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The absence of the legislative body and the future of politics in Egypt

By Ahmed Abd Rabou*

Egypt has been without a legislature since July 2013 with authority instead resting solely in the hands of the president, a situation that has not only prevented the balance of power but that has also derailed political life and the possibility of pluralism. Currently, the lack of a legislature has been the result of repeatedly postponed parliamentary elections. While these delays have officially been associated with the unconstitutional election laws, in particular the division of electoral districts, they are also defined by a lack of political will amongst numerous state institutions and political forces who see a representative parliamentary authority as a threat to their current status. The absence of a parliamentary authority may have dire consequences for Egypt and its foreign policy, especially in light of on-going regional instability. Egypt sits at a crossroads, facing the choice of either continuously postponing or rushing parliamentary elections, with both resulting in a highly fragile or short-lived parliament. To avoid this, the country's political forces must work together to press for constitutional change and meaningful political inclusion.

Introduction

Egypt has been formally without a legislative or representative authority since the dissolution of the Shura Council in July 2013, in the wake of former president Mohammad Morsi's removal from power. Yet even prior to this, Egypt did not have a proper legislative authority: the Supreme Court dissolved the People's Assembly a few days prior to Morsi's election, and the Shura Council, which assumed a legislative role through the transitional provisions of the 2012 constitution, was plagued by extreme structural weakness and low electoral legitimacy.¹ For the first time since the 1950s, Egypt has had no legislative body for an entire year (2014), and indeed in the fifty-two months since January 2011 the country has had a representative legislature for only six months. This absence could last even longer now that the

¹ Though there were big differences in the turnout for the Shura Council the closest to reality is perhaps 12%; see Khalil Clift, "Confusions over Voting Numbers in Egypt," (Arabic) June 4, 2012: <http://www.middle-east-online.com/?id=132489>

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Constitutional Court decreed the unconstitutionality of Article 3 regarding the division of electoral districts, issued hours before new President Abdel-Fattah el-Sisi's inauguration.²

In this state of legislative limbo, three critical issues must be addressed;

- The nature and implications of Egypt's unconstitutional Elections Law,
- The reason for the political backlash against the establishment of a representative legislative authority,
- Egypt's political future in light of the continued absence of a legislative body.

This paper addresses these issues and lists a number of recommendations regarding the future of the country's election laws and legislative authority.

Background: 2010-15 the legislative authority after the revolution

Following the overthrow of Mubarak, the Supreme Council of the Armed Forces (SCAF) ordered the dissolution of People's Assembly elected in 2010 and the suspension of the 1971 Constitution. They also called for a public referendum on the new Constitutional Declaration in March 2011 thus, opening the door to parliamentary elections which were followed by presidential elections and a new permanent constitution for the country. An intense debate ensued in Egypt regarding whether the constitution or parliament should come first and there was revolutionary pressure from the street to speed-up the transition from military rule and establish an elected bicameral representative authority. Following some manoeuvring by the SCAF, the Muslim Brotherhood, and some liberal and leftist forces, legislative elections to the People's Assembly (the lower chamber) were held between 28 November 2011 and January 2012, resulting in an overwhelming victory for the Brotherhood and Salafists, who won almost 70% of parliament's seats. This was followed by elections to the Shura Council (the upper chamber), also won overwhelmingly by the Islamists due to low voter turnout and the withdrawal of a number of liberal and independent candidates, who were discouraged by the outcome of the previous elections and the weakness of the Council's prerogatives.³

A few days later, an argument arose regarding the Islamists' sway over the legislative process and membership to various committees, and the fact that they had distanced themselves from their earlier slogans promoting consensus and partnership-building.⁴ The People's Assembly did not last long: in June 2012, a few days before the second round of the presidential elections, the Constitutional Court ordered its dissolution due to the unconstitutional nature of certain articles of the Elections Law, chief among them the restriction of independents from competing for two-thirds of seats. And although new president Mohammad Morsi reinstated

² The Official Gazette, No. 9, March 1, 2015.

³ Article 37 of the Constitutional Declaration, issued on March 30, 2011, said only to "consider the opinion" of the Assembly in the State's Economic and Social Development Plan, draft laws and decisions relevant to the state's public policies without any commitment to implement it; http://parliament2011.elections.eg/images/Laws/1_%20%202011%20-%20%202011.pdf

⁴ See e.g. a member of the People's Assembly reciting the Koran in parliament, "A Representative Recites the Koran in Parliament and Al-Katatni Stops Him," (Arabic) ONtv, February 7, 2012; <https://www.youtube.com/watch?v=TO3ZNA0qxYo>

the People's Assembly a few days after his election, it was once again dissolved through SCAF manoeuvrings and a Supreme Court decision.⁵

From then on, the two parties continued to exchange strategic moves until Morsi issued a supplementary constitutional declaration in November 2012, giving himself immunity against challenges by the Supreme Court, and protecting the Shura Council and Constituent Assembly against dissolution until a new People's Assembly could be elected – manoeuvres which angered the liberal and leftist forces. Though he was forced to revoke the declaration, he kept in place the right of the Shura Council to legislate until a new bicameral parliament could be elected.⁶

In the aftermath of Morsi's removal from power in July 2013, the legislative authority reverted back to the presidency, this time to Interim President Adly Mansour who assumed the position as the head of the Constitutional Court only a few hours before Morsi's deposition. The six months during which the legislative power was in the hands of the Shura Council (January 2013 to July 2013), it was still not enough time for it to introduce any effective legislation. Clashes with the other political forces and state institutions, especially the judiciary, had taken place concerning the constitutionality of the Council's legislative authority. The struggle intensified with the Supreme Court's use of its oversight prerogative to declare null and void the division of electoral districts relevant to the election of the new People's Assembly which was scheduled for summer 2013.⁷ Instead they called for the postponement of elections to an unspecified date.

The situation hardly improved after Morsi's ousting, democracy evaporated not only as a result of state violence and the spread of armed terrorist groups but also because the legislative authority stayed in the hands of the president. Legislative elections were again postponed three times in the span of twenty months. On 3 July 2013, then Defence Minister el-Sisi called on the Supreme Court to quickly approve the draft law relevant to election of the People's Assembly however, this was issued a full year later, resulting in the postponement of the presidential election pending amendment of the new constitution.⁸

⁵ A review of the timeline of these events reveals the extent of the confusion, maneuverings and conflicts in Egypt at that time; the first round of the presidential elections had taken place on May 23 and 24 and, on June 15 of that same year, the court had dissolved the Assembly. Twenty-four hours later, and after meeting with the Military Council, General Tantawi implemented the dissolution decision and issued a supplementary decision on June 17 in which he kept the legislative prerogative for himself until a new People's Assembly is elected, this took place the same day the second round of the elections between Mohammad Morsi and Ahmad Shafiq was unfolding. While it was expected to announce the results and Morsi's victory on June 18 or 19, this was delayed by a week to June 24. After taking the oath of office in front of the Supreme Constitutional Court, on July 8 Morsi annulled the decision to dissolve parliament but retreated from his decision before annulling, on August 12, 201, the supplementary decision issued by the Supreme Military Council. This allowed him to retain the legislative authority, sideline Tantawi and other members of the Military Council and appoint Sisi as Minister of Defense, after promoting him to Lieutenant General. See other amendments in detail at: https://www.youtube.com/watch?v=wt7YD_LI9oQ

⁶ The 2012 Constitution gave the Shura Council (Articles 128 to 131), and for the first time in its history, wide legislative and oversight prerogatives before being entirely annulled by the 2014 Constitution, which retained a single chamber parliament.

⁷ According to Article 177 of the 2012 Constitution

⁸ El-Sisi's statement, decision to remove Morsi from power and announcement of the road map, July 3, 2013; <https://www.youtube.com/watch?v=Zf17ORjIA>

Egypt's new constitution, which went into effect January 2014, laid the way for legislative and presidential elections in July 2014 through stipulations in Article 230. A decision has been taken that the presidential election should be held first, but no clear date for the legislative elections was decided, instead the text ambiguously referred to the date by which electoral procedures should commence. Thus, Egypt saw the formation of the Supreme Election Committee as a "procedure" without a time limit, with the text of Article 230 considered as mere administrative guidelines.⁹ Parliamentary elections therefore could be postponed without violating the constitution.

Following a strong publicity campaign featuring figures from the media as well as the legal, academic, and political communities, the idea spread that Egypt was not ready for parliamentary elections given the war on terrorism and the need to free the president's hands. Nonetheless, the president reaffirmed in a dialogue with the press the need to hold the elections and information was leaked that they would take place before the Economic Development Conference scheduled for March 2015 to encourage potential investors in Egypt. The door for candidates to register for the new parliamentary elections was thus open again, but only after a restrictive law was issued. However, the Supreme Court once again declared Article 3, regarding the division of electoral districts, unconstitutional, thus causing another postponement.¹⁰

The elections are not expected to take place before summer 2015, if not later.

The forces at work

Before looking in detail at the reasons why the law was deemed unconstitutional and at the future of parliamentary elections in Egypt, it is worth considering the constant manoeuvrings by state institutions.

- Some state agencies, especially the security apparatus, and other traditional political forces clearly fear the existence of a parliament that could act as a second authority next to the president and his government. The right to legislate, draft laws, form committees, and veto, which are currently the President's prerogatives, could actually institute a

⁹ Regarding the debate on understanding this article and specifically the meaning of the word "procedures", compare between: Tamer Abou Arab's "Who Will Hold Sisi into Account?" (Arabic), in al-Arab al-Yaom, August 27, 2014; <http://www.almasryalyoum.com/news/details/510149> and Rania Talha and Abdallah Muftah, "Constitutionalists: Parliament's date in the Constitution is organisational in nature and could be contravened," (Arabic) al-Misriyoun, October 14, 2014; <http://almesryoon.com/%D8%A7%D9%84%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%D8%A9/575133-%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%D9%8A%D9%88%D9%86-%D9%85%D9%88%D8%B9%D8%AF-%D8%A7%D9%84%D8%A8%D8%B1%D9%84%D9%85%D8%A7%D9%86-%D8%A8%D8%A7%D9%84%D8%AF%D8%B3%D8%AA%D9%88%D8%B1-%D8%AA%D9%86%D8%B8%D9%8A%D9%85%D9%8A-%D9%88%D9%8A%D9%85%D9%83%D9%86-%D9%85%D8%AE%D8%A7%D9%84%D9%81%D8%AA%D9%87> and

c) Mustafa Eid, "A legal debate at the Supreme's first meeting regarding the date of the elections' announcement," (Arabic) July 18, 2014 ;

<http://www.shorouknews.com/mobile/news/view.aspx?cdate=18072014&id=14d300eb-d128-49e3-add6-6e079ff879ad>

¹⁰ Although President El-Sisi instructed the legislative Committee charged with drafting the election law to amend the said law within a month, after it was deemed unconstitutional, until now nothing new has been heard from the Committee.

certain balance of power, albeit small. Such a configuration is rejected out of hand by various state agencies and political forces who use all means available to impede it.

- Certain state institutions, specifically the judiciary, army, and interior ministry, are exceedingly protective of the gains they achieved after 30 June 2013, particularly in light of the genuine threat to their power they faced after the January 25 Revolution. For these institutions, reaching an understanding with a single authority (the president and his government) is a far better option that offers more guarantees than having to pressure two different institutions. Moreover, applying pressure on the legislative authority in addition to the presidency would not be easy if new political forces were to win seats.
- There is also fear of not being able to control the new parliament given that myriad political groups now exist. There is no longer a large state organisation, like the National Party or Socialist Union, to coordinate among different state institutions and parliament regarding draft laws, oversight reports, and other tools and functions of parliamentary representation. The absence of such a large organisation renders the warring agencies and institutions fearful that parliament could eventually see the rise of adverse political forces. This also explains the president's call, in a meeting with political parties, for preparing a unified national electoral list - a move that is provoked by the absence of large state organisation.¹¹
- There is also great fear of the opportunities available to the Islamist currents inside parliament, given the current chaos among the state's electoral alliances and their liberal counterparts. However, although the opportunities available to the Muslim Brotherhood and other Islamist groups are limited in light of the security mobilisation against them, the Salafist Al-Noor party and its supporters remain a thorn in the regime's side. While an important ally that cannot be forfeited at this time, the Al-Noor party has a strong organisation that the liberal and leftist political groups do not. This could increase their chances of reaping a number of seats that would allow them to influence the legislative, oversight processes and the formation of the government.
- In addition, and for the first time in the Republic's political history, the new parliament enjoys wide prerogatives that effectively make it a powerful authority that could bring equilibrium to the decision-making process - a situation with which Egyptian security and government agencies are unfamiliar with. The new parliament could, in cooperation with the president, form and dismiss a government, dismiss the president of the republic, and override presidential vetoes on legislation with a two-thirds majority. The new parliament is also endowed with other oversight prerogatives and the ability to prevent the president from declaring a state of emergency. Moreover, the chapter pertaining to transitional provisions in the 2014 Constitution gives the new parliament a series of responsibilities regarding issues that have long been kept in the dark. Reopening these issues would provide an opportunity to form new and non-traditional political equilibriums. These include the issuing of a law on the building and restoration of churches, which would allow the Christian community freedom of religious worship,

¹¹ Mohammad Izz et al, "After meeting el-Sisi, the parties are looking for a unified list," al-Ahram, January 6, 2015; <http://www.ahram.org/News/51428/60/NewsPrint/354455.aspx>

and the issuing of a law that organises the secondment of judges and members of the judiciary in a manner that would bring an end to all partial and total secondment of non-judicial staff. Moreover, the Constitution requires the parliament to issue a law on transitional justice, an unsettling task that has repeatedly been postponed since the 2011 revolution.¹²

Although some will say that it is unlikely the new parliament will have the ability to perform all these challenging tasks and issue laws that could change the status quo, the mere fact that the potential for them exists is unnerving for certain forces and hawkish elements in the regime. This is especially true since a weak and scattered parliament does not necessarily mean that the executive authority would be able to control it, and could instead create a chaotic situation that destabilises a regime in search of political and economic stability at any cost.

Deeming the elections law unconstitutional

After a long period of procrastination, delay, hesitation and pressure from public opinion, a date for the parliamentary elections was finally announced in January 2015. The elections would be held over two stages, the first starting the third week of March 2015 and the second at the end of April 2015.¹³ It seemed that the announcement would put an end to the lengthy dispute and negate the rumours and commentary that the president did not wish to hold parliamentary elections in order to prevent the legislative authority from being wrested away from him. The announcement also helped allay the fears of investors ahead of Egypt's Economic Development Conference confirming that the country was on the path to political stability.¹⁴ However, the election postponement trend was victorious in the end thanks to a case raised at the Supreme Constitutional Court requesting that Law no. 202 of 2014 be declared unconstitutional. A few weeks after the case was raised, the Egyptian media, both public and private, began laying the ground for an announcement regarding the unconstitutionality of the law, by hosting experts that challenged the election law and alluded to its unconstitutionality, in an effort to prepare public opinion for yet another postponement of the parliamentary elections. Several days later, Article 3 was declared unconstitutional followed by an announcement postponing the elections, again without specifying a new date.

A review of Egypt's Supreme Court's decision allows us to make five main remarks:

¹² See Chapter Five, Section One (Articles 101 to 138) and the chapter on transitional rulings Articles 235, 239 and 241), of the 2014 Constitution; <http://www.sis.gov.eg/Newvvr/consttt%202014.pdf>

¹³ The High Elections Committee in Egypt announces the timetable of the legislative elections, Aljazeera.net, January 29, 2015 ;

<http://www.aljazeera.net/news/arabic/2015/1/29/%D8%A7%D9%84%D9%84%D8%AC%D9%86%D8%A9-%D8%A7%D9%84%D8%B9%D9%84%D9%8A%D8%A7-%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D8%A7%D8%AA-%D9%85%D8%B5%D8%B1-%D8%AA%D8%B9%D9%84%D9%86-%D8%AC%D8%AF%D9%88%D9%84-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D8%A7%D8%AA-%D8%A7%D9%84%D8%AA%D8%B4%D8%B1%D9%8A%D8%B9%D9%8A%D8%A9>

¹⁴ The Conference was finally held in mid March 2015 a few days after the Constitutional Court's decision to postpone the parliamentary elections.

1. The regime stated that the article in question violates the texts of Articles 87, 90, and 102 of the 2014 Constitution that underline equality among citizens, and the need to ensure fair representation in the distribution of seats among various electoral districts. The Committee that created these districts is dominated by judicial figures who were mandated by the president and who had in theory reviewed the reasons for the Supreme Court's decision to deem the 2013 division of electoral districts unconstitutional. This begs the question how they could make the same mistake again given all the expertise involved. According to the Minister of Transitional Justice, the Committee had relied on a 20% deviation ratio between one district and the other, deemed reasonable at the time.¹⁵
2. The Court did not approve other nullification cases pertinent to the organisation of elections, including a claim regarding the unconstitutionality of Article 25 that places limits on electoral publicity. Other articles met a similar fate; Article 2 that designated social categories such as labourer, farmer, youth, handicapped, etc., Article 4 relevant to the number of seats allocated to individual districts that use the list system, and Articles 6 and 10 relevant to maintaining electoral qualifications and candidacy procedures.¹⁶
3. It is quite clear that although the text of the Supreme Court's decision regarding the unconstitutionality of Article 3 focused on the unfair representation of citizens both in and among different governorate districts, it failed to mention the inequality in both the ratio and manner of tabulating results to determine seat winners. This means that even if the law was amended in order to reduce deviation in the distribution of seats among the districts, failing to amend the manner of tabulating results will remain open to future challenges of unconstitutionality. This is an almost certain eventuality now that the Court has approved the new amendments to the challenged law.¹⁷
4. The reactions revealed large differences between those who saw the ruling as positive, safeguarding funds that would have gone to waste had the elections taken place only to see the legislature disband a short time later and those who saw it as an opportunity to redraw the road map entirely without the need for a parliament. There were also those who accused the president of seeking to monopolise the legislative process and others yet who attacked the Committee, which they blamed for the country's problem. These reactions reflect the fragility of the political situation in Egypt and the polarisation among different groups allied to the central authority since 3 July 2013, not to mention the opposition groups opposed to the arrangements of new regime, be they Islamists or liberal and leftist revolutionary forces.

¹⁵ Dina Abdel Khaleq, "Al-Huneidi: We view positively the Constitutional Court's decision regarding the division of districts," al-Watan newspaper, March 1, 2015; <http://www.elwatannews.com/news/details/674339>

¹⁶ The Official Gazette, No. 9 repeated, *ibid*.

¹⁷ Mahmoud Fayed, "The Government approves the amendments to the elections law," (Arabic) Al-Wafd website, April 16, 2015,

<http://www.alwafd.org/%D8%A7%D9%84%D8%A8%D8%B1%D9%84%D9%85%D8%A7%D9%86/844170-%D8%A7%D9%84%D8%AD%D9%83%D9%88%D9%85%D8%A9-%D8%AA%D9%82%D8%B1-%D8%AA%D8%B9%D8%AF%D9%8A%D9%84%D8%A7%D8%AA-%D9%82%D9%88%D8%A7%D9%86%D9%8A%D9%86-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D8%A7%D8%AA>

5. Despite the Egyptian government's announcement of a "societal dialogue" aimed at the amendment of the unconstitutional law, an organisational framework for such a process has failed to emerge. Fourteen different parties, chief among them Wafd, the Egyptian Social Democratic Party, as well as several other political currents and public figures, signed a proposed amendment that reserves 40% of seats to the individual system, 40% to the proportional lists, and 20% to the closed lists. However, other parties objected to the proposal and the way seats were distributed, accusing the signatories of seeking to secure a number of seats for themselves.¹⁸ Leaks to the press alluded that the High Elections Committee rejected the proposal as well.¹⁹ In an attempt to co-opt and absorb various parties, harkening back to the Mubarak regime's practice of power, Prime Minister Ibrahim Mahlab held a series of meetings with a limited number of party representatives rather than embark on a genuine effort to foster political pluralism.²⁰

Future of the political process in Egypt

The postponement of the parliamentary elections does not only solely concern the technical aspects of drafting election laws, but also the lack of desire by certain political players in Egypt to implement this particular stage of the transitional road map, given the fears mentioned above. Therein lies the dilemma. Without such a desire among the state's institutions and in the shadow of weakening political parties and other civil forces, political life in Egypt will remain stuck.

Outcomes of the postponement of parliamentary elections:

- The Supreme Constitutional Court's decision means that Egypt will remain without a parliamentary or legislative authority for at least six more months and it's unlikely that there will be a new legislative season before the end of 2015, if not the beginning of 2016. In the meantime, the President of the Republic will continue to hold both the executive and legislative authorities.
- Postponement means the potential to reconsider the decision to side line figures from the Mubarak regime, such as Ahmed Ezz, former Secretary General of the disbanded National Democratic Party. Former Prime Minister Ahmad Shafiq and many others who

¹⁸ See the proposals and debate: Mohammad Magdi el-Sisi, "New disagreement between the al-Misryeen al-Ahrar and Wafd Parties over the elections law...", (Arabic) al-Yaom al-Sabe', March 23, 2015 ;

<http://www.youm7.com/story/2015/3/23/%D8%AE%D9%84%D8%A7%D9%81-%D8%AC%D8%AF%D9%8A%D8%AF-%D8%A8%D9%8A%D9%86-%D8%AD%D8%B2%D8%A8%D9%89-%D8%A7%D9%84%D9%85%D8%B5%D8%B1%D9%8A%D9%8A%D9%86-%D8%A7%D9%84%D8%A3%D8%AD%D8%B1%D8%A7%D8%B1-%D9%88%D8%A7%D9%84%D9%88%D9%81%D8%AF-%D8%A8%D8%B4%D8%A3%D9%86-%D9%82%D8%A7%D9%86%D9%88%D9%86-%D8%A7%D9%84%D8%A7%D9%86%D8%AA%D8%AE/2114731#.VRtYmjusVi0>

¹⁹ Mohammad Abboudi, "The elections law Committee imposes the parties' proposals," al-Bawaba news, undated, <http://www.albawabhnews.com/1203960>

²⁰ See Mohammad Saad Abde Hafeeth, "Mahlab plays with Safwat al-Sharif's fire," (Arabic) al-Shourouq, April 12, 2015; <http://www.shorouknews.com/columns/view.aspx?cdate=12042015&id=3d4708cf-6d90-4fe7-b195-b7b2616e3ba6> and

Mohammad al-Munsi, "Al-Shihabi accuses Mahlab of tricking the public in order to postpone the elections," (Arabic) Veto, April 10, 2015; <http://www.vetogate.com/1575766>

were recently released from detention, could also join the election race directly or indirectly via their political and financial networks.

- Postponement also means an increase in the burden shouldered by the old legislature that in its first round has to review all laws issued by the president since July 2013. This will likely mean endorsing them all without scrutiny, thus ensuring the executive authority and military establishment's control for years to come.²¹
- Some parties, like Strong Egypt Party, the Popular Socialist Alliance and the Popular Current had previously announced their boycott of the parliamentary elections in protest against the political coercion and inadequate election laws.²² Such boycotting parties could reconsider their positions and throw their hat into the ring if the terms of the newly amended law are changed.
- The postponed elections also imply the undoing and rebuilding of various electoral alliances, especially with regards to seats reserved for lists. The postponement raises questions regarding the fate of the unified list that the president had called for earlier on and whether the current lists will have the same alliances. For example, the Wafd party announced that it would compete alone and cut ties with former alliances.²³ No doubt all current alliances will undergo significant changes in the next elections.
- The delayed elections also imply the possibility of changing the equation with the Islamists, specifically the Salafists. With the continued difficult integration of the Muslim Brotherhood and their allies in the political process, the zero sum game with the state, the ongoing violence and terrorism in the country, the fate of the Al-Noor party and its position in the upcoming elections will remain a matter of conjecture, especially given the possibility that it might be disbanded as a result of a case under review by the Administrative Judicial Court. Will Al-Noor disappear from the next elections? Will it be disbanded and allow its members to run as independent candidates, in a scenario similar to that of the Muslim Brotherhood in the 2005 elections? Or will the party continue playing a role in the political equation, and form a legislative and oversight block in the next parliament?
- In the shadow of the ongoing political instability besieging Egypt on all sides (Libya in the west, Sinai and Gaza in the east, and Al-Nahda Dam and the Yemen war in the south), the potential for involvement in a regional war seems higher without the presence of a parliament. As Article 152 of the 2014 Constitution will be partially impeded, which stipulates the legislature's approval for participation in a foreign war,

²¹ Article 156 of the 2014 constitution

²² May Mahmoud Salim, "Parties: in this case we will reconsider our boycott of the elections," (Arabic?) dot.Egypt, February 26, 2015 ;

<http://www.dotmsr.com/details/%D9%87%D9%84-%D8%B3%D8%AA%D8%B9%D9%8A%D8%AF-%D8%A7%D9%84%D8%A3%D8%AD%D8%B2%D8%A7%D8%A8-%D8%A7%D9%84%D9%85%D9%82%D8%A7%D8%B7%D8%B9%D8%A9-%D9%84%D9%84%D8%A7%D9%86%D8%AA%D8%AE%D8%A7%D8%A8%D8%A7%D8%AA-%D9%85%D9%88%D9%82%D9%81%D9%87%D8%A7-%D8%A8%D8%B9%D8%AF-%D8%AD%D9%83%D9%85-%D8%A7%D9%84%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%D9%8A%D8%A9>

²³ Samar Nabih, "The Wafd Party decides to take part in the elections alone," (Arabic) al-Watan newspaper, March 24, 2015; <http://www.elwatannews.com/news/details/692789>

the decision-making process will remain obstructed and nationalised by a single authority.

Potential future scenarios

What awaits Egypt now that the parliamentary elections have been postponed for the third time ?

Before answering this question, it is worth acknowledging that postponing the elections does not only mean delaying the separation of legislative and executive powers, but also the continued personalisation of politics in Egypt and the erosion of institutional and party activism. It also means a lack of proper frameworks for oversight, transparency and accountability, meaning that financial, political, and administrative corruption will continue. There is an absence of governance in light of the nationalisation of local politics, the postponement of local elections and a lack of parliamentary responsibility or relationship between the public and its representatives. This keeps the Egyptian political system hostage to clientelist relationships between governor and governed. In this sense, the continued postponement of parliamentary elections implies the continued nationalisation of political life and restriction of civil society and political party freedom.

We stand today at the crossroads of three major scenarios regarding parliamentary elections in Egypt:

Scenario 1: Holding the elections and establishing a fragile parliament.

Such a scenario implies that a new law will be issued by the president of the republic, either drafted by the same committee or a new one that will take all proposals into account, ahead of elections in the summer-autumn 2015. However, based on the expected repercussions of the current political conditions, this parliament will be fragile and subservient to the executive power. In other words, Egypt will once again have a parliament serving to rubberstamp the authorities in power.

Scenario 2: Holding the elections and establishing a short-lived parliament.

In this scenario as well, elections will be held in the summer-autumn 2015, after amending the law and securing the Supreme Constitutional Court's approval but these will give birth to a dismembered parliament that no political or state institution will be able to control. As a result, this parliament will either be involved in a conflict with the executive authority or remain unproductive except when issuing legislation that toes the executive authority's line or in a reverse logic, proves incapable of establishing a balance of power. It will come to an end either when the president uses his constitutional prerogative to dissolve it, or when the Supreme Constitutional Court issues a decree to this effect. Egypt will thus go back to square one.²⁴

Scenario 3: Continue postponing the parliamentary elections.

²⁴ Article 137 of the 2014 Constitution

In this scenario, the elections will be postponed yet again until 2016 or indeed 2017. The potential for this scenario to come to fruition exists, unless there is political will to hold parliamentary elections no matter the cost. This scenario will unfold if a court case is raised against the new law currently being amended and the court decides again that it is unconstitutional, or if the Committee approves the division of districts but not the elections system itself. In the latter case, it will either be challenged as before, or the winners will be announced for seats that are entirely different. This will create vast opportunities to circumvent the so-called third instalment of the road map, due to the content of the two laws relevant to the division of district and election of the parliament.

Conclusion and recommendations

Egypt will continue to go round in circles as long as the will to open the public space and accept political pluralism does not exist. In order to avoid nationalising politics in Egypt, this paper proposes the following:

- Political decision-makers in Egypt should realise that the absence of a parliamentary and legislative body will have dire consequences on the regime and the country as a whole. Having gone through two revolutions and given the widespread terror and political violence, there is no option but to return to a political process that involves candidacies, representation, and oversight. If this does not happen, the balance of power in the country will be destabilised and lead to incidents with an unknown outcome. Without the support of the country's political forces internally, Egypt's foreign policy will remain exposed and vulnerable to infiltration.
- The country's political forces should apply pressure not only to express their views on the unconstitutional law but to amend it radically as well. This should be done by changing the division of electoral districts and unifying the number of seats allocated in a manner that would annul districts with two and three seats or implement one system in all districts. The fact that the Egyptian government approved the amendments to the challenged law by adding a fourth category of seats, namely four-seat districts, and increasing the number of individual seats by 22, is a clear sign of the political parties' weakness and inability to pressure the government to change the political equation.
- The country's political forces should not only apply pressure to change the law but also to secure enough guarantees for political inclusion, opportunities for public activism and the release of imprisoned members of parties and other political forces. They should also apply pressure to change unconstitutional laws, especially the Protest Law that the authorities use to repress all forms of public activism.
- To be able to apply pressure, the country's political forces should coordinate their positions, place conditions on their participation in the parliamentary elections and link them to the above-mentioned amendments, otherwise they should collectively decide to boycott the elections process entirely. One or two parties boycotting the elections while others accept to join will not only scatter these political forces and damage their ability to effect change, it will also allow the political regime to continue pursuing the

nationalisation policies that will bring an end to all kinds of public and political activism.

- If the authorities accept these amendments, or at least parts of them, the various political forces should build wide electoral alliances separate from the authorities' lists in order to compete more effectively for seats and form a legislative block that can refine laws, exercise oversight and avoid the potential scenario of a fragile or dismembered parliament. However if they insist on coordinating with the government in forming these lists it only means maintaining the ruse of parliamentary, legislative, and oversight processes in Egypt.
- Egypt's political forces should add the issue of amending the constitution to the next parliament's agenda, no matter its nature and make-up and reinstate the article on a priori oversight of laws. The article was removed from the 2012 Constitution despite its importance in providing legislative stability to ensure that rulings concerning unconstitutionality cannot be issued after parliament has been elected, as happened in 2012 and could well happen again.²⁵
- It is specifically incumbent upon the youth to continue applying pressure not only on the political regime but also within their own political parties, to amend internal party lists, activate the dynamics of transparency and accountability and strengthen their organisational structures and ability to mobilise. In order for this to happen, some form of coordination or spontaneous alliance between youth and different parties, aimed at drafting a declaration of political principle relevant to public activism in Egypt. This will no doubt also rectify the imbalance between them. The postponement of the elections is perhaps a rare opportunity for such coordination to happen.

²⁵ Article 177 of the 2012 Constitution stipulated this oversight before being annulled from the 2014 Constitution.

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