

EGYPT

At-a-Glance

OFFICIAL NAME

Arab Republic of Egypt

CAPITAL

Cairo

POPULATION

77,505,756 (2005 est.)

SIZE

395,793 sq. mi. (1,025,100 sq. km)

LANGUAGES

Arabic

RELIGIONS

Muslim 94%, Christian (Orthodox, Catholic, Protestant) and other 6%

NATIONAL OR ETHNIC COMPOSITION

Egyptian, Bedouin, and Berber 99%; Greek, Nubian, Armenian, other European (primarily Italian and French) 1%

DATE OF INDEPENDENCE OR CREATION

February 28, 1922 (from United Kingdom)

TYPE OF GOVERNMENT

Republic, based on mixed parliamentary and presidential systems

TYPE OF STATE

Centralist state

TYPE OF LEGISLATURE

Bicameral parliament

DATE OF CONSTITUTION

September 11, 1971

DATE OF LAST AMENDMENT

May 25, 2005

Egypt is a hybrid of parliamentary and presidential forms of government that endows the president with a wide variety of executive and legislative powers. It is a centralist state, divided into governorates that enjoy very little autonomy. The constitution provides for far-reaching guarantees of both generations of human rights, liberal and social. A rather powerful and quite independent constitutional court is in charge of reviewing the conformity of laws and administrative regulations with the provisions of the constitution.

The head of state is the president, who dominates the entire field of political activity. The head of government enjoys limited internal influence. Members of the lower chamber of parliament are elected, but there have been frequent allegations of fraudulent electoral practices. Pluralism is guaranteed by the constitution, but political parties must be registered and very few have any real influence.

Egypt is an Islamic state, and the principles of the Sharia are to be the main source of legislation, accord-

ing to the constitution. The constitution also states that the economic system is socialist, but in practice, Egypt is moving more and more toward a market economy and privatization. The military plays an important though informal role in politics, and all presidents so far have been from the armed forces. A state of emergency was proclaimed in 1981 and has not been lifted since.

CONSTITUTIONAL HISTORY

Egypt, home of one of world's earliest civilizations, became a province of the Ottoman Empire in 1516. After the failure of the French campaign led by Napoléon Bonaparte (1798–1801), Muhammad Ali, leader of the Albanian contingent of the Ottoman army, became viceroy of Egypt (1805). He and his successors started the country on the road to modernization.

Starting in 1841, succession to the viceroyalty became hereditary to the oldest surviving male in the Muhammad

Ali family. Given the title of khedive in 1867, they gradually expanded their prerogatives at the expense of the Ottoman sultan and reformed the administrative, legal, and political systems on the European model. In 1866, an Assembly of Delegates was established. Its functions were merely consultative at first, but its establishment marked the beginning of parliamentary life in Egypt. In 1878, Khedive Ismail established a Council of Ministers and entrusted them with some of his executive powers.

A Fundamental Law, adopted in 1882, provided for a parliamentary system with a cabinet responsible to the assembly but with the power to dissolve it. The same year, Egypt was occupied by British troops, and the Fundamental Law was abrogated. An Organic Law was adopted in 1883 that gave only consultative powers to the representative bodies, except in the imposition of new direct taxes, in which its opinion was binding. The Organic Law was amended in 1912 to give members of the legislative assembly the right to interrogate cabinet ministers. It was amended again one year later to create a new representative assembly with increased legislative powers, which met for a permanent annual session and whose proceedings were open to the public. In 1914, Egypt became a British Protectorate and was detached from the Ottoman Empire.

The representative assembly was soon suspended, never to be restored. In 1922, the British abolished the Protectorate and unilaterally proclaimed Egypt's independence, recognizing Sultan Fuad I as king of Egypt. England, however, maintained its own military forces in the country and reserved four questions for future negotiations, namely, the defense of the country, the security of communications of the British Empire, the protection of foreign interests and minorities, and the status of the Sudan. This was a formal independence but not a real one as the British still intervened in Egyptian internal affairs.

In 1923, the first Egyptian constitution was adopted. It set up a parliamentary system of government with a separation of powers, though the king retained extensive executive and legislative powers. Its second section contained an extensive list of civil and political rights, such as freedom of expression, freedom of association, freedom of religion, and independence of the judiciary. The 1923 constitution was abolished in 1930 and replaced by a new one that strengthened the powers of the monarchy. The 1930 constitution was abrogated in 1934, and the 1923 constitution was reinstated the following year; it remained in force until 1952. This was a so-called liberal era characterized by governmental instability. Few cabinets and parliaments completed their constitutional term. The majority party itself (Wafd) did not rule for more than seven and a half years of the 28-year era. The autocratic monarch suspended the constitution several times. Egypt did, however, gain experience with democratic institutions and practices such as political parties, separation of powers, elected assemblies, constitutional protection of human rights, and a fully developed judiciary, all in a country still under foreign military occupation.

In 1936, the Treaty of Independence and Honor, which called on Britain to limit its military presence in the Suez Canal zone and asked for negotiations to end the capitulation system, was signed. The latter was a series of privileges, originally granted by the Ottoman sultan to European heads of state, according to which foreigners were placed under the extraterritorial jurisdiction of their consular courts, which applied their own national laws.

During this period, the judiciary took major steps toward independence. In 1948, the two-year old Council of State, an administrative court, ruled itself competent to exercise judicial review of legislation in the course of deciding a case submitted to it and to refrain from enforcing a law found unconstitutional. In 1952, the Court of Cassation (final appeal) decided to follow the example of the Council of State. After this precedent, Egyptian courts at all levels began to exercise judicial review of legislation. This decentralized review, however, led to legal instability and contradictory decisions among judges since the ruling of a particular court had no binding effect on other courts.

On July 23, 1952, a coup d'état by young army officers overthrew the king and ushered in the July Revolution. On December 10, the constitution of 1923 was abrogated. A three-year transitional period was declared to last until January 16, 1956, during which the Revolution Command Council, consisting of Free Officers, ruled under martial law. A constitutional proclamation of February 10, 1953, organized the basic structure of the transitional government, which was characterized by a strong concentration of power. On June 18, 1953, another proclamation abolished the monarchy and made Egypt a republic.

A new constitution was finally adopted in 1956 and submitted to a referendum after a first draft, deemed too liberal, was rejected in 1955. For the first time, citizens enjoyed not only civil and political rights but also social and economic ones. Candidates to parliamentary elections had to be selected by the one party, the National Union. Women were given political rights for the first time in the history of the country by a law of 1956.

After the union between Egypt and Syria in 1958, a constitution was adopted for the newly created United Arab Republic. After the union was dissolved in 1961, a constitutional declaration was issued in 1962 to organize the structure of the state until another constitution could be adopted. It centralized all powers in the hands of the president. A provisional constitution was adopted in 1964 and submitted to referendum, designed to last until a permanent constitution could be drawn up. The official denomination of the state remained United Arab Republic, though it now applied to Egypt alone. It contained first- and second-generation (liberal and social) rights. In a departure, the new constitution established the principle that half the assemblies' representatives must be workers and peasants.

A 1969 law decree created a Supreme Court entrusted with the exclusive power of judicial review in constitutional issues. Its members served three-year terms and

were appointed directly by the president of the republic, who could also discharge them. After the death of Nasser in 1970, Anwar al-Sadat acceded to power and ordered the parliament to draft a new constitution. The text was adopted on September 11, 1971, by a referendum. The official denomination of the state became Arab Republic of Egypt. The constitution reflected different trends: the socialist values, one-party system (until the amendment of 1980), and Arab nationalism inherited from the Nasser era, juxtaposed with liberal democracy and Islam. It accorded the president far-reaching powers.

FORM AND IMPACT OF THE CONSTITUTION

Egypt's constitution is codified in a single document that is considered to be at the apex of the hierarchy of domestic norms (laws and regulations). International treaties, duly ratified, have "the force of law," meaning that the constitution and most recent laws enjoy a higher rank. The Supreme Constitutional Court, established in 1979, is the guardian of the constitution.

According to Article 2, as amended in 1980, the principles of the Islamic Sharia are the main source of legislation (and no longer a main source of legislation, as was stated in 1971). The Supreme Constitutional Court has refused to interpret this provision as giving supraconstitutional value to the Islamic Sharia. First of all, it has ruled that the 1980 amendment has no retroactive effect; the court considers itself incompetent to review the conformity to Article 2 of laws adopted before 1980. In addition, the court believes that only certain principles of the Islamic Sharia can have precedence over domestic laws: those that are from identified sources and have a precise meaning that all religious scholars have always accepted.

BASIC ORGANIZATIONAL STRUCTURE

Egypt is a centralist state with a strong centralization of power. All the main institutions and judicial bodies are based in Cairo, the capital. The territory is divided into 26 governorates headed by governors appointed by the president of the republic. Local councils at the governorate and district levels are elected but enjoy very little power. The decision-making process does not really rely on the principle of public participation.

LEADING CONSTITUTIONAL PRINCIPLES

Egypt is defined as a socialist democracy, based on an alliance of the working forces of the people (Article 1) and

an Islamic state (Article 2), based on popular sovereignty (Article 3) and the rule of law (Article 64). Its system of government has elements of both parliamentary and presidential systems. The constitution of 1971 retains strong presidential powers and strengthens the dominant position of the president under exceptional circumstances (Article 74). Article 68 states that no administrative act or decision is immune from appeal to a court. The constitution, for the first time, makes the principles of the Sharia the main source of legislation.

Political participation can be exercised through elections to the parliamentary assemblies, and the people may be consulted directly through referendums in certain cases, such as after a motion of no confidence or during the dissolution of the People's Assembly. This option, however, is rarely used. Workers and peasants must constitute at least 50 percent of parliamentary bodies. Political participation is low.

In practice, the system of checks and balances provided for by the constitution did not lead to a real balance of powers between the executive and the legislative. Only the judiciary, and particularly the Supreme Constitutional Court and the State Council, has succeeded in putting limits on executive power.

CONSTITUTIONAL BODIES

The constitution provides for a president of the republic; an administration consisting of a prime minister and cabinet ministers; a bicameral parliament made of the People's Assembly and, since 1980, a Consultative Assembly; and a judiciary, including a Constitutional Court in charge of reviewing the constitutionality of laws and administrative regulations.

The President of the Republic

The president of the republic is the main figure in the current Egyptian political system. Since the constitutional amendment of 2005, the president is elected by direct secret ballot for a six-year term. Since the amendment of 1980, the president can serve unlimited successive terms. The president must be born to Egyptian parents and be at least 40 years of age.

The constitution gives the president of the republic a wide range of executive and legislative powers. The president appoints and dismisses the prime minister and the cabinet ministers, convokes the cabinet, and presides over its meetings. The president issues regulations for implementing the laws, makes all military and civil appointments, concludes treaties, is the chief of the army, declares war, grants amnesty, and can also proclaim a state of emergency.

The president also has the right to propose and promulgate laws. The president can veto a bill adopted by the People's Assembly; if the deputies approve it again with a two-thirds majority, the president is required to promul-

gate it. It is the president who dissolves the People's Assembly in case of necessity and after a referendum and who can also call a referendum on any important matter deemed to affect the supreme interests of the country. The president can pass legislation by decree laws when special circumstances require urgent measures or after a delegation of powers by the People's Assembly or on the president's own initiative. The president is not accountable to the parliament.

The Administration

The administration (cabinet) consists of the prime minister and other ministers, all appointed and dismissed by the president of the republic. Ministers must be Egyptians, no less than 35 years old. They may be members of the People's Assembly.

The cabinet, with the president, determines the general policy of the state; directs, coordinates, and follows up the work of the ministries; issues administrative regulations; and prepares draft laws and the draft general budget. Ministers are individually and collectively responsible before the People's Assembly.

As a result of the far-reaching powers of the president, the role of the prime minister is secondary, mainly one of coordination and confined to domestic policy. Some ministers have continuously held office for more than 20 years.

The People's Assembly

The People's Assembly is made up of 454 members who serve for a five-year term. They are elected in a general and direct balloting process from two-member districts. At least half of the members must be workers or peasants. Ten members are nominated by the president of the republic. The assembly meets for about seven months a year.

Each member of the assembly has the right to propose laws. The People's Assembly also monitors the work of the administration through questions, interpellations (challenging of government actions), fact-finding committees, and withdrawal of confidence from any cabinet minister. A motion of no confidence may be adopted by a majority of the members of the assembly upon an initiative of one-tenth of them. The president of the republic may approve the assembly's decision and decide to put the subject to a referendum. If the result is in support of the assembly, the cabinet resigns. If the referendum is in favor of the administration, the assembly is considered dissolved.

Membership in the assembly may not be revoked except on specific grounds such as loss of one of the conditions of membership, loss of the member's status as a worker or peasant if he or she was elected as such, loss of confidence, or violation of the mandate. The decision to lift a deputy's immunity must be made by a two-thirds majority of the members. The delegates may not be subject to criminal prosecution without the permission of the

assembly except if the member is arrested in the course of committing a crime.

The People's Assembly is dominated by the regime's political party, as the opposition is underrepresented. The assembly exercises no real control of the actions of the executive branch. Cabinet-proposed bills are not rejected or even subject to serious amendments by deputies.

The Consultative Assembly

Established in 1980 after amendment of the constitution, the Consultative Assembly can be regarded as the second chamber of the parliament. It is composed of 264 members, two-thirds of whom are elected by direct secret public balloting and one-third appointed by the president of the republic. Half must be workers and peasants. No one can be member of both the People's Assembly and the Consultative Assembly. The term of office is six years, and half of the members are renewed every three years.

This assembly must be consulted on, among other matters, proposals for the amendment of the constitution, draft laws complementary to the constitution, most important treaties, and draft laws referred to it by the president of the republic. It has no power to monitor the government's work, and ministers are not responsible before it. The assembly can be dissolved by the president of the republic in case of necessity.

The Lawmaking Process

Both the president of the republic and members of the parliament have the right to initiate laws. Draft laws are submitted to one of the 19 permanent committees of the People's Assembly before they are submitted to the assembly and approved by a majority of all members. The laws are promulgated by the president, who has the right of veto. If the People's Assembly approves the draft law again after the veto, the president must promulgate it. Laws passed are published in the *Official Gazette*. In practice, most laws are government-sponsored bills and are adopted with little debate by a large presidential majority.

The Judiciary

The judiciary in Egypt is constitutionally independent of the executive and legislative powers. It follows the civil-law model, with an administrative justice separate from the civil and criminal one. The State Council controls administrative action with regard to laws and regulations, and another set of courts is competent in civil, commercial, and criminal matters as well as for questions regarding personal status. Each set of courts is headed by a supreme court that can rule on points of law only.

The constitution of 1971 was the first Egyptian one to establish a constitutional court in charge of reviewing the constitutionality of laws and administrative regulations. Its justices are nominated through a process of co-optation, and they serve until they retire. Cases can be taken before the Supreme Constitutional Court by a court or

by a party to a court case. The rulings of the constitutional court are binding upon all public authorities and persons. This court has proved to be very active and has developed a jurisprudence supporting the protection of human rights.

The judiciary as a whole is a powerful actor in legal and political life. In many sensitive cases, it has been a real counterpower to the other two branches and a major force in fostering democracy and human rights. This may explain why so many exceptional courts have been set up: to remove the ordinary judiciary from politically sensitive cases. State security courts as well as military courts have been given wide-range jurisdiction during states of emergency. They issue rulings without appeal, after summary procedures.

THE ELECTION PROCESS

Since 1956, all Egyptians over the age of 18, men and women, have the right to vote in elections. Naturalized citizens must wait five years after obtaining nationality to vote. Only Egyptians over 30, born to an Egyptian father, who have completed military service or been exempted and are literate can stand for elections. In 2000, the State Council decided that binationals were not allowed to run for office.

Parliamentary Elections

At one time, Egypt followed proportional representation and a party list system, but this was declared unconstitutional by the Supreme Constitutional Court in 1987 and 1990 because independent candidates could not run for elections. The country has thus resumed elections of individuals by a two-round majority vote. Two candidates, one of whom necessarily is a worker or a peasant, are elected in each of the 222 constituencies. The People's Assembly is the only authority competent to decide upon the validity of the mandate of its members.

Since another decision of the Supreme Constitutional Court in 2000, judges are empowered to oversee elections in all polling stations. Judicial supervision inside the polling stations has helped curtail numerous fraudulent practices of the past. However, judges can still not prevent intimidation and exclusion of voters outside the polls.

Presidential Elections

Since 2005, the constitution provides that the president is popularly elected by direct secret ballot. This reform gives political parties that have five years of existence the opportunity to nominate their leaders as presidential candidates, if the party won a minimum of 5 percent of seats in both houses of parliament. Independent candidates need the combined support of 250 members of the People's Assembly, the Consultative Assembly, and Municipal Councils. In case none of the candidates wins an absolute

majority in the first round, a second round of elections between the two top candidates is held.

POLITICAL PARTIES

All political parties were dissolved in 1953 by the Revolution Command Council, and a one-party system was established. Only in 1976 was a multiparty system reinstated in Egypt. In 1980, the constitution was amended to recognize the multiparty principle. This pluralistic system is limited by a law of 1977 that regulates the formation of parties. Political parties have to meet certain vague and general conditions and be licensed by a special committee in order to operate. This Political Party Committee is headed by the Speaker of the Consultative Assembly and is composed of ministers and members close to the ruling party. The committee can also decide to freeze or dissolve a party. Its rulings can be appealed before a special circuit of the State Council.

In practice, since the reestablishment of a multiparty system, only four political parties have been licensed by the Political Party Committee, all of them after 2000. Other parties have been granted recognition by the judiciary on appeal. The activities of about one-third of the 21 existing parties have been frozen by the committee, mostly because of internal turmoil. The ruling party is the National Democratic Party, led by the president of the republic. The Muslim Brotherhood is not recognized as a political party on the grounds that the 1977 law prohibited parties organized on religious lines. Muslims Brothers nevertheless compete in elections as independent candidates or through alliances with recognized parties. In practice, political parties cannot be considered a dynamic democratic force in Egypt.

CITIZENSHIP

Egyptian citizenship is primarily acquired by birth to an Egyptian father. Until 2004, having an Egyptian mother was not sufficient to confer Egyptian nationality unless the father was unknown or stateless. Under national and international pressure, however, the law was finally amended in June 2004 to allow all Egyptian mothers to transmit their nationality to their children. Nationality can also be granted under certain conditions to foreigners who have resided in Egypt for at least 10 years.

FUNDAMENTAL RIGHTS

The Egyptian constitution devotes Part 3 to public freedoms, rights, and duties, whereby civil and political rights are protected. Among these are the principle of equality, individual freedom, and protection of the rights of detainees; freedom of religion, of expression, of the press, of movement, of assembly, and of association; the principle that crimes and penalties must be defined by law; and the presumption of innocence.

The constitution explicitly guarantees economic, social, and cultural rights in Part 2, Basic Components of Society. Chapter 1 sets forth the social and moral components of society, Chapter 2 its economic constituents. Among the rights guaranteed are the right to work, to health insurance services, to pensions, and to education.

Some human rights provisions are also found in other parts of the constitution. For example, the multiparty system is guaranteed in Part 1, The State and the independence of the judiciary in Part 4, Sovereignty of the Law.

Most of the rights stated in the constitution (e.g., the principle of equality, inviolability of private life, or freedom of movement) apply to "all citizens," meaning Egyptians only. Other rights (e.g., protection against arbitrary arrest or the rights of detainees) apply to "any person," including foreigners.

Impact and Functions of Fundamental Rights

Most fundamental rights guaranteed by the Egyptian constitution were already protected by previous constitutions. First-generation rights (liberal rights) already existed under the constitutions of the monarchy, and second-generation ones (social rights) appeared at the Nasser era, mostly in the 1964 constitution.

The 1971 constitution defines some "positive discrimination" (affirmative action) measures, such as allotting workers and peasants at least half the seats in all representative bodies. This provision is often criticized as contradictory to the principle of equality.

Some provisions also establish duties for citizens. These include defending the homeland, safeguarding national unity and keeping state secrets, safeguarding social gains, working, paying taxes, and participating in public life.

Limitations to Fundamental Rights

The Egyptian constitution specifies possible limitations on fundamental rights. No criteria are specified for limiting rights in general; such limitations are prescribed on a case-by-case basis. Freedom of expression or freedom of assembly, for instance, shall be exercised "within the limits of the law." No rights are stated as never to be limited.

The Supreme Constitutional Court has ruled that no law can deprive any right of its core content. Only limitations necessary for the exercise of the right shall be allowed, and those limitations shall themselves be limited by the principle of proportionality (the limitation should be appropriate to the specific need).

ECONOMY

According to the constitution, Egypt is a socialist state, and socialist gains have to be protected. Public ownership is sacred, and its protection and consolidation are

the duty of every citizen. These provisions are a heritage of the Nasser era.

However, since the Sadat era, Egypt has been moving toward an economic system based on capitalism, liberalization of the economy, and privatization of the public sector. One of the objectives of this new policy is to attract foreign investments.

The constitution protects private property, the right to work, and the right to form associations and trade unions. It also guarantees the social function of property. Some economic rights have been inherited from the Nasser era, such as popular control over the means of production or the right of participation of workers in companies' management and profits.

RELIGIOUS COMMUNITIES

Freedom of religion is guaranteed by the constitution, which also guarantees the principle of equality of all citizens and forbids discrimination on the basis of religion. However, the constitutional text also declares that Egypt is an Islamic state. The norms of the Islamic Sharia still influence the personal status law, but most other branches of law have been secularized.

Fourteen non-Muslim communities are recognized in Egypt. Most of them are Christian: Orthodox (four different communities), Catholic (seven different communities), and Protestants. The Jewish community is divided into two parts. Each community has power to legislate its own personal status law, although courts dealing with these issues have been unified since 1956. Islamic Sharia, as codified by Egyptian law, is applied whenever the two parties to a personal status dispute are not members of the same religious community.

A Muslim man can marry a Christian or a Jewish wife, but a Muslim woman cannot marry anyone but a Muslim. Muslims cannot convert to another religion.

MILITARY DEFENSE AND STATE OF EMERGENCY

The president of the republic is the supreme commander of the armed forces and has the authority to declare war, with the approval of the People's Assembly. No organization or group may establish military or semimilitary formations such as private militias. According to the constitution (Article 58), the defense of the homeland and its territory is a sacred duty, and conscription is compulsory. All men between 18 and 30 years of age are liable for military service. Conscripts serve three years of active duty. College graduates serve only 12 months. Sons who do not have brothers and family breadwinners are eligible for exemptions. Women can volunteer for the armed forces to perform administrative tasks. Conscientious objection is not allowed.

The constitution of 1971 authorizes the president of the republic to proclaim a state of emergency for a limited period but must notify the People's Assembly within 15 days for their approval. A state of emergency was proclaimed on October 6, 1981, the day President Sadat was assassinated. It has remained in force since. It gives the president of the republic far-reaching powers and places restrictions on many constitutionally guaranteed rights. Special courts have also been established to adjudicate crimes against the internal or external security of the state. The president can refer ordinary crimes to such courts. They judge without appeal, but their decisions can be challenged by the president within 15 days.

The president may also refer to military courts civilians accused of any crimes proscribed by the penal code or any other law. These courts have been used to try Islamists.

AMENDMENTS TO THE CONSTITUTION

Article 189 of the constitution sets out a special and complex amendment procedure. First, the president or one-third of the People's Assembly initiates the procedure. The assembly then approves the principle of the amendment by a majority vote of its members. After two months it resumes deliberation; if the amendment is approved by a two-thirds majority, it is referred to the people for a referendum.

The constitution was amended twice. In 1980, the amendments ended the two-term limits for the president (Article 77); created a multiparty system by ending the exclusive constitutional status of the Arab Socialist Union (Article 5); made Islamic principles *the* principal source of legislation and not *a* principal source of legislation

(Article 2); created the Consultative Assembly and a Supreme Press Council to authorize licenses to newspapers and to oversee distribution of foreign publications in the country (Part 7); changed Egypt from "a democratic socialist state" to "a socialist democratic state" (Article 1); and, finally, obliged the state to "narrow the gap between incomes" instead of to "suppress class distinctions in society (Article 4)."

In 2005, Article 76 of the constitution was amended to allow multicandidate presidential elections. The very restrictive conditions set for candidacy, however, make it extremely difficult for independent and even party candidates to run.

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