

CAF's poor transition planning to blame for Egypt's looming crisis

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President Hosni Mubarak stepped down have been turbulent and chaotic for the country. But it is only now, with a presidential election scheduled to begin in eight weeks and a committee being put in place to write a new constitution, that full-on political crisis seems to be looming.

In recent days, the Supreme Council of Armed Forces (SCAF), which took power when Mubarak resigned and has been overseeing the transition process, has found itself in conflict with the Muslim Brotherhood over the powers and responsibilities of the recently elected parliament. At the same time, secular forces are challenging the Islamists' domination of the constitution-writing process. And a presidential election set to begin in weeks further complicates these dynamics. But what is happening now is not simply a product of the Muslim Brotherhood's overconfidence, the military's desire to maintain control or the secularists' indignation at being marginalized. The timetable set by the SCAF and the inconsistencies of the current military-authored constitution made a messy transition process inevitable.

Just weeks after assuming power in February 2011, the SCAF introduced a set of eight amendments to the previous constitution, in place since 1971, even though most liberal, leftist and other secular groups had advocated for beginning work on an entirely new constitution immediately. The amendments were approved in a referendum the next month, with 77 percent of voters backing them, in large part due to vocal support from the military and Islamist forces. But after the poll, the military junta decided that simply amending the 1971 constitution was not enough. In an early sign of what was to become the SCAF's ad hoc style of governance, the generals decided instead to issue a 63-article constitutional declaration (.pdf) that preserved some elements of the old constitution, including the eight voter-approved amendments, while scrapping others. And in that decision lay the seeds of most of Egypt's current crisis.

Under the constitutional declaration, the distribution of authority among elected bodies and the SCAF is ambiguous at best. For example, Article 33 says that the parliament has the authority to "legislate and determine public policy of the state," while Article 56 gives the SCAF sweeping powers, including that of "legislation" and "issuing public policy." As a result, parliament's weakness is now coming to the fore. Draft laws discussed in committee on issues ranging from Islamic tax collection to freedom of information have not made it to the floor for a general vote, in part because the parliament understands that its powers are limited as long as the military is in charge. Critically, the constitutional declaration gives the as-yet-unfilled office of the president, and not parliament, the power to name a new cabinet to replace the SCAF-appointed civilian government.

The resulting legislative gridlock has led the Freedom and Justice Party (FJP), the Muslim Brotherhood's political wing and the major winner in last year's parliamentary elections, to become increasingly critical of the government, going so far as to demand a no-confidence vote in an effort to pressure the generals to replace the cabinet. The SCAF has responded with equally harsh rhetoric, and the crisis in relations between Egypt's two most important power players -- who have generally enjoyed good relations over the past year -- now threatens to upend the ongoing transition to civilian rule.

Meanwhile, the constitutional declaration's initial vagueness regarding the timetable for that transition essentially left major decisions up to the SCAF's discretion, further exacerbating the situation. Last year's parliamentary elections were held in November and December, sooner than many secular forces had preferred. And the presidential election, initially scheduled for early 2013, was moved forward to May 2012 amid protests in November calling for an end to military rule.

The constitutional declaration has little to say on another critical component of Egypt's transition: the drafting of a new constitution to establish the framework for Egypt's democracy. Article 60 of the declaration simply stipulates that the parliament, at the invitation of the

SCAF, will elect a 100-person constituent assembly to draft the constitution within six months, followed by a public referendum.

But because of the ad hoc nature of the SCAF's transition timetable, including the accelerated presidential election, it is very unlikely that the constituent assembly will complete its work before a new president is elected. This means that Egyptians will be forced to vote for a president whose constitutional powers have yet to be determined. In the interim, the president will assume the authorities that the constitutional declaration grants to the SCAF, a level of power that no one in Egypt wants a president to wield.

Things came to a head last week when, in a move that surprised many, the parliament chose to fill the 100-person body charged with writing a new constitution with 50 members of parliament, most of them from the FJP or the hard-line Salafists' Nour Party. Many of the assembly's remaining members are also affiliated with or sympathetic to Islamist politics, with women and Egypt's Coptic Christian minority receiving scant representation. Within days, most of the non-Islamist members of the constituent assembly resigned in protest, fearing that an Islamist-dominated assembly will challenge the civil nature of the Egyptian state. Some filed a court case challenging the assembly's legitimacy, arguing that it does not fairly represent all of Egyptian society and that its selection process violates the norms of constitution writing. That may be true, but it does not violate the SCAF's constitutional declaration, which gives no guidance on how representative the assembly should be or any details on how to conduct the writing of the constitution.

The weaknesses of the SCAF's transition timetable and its constitutional declaration have long been apparent. But amid the day-to-day struggles of a tumultuous year, they were ignored until Egypt reached the precipice of crisis. How all of these issues will be resolved remains to be seen. What is certain is that the SCAF has put Egypt on a dangerous track.

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