

Nº 134 - AUGUST 2012

Crunch Time for Egypt's Civil-Military Relations

Moataz El Fegier

>> President Morsi's sudden ouster of the first ranks of the Supreme Council of the Armed Forces (SCAF) seems to have settled the power struggle between the Muslim Brotherhood (MB) and the military in the formers' favour. Since the fall of Hosni Mubarak on February 11, 2011, executive authority in Egypt was firmly in the hands of the SCAF. While many Egyptians initially perceived the military as the protector of the revolution, over the past 18 months, SCAF's monopolisation of power during Egypt's transition escalated the perception that the military intends to retain control of the government. SCAF maintained certain constitutional and legal powers to ensure that its role in Egypt's transition would not end by declaring the new elected president. By removing SCAF's key old guard and appointing new military leaders loyal to him, President Morsi has finally been able to reassert his presidential powers over the military and state institutions. Reform efforts to preclude the politicisation of the armed forces and enhance civilian oversight of the military continue to be one of the transition's greatest challenges. Now that Morsi's government bears full executive power, the MB for the first time has the opportunity to reform Egypt's power structures towards democratic civilian rule – if it wants to.

CIVIL-MILITARY RELATIONS BEFORE 25th JANUARY

Breaking from a record of military leadership since 1952, Morsi became Egypt's first civilian president in June 2012. Under Nasser, military leaders were the most powerful actors in domestic politics. This direct political role of the military declined during Sadat, who

HIGHLIGHTS

- Even without Tantawi at the top, the far-reaching, deeply entrenched powers and privileges of Egypt's military establishment will be difficult to crack.
- How to avoid politicisation of the army and democratise civilian oversight of the military continues to be the transition's key challenge.
- Any sustainable transition must seek a broad national consensus among all political forces on the management of the transitional process.

This research acknowledges the support of the EU FP7 large-scale integrated research project, GR:EEN-Global Re-ordering: Evolution through European Networks (European Commission Project Number: 266809).

»»»»» was able to place the military under his control. Mubarak followed Sadat's tactics and used co-optation to ensure the political loyalty of senior military leaders by appointing military generals in senior civilian positions and expanding their role in the economy. Thanks to these policies, today the Egyptian military owns and manages significant economic enterprises in civilian industries, agriculture, and national infrastructure that amount to an estimated minimum of 25 per cent of the value of Egypt's economy. In addition, military leaders were granted unchecked powers in defence procurement and control of international military international aid, particularly the annual \$1.3 billion from the United States. For decades, the military's budget and business affairs have remained out of public scrutiny.

During Mubarak's last years, many SCAF leaders were unhappy about the increasing political and economic powers of Mubarak's son Gamal, and grew increasingly concerned about the mounting popular unrest due to the regime's economic and political failures. When the massive popular uprising erupted on 25th of January 2011, SCAF leaders concluded that the withdrawal of Mubarak and his family from the political scene was the only way to maintain order, keep revolutionary forces in check, and preserve their own positions. While the SCAF's exact role in Mubarak's final ouster remains opaque, they reportedly put significant pressure on Mubarak to abdicate. With the fall of Mubarak, the military leadership established itself as the leading engineer of Egypt's transition.

LEADING A BUMPY TRANSITION

Motivated by the preservation of its political and economic interests, SCAF led by Field Marshal Tantawi was able to circumvent any meaningful dismantling of the pillars of Mubarak's repressive state. The military council's insistence on holding parliamentary elections before drafting a new constitution contributed to the political polarisation

between Islamists and liberals, and political opposition forces failed to agree on an alternative road map for the transition. In the meantime, the Muslim Brotherhood (MB) and its Islamist allies collaborated with the SCAF to maximise political gains, and attempted to exercise exclusive control over the constitution drafting process.

However, the harmony between the SCAF and the Muslim Brotherhood did not last long.

The SCAF methodically unfolded its ambition to maintain significant powers in post-Mubarak era. A set of SCAF-backed supra-constitutional principles declared in November 2011 aimed to solidify the military's powers and autonomy, suggesting that the military – like in Turkey – act as a guarantor for the civil state, including through veto power in all military affairs. Under public pressure, the proposal was dropped.

After the parliamentary elections ended in January 2012, the ensuing power struggle between the military and the Muslim Brotherhood intensified. The vagueness of the March 2011 Constitutional Declaration enabled the SCAF to weaken the newly elected Islamist-dominated parliament and preserve its own ability to disrupt political processes it did not approve of. A controversial ruling by the Supreme Constitutional Court on 14 June 2012 led to the dissolution of the parliament, and allowed the SCAF to unilaterally amend the Constitutional Declaration and elevate itself above all public bodies. Moreover, an addendum of 18 June stripped the elected president of his powers over the military and endowed the SCAF with power to veto the new constitution and appoint a new constitutional assembly. On 19 June, the SCAF established by decree the new composition of the National Defence Council which, though officially headed by president Morsi, is controlled by military leaders. The power struggle with the SCAF has also been taking its toll on the MB's credibility, as it has prompted President Morsi

and the MB leadership to break various electoral promises to align with SCAF's opaque transition management.

In a sudden and unexpected response to SCAF's increasing power grab, on 12 August, President Morsi removed the top military leaders Field Marshal Tantawi, Commander-in-Chief of the Armed Forces and Minister of Defence alongside his Chief of Staff Lieutenant General Sami Anan as

well as other senior military leaders. He also declared the addendum of the SCAF's Constitutional Declaration as null and void and replaced it with new amendments, according to which the president now holds full powers over the military. First reports seem to indicate that this move was enabled by a previous backdoor agreement between Morsi and a number of other senior military leaders, under which the latter would replace the old guard and contain possible protests within in the army. The unprecedented terrorist attack against the military in Sinai the week

before Morsi's move was also decisive, as Tantawi's SCAF leadership had been strongly embarrassed and weakened over its failure to maintain security on the Sinai.

The key question now will be to which degree the newly empowered government will use its powers to institutionalise democratic rule.

THE MILITARY IN THE EMERGING ORDER

Constitution-making will be crunch time for the future of Egypt's civil-military relations, and ultimately, for the democratic potential of the country's emerging order for the years and decades to come. So far, the Constituent Assembly was addressing the future of the military establishment at a time when SCAF controlled the transition process, and the fragmentation of political society allowed the SCAF's to design its future place in Egyptian politics according to its own preferences. Morsi's latest move has drastically changed this condition by liberating himself and the constituent assembly from SCAF's pressure. However, the exclusion of most political forces other than the Muslim Brotherhood continues to threaten Egypt's transition. The concentration of political powers in the hand of President Morsi and the MB, now further boosted by Morsi's ouster of Tantawi, is a serious concern among Egyptian political and civil society.

If Morsi can resist temptations to instrumentalise the military to entrench the MB's hold on power and is indeed serious about institutionalising democratic civilian rule over the military, he must aim to fulfill a number of basic requirements for democratic civil-military relations. These must include guarantees to place all military affairs under the oversight of elected civilian bodies; appropriate measures to ensure that the members of the military are held accountable for human rights abuses; and prevent military justice from forming a parallel judicial system beyond ordinary judicial oversight.

Civilian oversight over the military: Firstly, appropriate civilian oversight over the military's budget and economic activities must be established. National security was often presented by both Mubarak and SCAF as a pretext to curtail civilian oversight over military budget. However, after the revolution, voices in Egypt calling for an end to the military's control over entire economic sectors have become louder. While an immediate

»»»»»

If Morsi can resist temptations to instrumentalise the military to entrench the MB's hold on power and is indeed serious about institutionalising democratic civilian rule over the military, he must aim to fulfill a number of basic requirements for democratic civil-military relations

»»»»» withdrawal of the military's economic privileges would lead to an unwise confrontation the body politic could ill afford, there are incremental ways with which civilians can become involved in monitoring the military budget. The economic activities of the military should normally be monitored like the other budgetary items, and the Parliamentary Committee of Defence and National Security could be tasked with reviewing the purely military items. Civilian oversight over military affairs should also be extended to arms procurement, a task which could be assigned to the National Defence Council. However, the membership of this Council should be revisited to ensure that civilian representatives are properly integrated in the decision-making process.

Secondly, the power to declare war must lie in the hands of elected civilian representatives. Under the constitution of 1971, the president declares war with the approval of the parliament. However, current military leaders have opposed handing such powers to civilians. A compromise solution could be to establish by tasking the National Defence Council as an intermediary to confirm the presidential decision in a way that it enjoys the backing of military leaders.

Thirdly, elected civilian representatives must transparently appoint and dismiss senior military leaders in a transparent manner. Under the 1971 constitution, the president as the commander-in-chief holds the power to appoint and dismiss senior military leaders. In its current constitutional reform process, Egypt will need to institutionalise a transparent and depoliticised military appointment process and help to ease current fears among many political forces that the MB seeks to promote its grip on the military. Therefore, other organs such as the Parliamentary Committee of Defence and National Security and the National Defence Council should be involved, inter alia, with the power to advise and consent to presidential appointments.

In very specifically defined cases of emergency, it can be acceptable that the executive might order the Armed Forces to assist in preserving

domestic security. The role of the military in domestic security must be clearly defined in order to avoid abuses. The decision of the president to order the armed forces to preserve domestic security can be checked by other organs such as the National Defence Council and the High Courts. The emergency situations in which the president can order the army to deploy domestically must be defined clearly in the constitution. Safeguards and other guarantees are needed to ensure that the Armed Forces are cannot be used by the political authorities to suppress peaceful protests. In clearly defined emergency situations, all constitutional human rights safeguards must be applicable to the Armed Forces. Members of the military must be held accountable for any legal violations without immunity, or any other special status.

Restricted Military Justice: Military justice, which lacks basic safeguards of fair trial and judiciary independence, must be tightly restricted, and must not apply to civilians. In the last 18 months, around 12000 Egyptian civilians have been tried by military courts. Most of the cases were related to ordinary crimes, but hundreds of political activists were also subject to military trials. On 6 May 2012, the Islamist-dominated parliament modified the law of military justice to abolish the wide powers of the president to refer civilians to military courts. However, the SCAF exerted pressure on the parliament to maintain strong powers of the military justice. The current Code of Military Justice still allows trying civilians before military courts if they are accused of committing crimes against the armed forces, or in regions that are under the jurisdiction of the military. According to the Code, the military prosecutors are the competent organs to determine whether a given crime falls under the jurisdiction of the military justice.

Upon taking office, president Morsi established a committee to examine 'all cases of civilians sentenced by military courts since January 2011 until 30 June 2012'. The committee is also

mandated to review ‘all administrative detainees held by the minister of interior or others’ and ‘cases of revolutionaries sentenced by regular courts from January 2011 until 30 June 2012’. The committee has been criticised by many political activists on the grounds that its membership is dominated by figures close to the SCAF. The committee members include two prominent human rights defenders and two representatives of the revolutionary youth coalitions. Critics argued that, according to the Constitutional Declaration and the Code of Military Justice, the president can immediately use his powers to pardon all civilians convicted by military courts or order their retrial before ordinary courts. Most importantly, however, the military justice continues to prosecute civilians while the committee embarks on its job, but the committee addresses cases until 30 June only, meaning that all new cases will remain outside of public scrutiny. Restricting the powers of military justice is a very critical dossier for civil-military relations, on which the president must act decisively. Drastic legal amendments are needed not only to fully cease the referral of civilians to military courts, but also to ensure that members of the military can challenge the rulings of military courts before a higher ordinary court.

Immunity and Accountability: Serious human rights abuses allegedly committed or commissioned by the Egyptian security forces during the transitional period, including extra-judicial killing of demonstrators, the excessive use of force in dispersing protesters, and torture during detention and arrest, must be held accountable. The SCAF has failed to investigate these crimes and to identify the perpetrators. According to local and international human rights observers, the armed forces were involved in the commission of many of these crimes aiming to silence its critics. However, the civilian General Prosecutor currently lacks the power to investigate abuses committed by members of the army. On 10 May 2011, the SCAF amended the Code of Military Justice to provide military prosecutors with an exclusive jurisdiction over crimes committed by members

of the military, even if investigation is initiated after their retirement.

After his election to the presidency, Mohamed Morsi expressed his commitment to transitional justice and investigate human rights violations during Egypt’s transitional period. On 7 July, he established a fact-finding committee to inquire into crimes committed against unarmed protesters from 25 January 2011 to 30 June 2012. The commission, however, was formed hastily and without sufficient consultation with human rights experts and other stakeholders. Moreover, the commission includes the same organs such as the office of the general prosecutor and the intelligence agency which previously failed to provide evidence to the court to identify the perpetrators of the crimes committee during the 18 days of the revolution. Two human rights activists joined the commission only as observers but lack powers to meaningfully contribute to the commission’s work. Many Egyptians therefore doubt that the commission’s investigations will lead to significant results.

A long-term strategy of transitional justice needs to be carefully devised to avoid the pitfalls of the criminal trials initiated against Mubarak and his senior associates over the previous year. These trials led to the acquittal of senior security leaders for lack of evidence. Hosni Mubarak and his Minister of Interior were jailed for life for failing to stop killings, but the court failed to identify and punish the perpetrators of the crimes. In order to lay the groundwork for genuine accountability, the president must conduct systematic reforms of the Office of the General Prosecutor and the security apparatus. Morsi’s current attempts to address the military’s involvement of human rights crimes during the transitional period is widely expected to meet significant resistance by the military even after the recent reshuffle. Some observers believe that military leaders might have been offered a de facto immunity by president Morsi as part of an exit deal. Public pressure can, however, still push the government ensure accountability, as occurred in the case of Mubarak.

»»»»» **CONCLUSION**

Democratising civil-military relations and institutionalising civilian oversight over military affairs must be a top priority during Egypt's transition. This will be a hard task: having been entrenched in the political regime for decades, the far-reaching powers and privileges of the military establishment are difficult to crack, even without Tantawi at the top.

After removing his SCAF competitors from power and regain his presidential authority over the military and other state institutions, President Morsi is now empowered to devise new civilian-military relations and lead an inclusive transition to democracy. However, a transparent and inclusive transition has not been a priority so far for either Morsi or the Muslim Brotherhood. Undoubtedly, Morsi's newly won control over the military, constitution making, and the legislative process, which gives largely unchecked powers to the Muslim Brotherhood over Egypt's transition, arouses serious concern among many Egyptians. Freed from SCAF's grip, the MB-led government will now be able to show its true colours.

Any sustainable transition would have to be based on a broad national consensus, among President

Morsi, the Muslim Brotherhood, and other political forces on the management of the transitional process. Ensuring a transparent and inclusive constitution drafting process must stand at the heart of the transition. Unfortunately, the current structure of the Constituent Assembly does not fulfill the requirement of inclusive representation.

The US and EU have united around the demand that political powers should be swiftly handed over to elected civilian bodies. While this helped to isolate the SCAF, the key in changing Egypt's power relations will be to help build Islamists' and liberals' ability to reunite the revolutionary front. While continuing to consolidate their engagement with the newly elected Islamist leadership, Western governments must step up their efforts in speaking up for an inclusive transition based on a broad national consensus and transparent constitution making.

Moataz El Fegiery is a visiting fellow at FRIDE.

e-mail: fride@fride.org
www.fride.org

