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It's not a Revolution yet

Although commentators have been quick to call the January 25th movement a "revolution," democracy activists are painfully aware that their struggle has only just begun. What will make the movement a true revolution, and not merely a successful rebellion against Mubarak, are institutional reforms that fundamentally reorder political life. Constitutional amendments are the critical first ...

BY TAMIR MOUSTAFA | FEBRUARY 28, 2011, 10:24 PM

Although commentators have been quick to call the January 25th movement a "revolution," democracy activists are painfully aware that their struggle has only just begun. What will make the movement a true revolution, and not merely a successful rebellion against Mubarak, are institutional reforms that fundamentally reorder political life. Constitutional amendments are the critical first step to empowering representative institutions and constraining the arbitrary exercise of power. Not coincidentally, constitutional amendments also provide the key test of the military's willingness to break from the past.

In this context, the highly anticipated **amendments** to the Egyptian Constitution were unveiled by the Constitutional Reform Committee this past Saturday. The Committee, which had been appointed by the Supreme Council of the Armed Forces in mid-February, was charged with proposing constitutional amendments within 10 days. After soliciting public feedback, the finalized amendments will be voted on in a national referendum in two

months time.

Now that the committee has released its work, Egyptians and foreign analysts will be asking whether the proposed amendments are meaningful, and whether or not they constitute a fundamental break from the past. My own view is that the proposed amendments, by themselves, do not yet constitute a fundamental break from the past, but they do open a viable path to further political reform.

The amendment that will likely draw the most media attention is the proposed change to article 76, which would open three routes for candidacy in presidential elections: (1) Endorsement by 30 members of the People's Assembly or Shura Council; (2) 30,000 signatures, collected from 15 governorates, with not less than 1,000 signature from each governorate; or, (3) nomination from a political party holding at least one seat in the People's Assembly or the Shura Council. This change represents a much lower threshold for candidacy and provides the possibility for meaningful presidential elections for the first time in the history of the republic. A proposed amendment to article 77 would further limit the presidential term to four years with the possibility of only one consecutive term.

The proposed amendment for article 88 would additionally require full judicial supervision of elections. But lest one get too optimistic about these proposed changes, we should note that judicial supervision is to be organized "in the manner prescribed by the law." Article 88 will ring hollow, like many other constitutional guarantees in the past, unless the appropriate enabling legislation is put in place to make effective judicial supervision a reality. The Supreme Council for the Armed Forces and the Constitutional Reform Committee has indicated that enabling legislation will be forthcoming in the next weeks. This will be an important development to follow because, in practical terms, the enabling legislation is every bit as critical as the text of the

constitution itself.

The proposed amendment to article 93 would give the Supreme Constitutional Court (SCC) the ability to decide on the validity of membership in the People's Assembly. Previously, the constitution declared that "The People's Assembly shall be the only authority competent to decide upon the validity of its members." This article had provided the legal rationale for the ruling NDP to ignore literally hundreds of court rulings invalidating election results after each People's Assembly election, when the courts determined there were egregious election irregularities. Providing the judiciary with the ability to review election irregularities and to declare election results null and void is a positive development, but it is curious the amendment would make the Supreme Constitutional Court the sole judicial body charged with this role. The SCC, once largely independent from the executive, has in recent years been far less robust. It is difficult to judge whether, in a completely reformed institutional environment, the SCC would play the role of neutral arbiter or act as an "authoritarian enclave." The Turkish Constitutional Court has played such a role, constraining representative institutions in a manner that is debilitating for democracy.

The proposed amendment to article 139 also makes it obligatory for the president to appoint a vice president within two months of coming to power. This is meant to correct for Mubarak's 30-year run without a vice president, but it will obviously do little to constrain executive power.

The proposed amendment to article 148 is more encouraging. It makes a state of emergency contingent upon the approval of a People's Assembly (as it was formerly), but it additionally requires a public referendum if a state of emergency is to last more than six months. While this is an improvement, its effectiveness rests on a truly representative People's Assembly and clean elections (underlining the importance once again of the enabling legislation

for article 88).

The Constitutional Reform Committee also proposed the abrogation of article 179. This article had built aspects of the emergency law straight into the constitution itself, placing such powers outside of the purview of judicial review. Article 179 explicitly states that certain fundamental liberties and protections "shall in no way preclude such counter-terror action." With terms such as "public security" and "counter-terror" loosely defined, article 179 provided the regime with extensive tools to conflate political opposition with threats to public security. It is good that this article is slated for cancelation in the national referendum.

A final amendment to article 189 opens the possibility for a 100-member commission to draft a new constitution. This Constituent Assembly would be elected from among the two houses of Parliament after fresh People's Assembly and Presidential elections, opening the door to further constitutional changes. This is a good thing, because there are still a number of articles that need to be rewritten in order to further balance the configuration of power between the executive, the legislature, and the judiciary.

The proposed constitutional amendments are also notable for what they did not address. There was no proposed amendment to article 5 of the constitution, which blocks the Muslim Brotherhood and other groups with a religious orientation from political life. Article 5 states, in part, that "citizens have the right to establish political parties according to the law and no political activity shall be exercised, nor political parties established, on the basis of religion..."

But it is not only the Brotherhood that is potentially barred from political life. Article 5 also states that citizens have the right to establish political parties "according to the law." This points, once again, to the importance of enabling legislation, in this case the Political Parties law 40/1977, which had provided

Mubarak's regime with a variety of legal tools to control the political playing field. We are thus reminded once again that constitutional amendments are but one critical component of political reform in Egypt's uncertain transition from a rule-by-law regime to a rule-of-law democracy.

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