

# Presidential Power

Presidents and Presidential Politics around the World

## Nathalie Bernard-Maugiron – Should the 2014 Egyptian Constitution be Amended to Increase Presidential Powers?

*This is a guest post by Nathalie Bernard-Maugiron, Senior Researcher, Institute of Research for Development, Paris*

Between 10 and 25 January 2016, the Egyptian Parliament ratified in 15 days more than 300 law-decrees adopted by President Abdelfattah al-Sisi since his election in June 2014.<sup>[1]</sup> In spite of calls by Egyptian experts<sup>[2]</sup> and NGOs<sup>[3]</sup> not to ratify abusive decrees that had, among other things, banned protests, legalized emergency police powers, and expanded military court jurisdiction over civilians, all the laws were rubber-stamped by the House of Representatives without much debate or discussion. Only the new Civil Service Law was rejected by the deputies.

These laws were endorsed on the basis of Article 156 of the 2014 Constitution according to which in case an event requires taking urgent measures which cannot be delayed while the House of Representatives is not in session, the President of the Republic may issue decrees having the force of law, provided that they are presented to, discussed and approved by the new House of Representatives within fifteen days from the commencement of its session. When the Parliament met for the first time in January 2016 after the parliamentary elections, not only did they not challenge the urgent nature of these laws but they also decided to review only those that had been issued after January 18, 2014, meaning after the approval of the Constitution in a popular referendum, and not after July 2013, the dissolution of the Upper House of Parliament and the appointment by the armed forces of an interim president to replace President Mohamed Morsi. The newly elected Parliament, therefore, gave a restrictive interpretation of its supervisory powers under the 2014 Constitution. In addition, many newly elected MPs declared that they wished to amend the constitution to grant the president greater powers.<sup>[4]</sup>

### 1. Should the President's Term be Extended?

Newly elected members of the Parliament wish to increase the president's term in office to more than four years and to end the two-term limit. Since 2005, the president has been elected by direct universal suffrage. The 2014 Constitution (art. 140) provides that he will be serve for four years and may be re-elected only once. He must be an Egyptian, born to Egyptian parents, and neither he nor his parents nor

his spouse may have held any other nationality (art. 141). He must enjoy civil and political rights, have performed military service or have been exempted therefrom by law, and shall not be less than 40 years (art. 141).

In order to be accepted as a candidate for the presidency, candidates must receive the recommendation of at least twenty elected members of the House of Representatives, or support from at least twenty five thousand citizens enjoying the right to vote, in at least fifteen governorates, with a minimum of one thousand supporter from each governorate (art. 142).

The constitution does not provide for the appointment of a vice president. In case of the temporary disability of the president, the Prime Minister shall act in his place (art. 160). In case of permanent vacancy, the Speaker of the House of Representatives shall replace him (art. 160). In case the House of Representatives has not been elected, this task falls to the president of the Supreme Constitutional Court (art. 160). The interim President may not run for the presidency or request any amendment to the Constitution or dissolve the House of Representatives or dismiss the Government.

Al-Sisi's supporters wish to reinstate the provisions of the 1971 constitution, as amended, according to which the president was elected for renewable six-year terms.<sup>[5]</sup>

## **2. Should the Powers of Parliament be Decreased?**

It may seem paradoxal that members of the Parliament have called for a decrease of Parliament's powers and an increase in those of the President.

### ***Parliament and the Choice of the Prime Minister***

Some members of the parliament wish to grant the president greater powers. They have particularly criticized the provisions related to the appointment of the Prime Minister (art. 146). According to the new constitution, the President of the Republic shall assign a Prime Minister to form the government and introduce his program to the House of Representatives. If his government does not win the confidence of the majority of the members of the House of Representatives within thirty days at the most, the President shall appoint a Prime Minister who is nominated by the party or the coalition that holds the majority or the highest number of seats in the House of Representatives. If the government of such a Prime Minister fails to win the confidence of the majority of the members of the House of Representatives within thirty days, the House shall be deemed dissolved, and the President of the Republic shall call for the election of a new one within sixty days from the date on which the dissolution is announced. In the event the government is chosen from the party or the coalition that holds the majority or the highest number of seats in the House of Representatives, the President of the Republic shall, in consultation with the Prime Minister, choose the Ministers of Defense, Interior, Foreign Affairs and Justice.

Al-Sisi's supporters consider that the President should be able to choose and dismiss members of his government without considering the opinion of Parliament, as was the case under Mubarak.

### ***Parliament and the President's Responsibility***

Some members of the Parliament also wish to amend the conditions for impeaching the president. According to Article 159, accusing the President of the Republic of violating the provisions of the Constitution, treason or any other felony must be based on a motion signed by at least the majority of the members of the House of Representatives. The indictment shall only be issued by the majority of two-thirds of the members of the House of Representatives and after an investigation by the Prosecutor General. As soon as this indictment is issued, the President of the Republic shall be stopped from carrying out his duties; this is considered to be a temporary impediment precluding the President from performing his competences until a verdict is issued in the case. The President of the Republic shall be tried before a special court headed by the President of the Supreme Judicial Council with the membership of the most senior deputy of the President of the Supreme Constitutional Court, the most senior deputy of the President of the State Council, and the two most senior Presidents of the Courts of Appeal; prosecution is to be carried out before such a court by the Prosecutor General.

The 2014 Constitution also provided, for the first time, for a confidence removal mechanism. The House of Representatives may propose to withdraw confidence from the President of the Republic and hold early presidential elections upon the filing of a motion to be signed by at least the majority of its members and upon approval of two-thirds of the members of the House (art. 161). Upon approval of the proposal, the matter shall be put to public referendum to be called by the Prime Minister. If the majority approves the decision to withdraw confidence, the President of the Republic shall be relieved from his office and presidential elections shall be organized. If the result of the referendum is negative, the House of Representatives shall be deemed dissolved, and the President of the Republic shall call for the election of a new House of Representatives within thirty days as of the date of dissolution.

It is unlikely that such a procedure would ever reach its term or be initiated. The electoral system chosen for parliamentary elections, the fact that the president may appoint 5% of MPs, and that the assembly will be dissolved in case of failure of the referendum makes it almost impossible that there would be a two-thirds majority of members calling for the dismissal of the president.

### **3. Should the President's Powers be Increased?**

The constitution of 2014 is presented by its opponents as having significantly reduced presidential powers in favour of the government and parliament. For instance, they consider that the president should be able to commit the armed forces abroad after a simple notification of Parliament instead of its approval by a two-thirds majority. The new Constitution, though, grants the president extensive executive and legislative powers.

He is the head of state and head of the executive power (Art. 139), and the supreme commander of the armed forces (art. 152). It establishes, in conjunction with the Council of Ministers, the State's general policy (art. 150). He appoints and dismisses civil and military employees (art. 153), has the right to issue pardon after consulting the Cabinet (art. 155). He represents the State in its foreign relations (art. 151), accredits diplomatic corps (art. 153), declares war and sends armed forces outside after consulting the National Defence Council and with the approval of the House of representatives by a majority of two thirds (art. 152); makes peace and concludes and ratifies treaties (art. 151).

He has the right to propose laws (art. 122), promulgates them (art. 123) and can use his right of veto (art. 123). As we have seen above, in the absence of parliament, he may issue decrees having the force of law in case an event requires taking urgent measures that cannot suffer any delay (art. 156). He can call for a referendum on issues relating to the supreme interests of the state (Art. 157). He may also propose constitutional amendments (Art. 226).

The President may declare a state of emergency, after consultation with the Government and with the approval of Parliament, for a maximum period of three months, which may be extended for a similar period with the approval of two-thirds of the members of the House (art. 154).

He may appoint up to 5% of the members of the House of Representatives (art. 102). He may dissolve the House, after a referendum, but is not required to resign if he does not get the support of the majority of voters (art. 137).

## Conclusion

A common trait among all Egyptian constitutions of the republican era is the presence of a hybrid system, a mixture of presidential and parliamentary systems, increasingly unbalanced in favor of the executive. The 2014 Constitution has retained the same organization of powers while strengthening the concentration of power in the hands of the head of state.

A semi-presidential system is considered by supporters of the president as being incompatible with the security requirements of the current situation and there have been calls for the establishment of a presidential system. To be adopted, such amendments would require a two-thirds majority of the House of Representatives to be submitted to referendum (art. 226). The current composition of the Chamber of Representatives should not make reaching such a majority difficult for the proponents of such amendments.

In September 2015, President Abdel-Fattah Al-Sisi declared that the 2014 Constitution had been written with good intentions, in particular the provisions giving broad powers to the parliament, but that this was not enough to govern a state.<sup>[6]</sup> This statement was considered as an implicit call to amend the constitution. A few days later, however, the president declared that amending the constitution was not on the table at the current time.<sup>[7]</sup> This was not enough, though, to ease the worries of the drafters of the 2014 Constitution who decided with public figures in February 2016 to form a committee to protect the Constitution against those supporters of President Al-Sisi who consider that the constitution unduly limits the president's powers.<sup>[8]</sup>

## Notes

[1] The Tahir Institute for Middle East Policy, *Legislation Tracker. Extraparliamentary Laws passed by President Sisi*, 9 January 2016, <http://timep.org/commentary/legislation-tracker-report-january/>

[2] Ziad Bahaa Eldin, *Egypt parliament's first job: reviewing 340 laws*, 13 January 2016, <http://english.ahram.org.eg/NewsContentP/4/180861/Opinion/Egypt-parliaments-first-job-reviewing-laws.aspx>

[3] Human Rights Watch, *Egypt: New Parliament Should Fix Abusive Laws*, 12 January 2016, <https://www.hrw.org/news/2016/01/12/egypt-new-parliament-should-fix-abusive-laws>

[4] Gamal Essam Eldin, *Egypt's newly elected MPs vow to amend constitution*, 3 November 2015, <http://english.ahram.org.eg/NewsContent/1/64/162589/Egypt/Politics-/Aboutus.aspx>

[5] The 1971 Constitution had been amended in 1980, to cancel the limitation to two presidential terms (Article 77) and had been amended again in 2005 to establish presidential elections by direct public ballot (Article 76).

[6] Ahram online, *Egypt's 2014 Constitution was Written with Good Intentions but is not Enough: Sisi*, September 13, 2015, accessed October 24, 2015, <http://english.ahram.org.eg/NewsContent/1/64/141421/Egypt/Politics-/Egypts-constitution-was-written-with-good-intenti.aspx>. This statement raised criticisms from Nour Farahat, a prominent law scholar (<http://albedayah.com/news/2015/09/13/96697>), and from the novelist Alaa al-Aswani, (<http://www.egyptindependent.com/news/novelist-slams-president-over-constitution-remarks>), for whom the constitution should represent an obligation on all citizens, especially the president. This statement sparked questions around possible amendments of the constitution to reduce the powers of the parliament and increase those of the president.

[7] Ziad Bahaa-Eldin, "Egypt: Reclaiming the Constitution", *Ahram online*, 17 October 2015, <http://english.ahram.org.eg/NewsContentP/4/161127/Opinion/Egypt-Reclaiming-the-Constitution.aspx>

[8] Mona al-Nahas, « Amend or Upend ? », *Ahram Weekly*, 26 February 2016, <http://weekly.ahram.org.eg/News/15590/17/Amend-or-upend-.aspx>

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