Parliamentary Assembly
Assemblée parlementaire
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 12981
26 June 2012

Crisis of transition to democracy in Egypt

Report[1]
Committee on Political Affairs and Democracy
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Summary

Whilst the report welcomes the election of the first civilian president in Egypt as an historical step in the country's transition to democracy, it expresses deep concern that this follows a series of recent developments which constitute real obstacles to this transition, in particular: the dissolution of parliament; constitutional changes enacted by the Supreme Council of Military Forces granting the army legislative powers and stripping the president of powers in the field of the budget, foreign and defence policy; and the questionable independence and impartiality of the Constitutional Court. Caution is also called for regarding fundamental issues such as the role of women or of religious minorities, including Christians.

These questions, as well as the overall design of the balance of powers and the role Sharia Law will play in the new Egypt, will be tackled in the new constitution. In this respect, the report underlines the beneficial role which the European Commission for Democracy through Law (Venice Commission) could play due to its unique experience in constitutional drafting.

The report lists the main challenges the newly elected president currently faces: to reassure those Egyptians who are longing for security and stability but who are, at the same time, deeply polarised; initiate the badly needed reforms to build a civil administration free from the corrupt practices of the past and boost the Egyptian economy.

1. Reference to committee: Decision of the Bureau, Reference 3868 of 25 June 2012.

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A. Draft resolution[2]

1. Whilst the Parliamentary Assembly welcomes the election of the first civilian president in Egypt, following a ballot which, overall, was deemed to be free and fair, as an historical step in the country's transition to democracy, it is deeply concerned that this follows the dissolution of the recently elected parliament and the constitutional changes enacted by the Supreme Council of the Armed Forces (SCAF).

2. The newly elected President, from the ranks of the Muslim Brotherhood, appears to enjoy the necessary legitimacy to initiate the badly needed reforms to build up a civil administration free from the corrupt practices of the past and boost the Egyptian economy, which has suffered dramatically over the last year. The international community and Council of Europe member States could help in this respect, in particular by encouraging investments in the country.

3. The Assembly notes, however, that the newly elected President will first have to face the challenge of reassuring those Egyptians who are longing for security and stability and the chance to build the country's economy, but who are, at the same time, deeply polarised. There is, in particular, a need to reassure the revolutionary movement, which fears the confiscation of the goals of the revolution by the military, on the one hand, and by the Islamists, on the other. The choices the new President will make in forming his government will be decisive in this respect.

4. The announcement of the election results on 24 June 2012, after a four-day delay, has given rise to some optimism today in the country and within the international community, in particular as it has obviated the fears of possible widespread violence.

5. However, the Assembly is deeply concerned about a series of recent developments, which constitute real obstacles to a slowly emerging democracy in a country which has virtually no democratic experience.

6. The Assembly is, in particular, concerned about the dissolution of the parliament, following a ruling by the Constitutional Court on 14 June 2012, declaring the election of one third of MPs on the single candidate list unconstitutional. The dissolution of parliament has thus erased the first parliamentary elections held in the post-Mubarak era, in which some 30 million people participated and which were deemed to be generally free and fair.

7. Moreover, an interim Constitutional Declaration adopted by the SCAF on 17 June 2012 granted the latter legislative powers until a new parliament is once again functioning and reinforced its own role in the drafting of the future Constitution. The declaration stripped the president of the country of powers in the field of the budget, foreign and defence policy, which will be retained by the military.

8. Whereas the lifting of the state of emergency on 31 May 2012 has been welcomed as a positive development, a decree issued by the SCAF on 13 June 2012 has given the military broad powers of arrest and detention of civilians for trial in military courts.

9. The Assembly thus notes that serious questions arise as to the future of the democratic transition in Egypt. A fundamental challenge lying ahead is what will be the design of the balance of powers in Egypt in the near future and, in particular, how the Army will finally share power with the newly elected president and his future government, and when a new parliament will start functioning and resume its full legislative role.

10. At the same time, without doubting the legitimacy of the new president or underestimating the importance of his election, caution is called for regarding fundamental issues such as the role of women or of religious minorities in the new Egypt. Thus the question arises whether or not the Sharia will be recognised as a primary source of the law in the future Constitution and, if so, how the Sharia can be reconciled with the principles of the rule of law and how the declared equality between men and women, Muslims and Christians can be effectively achieved.

11. The Assembly in particular deplores that the situation of Christian communities in Egypt has not improved with the Arab Spring and the fall of Mubarak and that violence continues to be perpetrated against these communities, as well as against other religious minorities. The Assembly thus calls on the Council of Europe member States to implement the measures listed in its Recommendation 1957 (2011) on violence against Christians in the Middle East and, in particular, to take into account the situation of Christian and other religious communities in their bilateral political dialogue and to promote a policy, at national and Council of Europe level, which integrates the question of the respect for the fundamental rights of Christian and other religious minorities in their relations with Egypt.

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2. Draft resolution adopted unanimously by the committee on 26 June 2012.

12. The Assembly notes in conclusion that the question of the new Constitution is emblematic and that all crucial issues listed above must be tackled, in one way or another, in this fundamental text. In this respect, the Assembly underlines the important beneficial role which the Council of Europe could play, through its European Commission for Democracy through Law (Venice Commission), which has a unique and internationally recognised experience in constitutional drafting.

13. The Assembly finally recalls its Resolution 1831 (2011) on co-operation between the Council of Europe and the emerging democracies in the Arab world, and reiterates its readiness to share its experience in the field of democratic transition with the Egyptian institutions, in order to facilitate the difficult political transition in what is the largest country in the Middle East.

B. Introductory memorandum by Mr Gardetto, rapporteur

1. Introduction

1. In the context of the preparation of my report on the co-operation between the Council of Europe and the emerging democracies in the Arab world last year, I had the opportunity to visit Egypt in September 2011 together with Mr Konstantinos Vrettos, rapporteur on the situation in the Middle East. On the basis also of the findings of my visit, I prepared an Addendum to my report just before the debate scheduled for the October 2011 part-session so as to include the latest developments in the region (Doc. 12699 Addendum).

2. During my visit to Cairo last year, I had discussions with representatives of political parties, civil society and the media, as well as the Chief of the Intelligence Services of the country, Major General Mowafy. Representatives of Egyptian political parties were subsequently invited for an exchange of views with the committee and its Sub-Committee on the Middle East respectively in October and December 2011. They all insisted on the importance of strengthening ties between the Assembly and Egypt and on offering political support to the ongoing process of transition.

3. Given the hugely important geopolitical role of Egypt and the impact that political and constitutional developments in this county may have on the whole region of the southern Mediterranean and the Middle East, I proposed, in February this year, a motion for a resolution on "The political transition in Egypt" suggesting that our Assembly should follow closely the situation in Egypt and the process of political transition and further develop its contacts with both politicians and civil society in this country.

4. On 30 May 2012, I was appointed rapporteur for this motion and intended to ask the authorisation of the committee in order to carry out a fresh visit to the country, to take stock of developments since last year and develop contacts in order to present a report to the committee and then the Assembly in the forthcoming months.

5. However, worrying constitutional developments in Egypt in recent weeks, in particular the dissolution of parliament and the adoption of a constitutional declaration by the Supreme Council of Armed Forces (SCAF), which increases substantially its power and strips the newly elected president of his principal powers, prompted the decision of the Assembly to hold a debate under urgent procedure on the situation in Egypt at this part-session. I have therefore had only a few hours to prepare a report for approval by the committee and submission to the Assembly. At the same time, at the precise moment we decided to hold this debate, the newly elected president had just made his first public statements. It is, therefore, too early for us to make any clear assessment of what direction developments may take.

6. I will therefore limit myself to summarising developments and briefly present the main challenges the newly elected president faces, as well as the main risks and opportunities for democracy in Egypt. I also believe that, in the context of the present report and the debate under urgent procedure, our Assembly should reiterate what the Council of Europe can offer to the new political institutions in Egypt. Beyond that, I have probably more questions than answers, like most of my colleagues in the Assembly. Listing them can at least serve as pointers for our debate.

7. After this debate, and depending on developments in the country, I intend to go to Egypt and report back to the committee on the basis of more substantial information which I will collect on the ground.

8. To start with and partly for the reasons I explained above, I propose to modify the title of the report. To speak about "crisis of democracy" presupposes there is democracy. However, Egyptians are still in the process of "transition", hopefully to democracy, but they are not yet there. I also fear that such a title could be misinterpreted as putting into question the results of the election of the new president. The intention of those who proposed the debate under urgent procedure was no doubt to ring the alarm bell about the obstacles on the path to democracy that have occurred during the present transitional period and, in particular, the risk that the goals of the revolution are being confiscated by the military. At the same time, the election of the new president, his first statements and the reactions of the military and the international community, raise the prospects of normalisation and opportunities for the future. I thus propose that the report and debate be entitled "Crisis of transition to democracy in Egypt".

9. It has to be stressed from the outset that the very election of Mr Mohammed Morsi as President of Egypt is of historic importance as he is the first democratically elected, civilian President of Egypt, which is the largest country in the Middle East. Also, the elections themselves appear to have been free and fair and this, again, is in itself an extremely important and positive development both for Egypt and the entire region of the Middle East and beyond.

2. Brief overview of recent developments

10. When we were in Egypt last September, all our interlocutors told us that the Muslim Brotherhood was undoubtedly the largest and best organised political group in Egypt, a country in which religion (whether Muslim or Christian) plays an important role. On launching their new party, the Muslim Brotherhood confirmed that they did not object to women or Copts in a ministerial position (cabinet). One of the vice-presidents of the new party is Copt. They do however deem "unsuitable" both women and Copts for the presidency.

11. According to analysts, the primary role which the Brotherhood was called upon to perform appeared to be due not only to the strong religious impregnation of the Egyptian people, but also to the social context and the deep-seated clientelism of the vote in Egypt. As I noted in the addendum to my report on the co-operation between the Council of Europe and the emerging democracies in the Arab world, the Islamist vote is also perceived as having the advantage of giving meaning and significance to public action because it sustains a project.

12. At the same time, all our interlocutors credited the Muslim Brotherhood's Freedom and Justice Party, overall, with a score ranging from 25% to 33%, making it in all probability the country's leading political force, but without it attaining the absolute majority that would allow it to govern on its own. We were told that the Brotherhood appeared not to want to really exercise power, no doubt for fear that the measures which would need to be proclaimed just after the elections might make their backers unpopular, thus losing part of the revolutionary people's support. So it was said they would only put forward candidates in half the constituencies. This prognosis proved to be wrong, to the surprise of many liberal politicians and analysts inside and outside the country.

13. The electoral system has been an issue of controversy between the SCAF and the political parties and was also raised in our discussions with representatives of political parties. Initially, draft amendments to the law on the parliamentary elections proposed by the SCAF provided for half of the seats in the parliament to be allocated by a vote on party lists and half by a vote on a single candidate list. Representatives of all political parties we met stressed their preference for elections on the basis solely of party lists, as they feared that single candidate lists would privilege former members of Hosni Mubarak's National Democratic Party (NDP).

14. We were in Cairo on the very day, Sunday 25 September 2011, that Egypt's Cabinet, in a meeting headed by Prime Minister Essam Sharaf, approved the amendments to the law on the elections. The amendments approved provided that two thirds of the parliament would be elected through (closed) party lists while one third would be elected through a single candidate list. The new law divided Egypt into 129 constituencies – 46 where members would be elected using the party list voting system, and 83 where members would be elected using a single candidate list voting system. It also reduced parliamentary seats from 504 to 498.

15. The parliamentary elections to the People's Assembly took place from the end of November 2011 to the beginning of January 2012; those to the Upper House of the Parliament, the Shuria, from the end of January 2012 to the end of February 2012. The length of the electoral process was explained by the fact the judiciary had sole authority to supervise the elections (the High Elections Commission being exclusively composed of judges) in a country lacking a sufficient number of judges to cover all the polling stations at once. The elections to the People's Assembly were therefore conducted in thirds, with two rounds each time, beginning with voting in a third of the constituencies, then in the next third, then in the last third, on each occasion at an interval of some weeks. Furthermore, there were two rounds per zone.

16. The final results in Egypt's first post-Mubarak parliamentary elections confirmed an overwhelming victory for Islamist parties. The Muslim Brotherhood's Freedom and Justice Party won a much higher score than expected and the largest number of seats, namely 235 seats (47.2%) out of a total of 498. Even more surprising was the score obtained by the hard-line Salafist Nour party, which came second and won 121 seats (24.3%).

17. The liberal New Wafd party and the liberal Egyptian Bloc coalition, whose representatives we had met last September in Cairo, came far behind, obtaining respectively 38 seats (7.6%) and 34 seats (6.8%). Mohammed Saad al-Katatni, from the Muslim Brotherhood, was elected by a large majority of MPs as the Speaker of the People's Assembly at the inaugural session on 23 January 2012.

18. The first task of the new parliament was to elect a 100-member Constituent Assembly to draft the new constitution.

19. The main challenges in the elaboration of the new constitution include:

– the role of Sharia: would Sharia be the primary source of law? And which "version" of Sharia? A "strict" or a "soft" version of it? How would Sharia be reconciled with the principles of the rule of law?

– the balance of power between the president and the parliament;

– the role of the military;

– the rights of Egypt's religious and ethnic minority groups;

– the place of women.

20. After a Constituent Assembly, in which Islamists had the majority, was suspended by the Administrative Court of Cairo in April 2012 amid a boycott by groups which claimed liberals, secularists, women, young people and minorities were under-represented, a deal was reached at the beginning of June 2012 between representatives of political parties and the military on the composition of the Constituent Assembly. According to the agreement, 39 seats would be allocated to representatives of parties in the People's Assembly, dominated by the Islamists, 13 seats to unions, 6 to judges, while 9 would go to experts in law, with one seat each for the armed forces, police and the justice ministry. Al-Azhar University, one of Sunni Islam's most important institutions, would be given 5 seats and the Coptic Orthodox Church of Egypt would get 4. Furthermore, 21 public figures would be appointed. Decisions would be endorsed by a two-thirds majority.

21. While preparations for the elaboration of the new constitution were ongoing, with all the difficulties mentioned above, the presidential elections were also marked by many controversies, in particular regarding the admissibility of candidates.

22. After a first round at the end of May 2012 gave no clear winner, two candidates confronted each other in a second round in mid-June: Muslim Brotherhood's candidate, Mohammed Morsi, and the former air force commander and former Prime Minister of Mubarak, Ahmed Shafik.

23. Only a few days before the second round of elections, on 14 June 2012, the Constitutional Court, composed of judges appointed during the Mubarak era, in an unexpected decision, ruled that the election of one third of MPs during the last parliamentary elections on the single candidate list was unconstitutional and ordered the dissolution of parliament. A decree of the SCAF dissolving the parliament on the basis of the court ruling was issued and soldiers surrounded the parliament to prevent MPs from entering the building.

24. Just as the polls for the second round of presidential elections closed on 17 June, the SCAF issued an interim Constitutional Declaration, which granted them legislative powers until a new parliament was functioning and thus reinforced their role in the drafting of the future constitution. The Constitutional Declaration stripped the president of the country of powers in the areas of the budget, as well as foreign and defence policy, which were to be retained by the military. The re-establishment of the National Defence Council, putting the generals in charge of Egypt's national security policy, was announced by Field Marshal Tantawi, chairing the SCAF.

25. In a positive development, the state of emergency was lifted on 31 May 2012. But in mid-June, the SCAF issued a decree granting the military broad powers of arrest and detention of civilians for trial in military courts for a wide range of offences until the ratification of a new constitution.

26. The military explained the necessity of the Constitutional Declaration, saying that it was meant to fill a power vacuum in the absence of a parliament and ensure that the president would not monopolise power. The military said they would hand over executive power to the newly elected president on 1 July 2012.

27. As far as the presidential election itself is concerned, the announcement of the results was delayed for four days, both candidates having filed complaints against each other for fraud.

28. All these worrying developments prompted people to gather in Tahrir Square, which was the scene of massive demonstrations, and provoked concern throughout the international community about the future of Egypt's transition.

29. Fears that the military would impose former Prime Minister Shafik, thus giving rise to a violent confrontation on the streets, were dismissed when the High Elections Commission finally announced the results on Sunday 24 June. The victory of the Muslim Brotherhood's Mohammed Morsi was confirmed, albeit by a narrow majority (51.7% of the vote).

30. The announcement of the results was accepted with relief both inside and outside Egypt, since it obviated fears of possible widespread violence. Mr Morsi called for unity and stressed that he would be the president of “all Egyptians”, men and women, Muslims and Christians. The military congratulated Mr Morsi on his election and said they would stand by him to ensure the stability of the country. The announcement of the election results has moreover been welcomed by the international community in very positive terms, underlining the historical significance of this election, which also had an immediate positive impact on the markets.

31. That said, and while there is a wave of optimism today in Cairo, the challenges Egypt faces are still huge and the risks and obstacles to its transition to democracy are still significant.

3. Main challenges, obstacles, risks and opportunities

32. Mr Morsi is the first president elected in Egypt after elections were deemed, overall, to be free and fair, and he enjoys the legitimacy of a significant proportion of the population. It is indeed difficult for anyone to challenge the legitimacy of this victory or to claim that the electoral machinery was biased in favour of the Muslim Brotherhood.

33. As said earlier, this election is, in itself, a victory for the emerging Egyptian democracy as fears that the military would take full control of the country appear to have been obviated.

34. While the powers of the newly elected president have been significantly reduced, he still has the power to appoint a prime minister and a government, and powers over several aspects of domestic policy.

35. One of the greatest challenges the president will now have to face is to reassure those Egyptians who are longing for security and stability and the chance to build the country's economy but who are, at the same time, deeply polarised. Many of them are suspicious of the new president’s intentions and fear that Egypt may turn into an Islamic republic. In particular, there is a need to reassure the revolutionary movement, which fears the confiscation of the goals of the revolution by the military, on the one hand, and, on the other, by the Islamists, and risks marginalisation.

36. Mr Morsi could reassure them through his choice of prime minister, vice-presidents and cabinet ministers (notwithstanding the fact that the key posts will have to be approved by the SCAF).

37. Another challenge for the newly elected president is the poor state of the economy. Tourism has dramatically slumped, foreign exchange reserves are dwindling rapidly and the government's finances are in dire straits. Unemployment is high and on the rise, particularly among young people.

38. Wide-ranging economic reforms will need to be urgently introduced and the support of the international community is vital.

39. At the same time, the emerging democracy in Egypt is also facing high risks coming from two main sources.

40. On the one hand, a fundamental question is how the army will finally share power with the newly elected president and when will a new parliament start functioning and resume full legislative power.

41. Firstly, the dissolution of parliament, the Constitutional Declaration of 17 June, the enlarged arrest and detention powers granted to the military, the questionable independence and impartiality of the Constitutional Court in Egypt, give rise to many concerns and constitute real risks for a slowly emerging democracy in a country which has virtually no democratic experience.

42. Secondly, what will be the ultimate design of the balance of powers in Egypt in the coming months and years?

43. On the other hand, while welcoming the democratic election of the new president and without doubting his legitimacy, caution is called for regarding the future of the country, as his statements have often been perceived as ambiguous on such fundamental issues as the role of women or religious minorities.

44. Thus, a third set of questions arises: what will be the relationship between the Sharia and secular law in the new Egyptian State? Will Sharia be the primary source of law? And if so, how can the Sharia law be reconciled with the principles of the rule of law? Can equal rights for men and women, as well as for Muslims and Christians, be combined with such a prominent role for Sharia, for example?

45. It is worth recalling in this context that women and Christians played an important role in the revolution. Are their rights under threat in this new scenario?[3]

46. It may also be recalled that, in its Recommendation 1957 (2011) on violence against Christians in the Middle East, the Assembly reiterated that "Christianity had its beginnings in the Middle East 2 000 years ago, and that Christian communities have existed in the area since" and it expressed concern at the recent deterioration of the conditions in which these communities were living.

47. Unfortunately the situation has not improved, and successive statements of the President of the Assembly and of the Committee on Political Affairs and Democracy have been made since then.[4]

48. It must be noted that, as a consequence of present instability, Christians are leaving Egypt and certain sources indicate that some 100 000 have left during the last few months.

49. The future of Christians, as well as that of other religious minorities in Egypt, is a reason for genuine concern and reassurances from the new president are urgently needed.

50. Finally, the question of the new constitution is emblematic for all the questions raised above, as all these fundamental issues must be tackled, in one or another way, in this fundamental text. In this respect, our Organisation could play an important and beneficial role by offering the experience of the European Commission for Democracy through Law (Venice Commission) in constitutional drafting. This could be a concrete contribution that could be offered to facilitate the difficult political transition in what is, after all, the largest country in the Middle East.

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3. As regards the role of women during and after the Arab revolutions, see also Resolution 1873 (2012) on equality between women and men: a condition for the success of the Arab Spring, adopted at the April 2012 part-session of the Assembly. The debate was preceded by a hearing jointly organised by our committee and the Committee on Equality and Non-Discrimination, during which Ms Gameela Ismail, activist from Egypt, delivered a most interesting speech.

4. After a peaceful Coptic demonstration in Cairo, on 9 October 2011, degenerated for unknown reasons and resulted in at least 25 persons, most of them Copts, being killed and more than 300 wounded, the President of the Assembly condemned the violence and the Committee on Political Affairs and Democracy stated that "the first declarations of the Egyptian authorities, and their subsequent lack of action, fail to convince that they are genuinely committed to dealing effectively with recurrent inter-religious violence". A report on violence against religious minorities, under preparation by Mr Luca Volontè, deals, *inter alia*, with the situation of Egypt's Copts.