 570 would be elected.

- The election of the 570 would be through a three level system, with 350 (57.3%) seats allocated through the proportional list system, 120 seats (20%) allocated through the individual system, and 100 seats (16.6%) allocated through the system of conditional closed lists, and the remaining 5% of seats (30 seats) appointed by the President as already described.

- The republic would be divided into 35 districts for proportional lists, each with ten seats. The republic would be divided into 120 individual districts and five conditional closed districts, each with twenty seats, to achieve the constitutional benefits stipulated in Articles 244 and 243 of the 2014 constitution.

- With regards to the five closed conditional districts, the twenty seats would be divided as follows:
  - At least 6 seats for Christians (for a total of 30 seats or 5%)
  - At least 4 seats for workers and farmers (for a total of 20 seats or 3.3%)
  - At least 4 seats for young people (for a total of 20 seats or 3.3%)
  - At least 3 seats for people with disabilities (for a total of 15 seats or 2.5%)
  - At least 3 seats for Egyptians living abroad (for a total of 15 seats or 2.5%)
  - At least 12 women (for a total of 60 seats or 10%)
In this way, the suggested system could achieve the difficult formula required by the 2014 constitution, achieving a balance between the individual system and the list system while giving greater weight to the list system. This system has some advantages. First, it achieves an ease of voting because each voter will have to mark a name and a symbol of one proportional list, one closed list and one individual candidate. Second, it avoids the serious problem of the current law of giving greater relative weight to the list system. This will support the position of parties and restores them once again to political life. It will also restore the proportional list system as an alternative to the completely closed current system which empties the list of any meaning. Lastly, it also safeguards representation for the categories that obtained constitutional benefits in the 2014 constitution to the same extent as is suggested by the current law, even increasing them in certain cases. The chart below compares the proportional representation of the aforementioned groups in the current system with the suggested system.

Table 1: Disadvantaged groups under the current law and the suggested system

<table>
<thead>
<tr>
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<th>Proportion of seats in parliament under the current law (570 seats)</th>
<th>Proportion of seats in parliament under the suggested law (600 seats)</th>
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</thead>
<tbody>
<tr>
<td>Women</td>
<td>9.9%</td>
<td>10.0%</td>
</tr>
<tr>
<td>Christians</td>
<td>4.2%</td>
<td>5.0%</td>
</tr>
<tr>
<td>Workers and farmers</td>
<td>2.8%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Young people</td>
<td>2.8%</td>
<td>3.3%</td>
</tr>
<tr>
<td>Those with disabilities</td>
<td>1.4%</td>
<td>2.5%</td>
</tr>
<tr>
<td>Egyptians living abroad</td>
<td>1.4%</td>
<td>2.5%</td>
</tr>
</tbody>
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