

Position Paper

Mursi: Gains and Losses of the Battle Over the Constitution



Introduction

Three weeks after issuing the controversial constitutional decree of 21 November 2012, and four weeks since the opposition's representatives withdrew from the Constituent Assembly, Mursi has won more rounds than his opponents in the most complicated crisis since the start of his presidency. Yet the victory is coupled with losses. The opposition has been unsuccessful in achieving its real goal behind the mobilisation: to topple the president. But Mursi's administration of affairs of the republic has been widely criticised, and divisions in Egypt have become more pronounced. All that remains is the people's final word which will tell the world whether Egyptians approve of the draft constitution or reject it. The latter would mean pushing the process of writing the constitution, governance and building state institutions back to the starting point.

A Crisis that is Larger than its Makers

As in every multi-dimensional political crisis, the exacerbation of the Egyptian crisis led to those who initiated it losing control over it, and the crisis acquiring a unique trajectory. After five long months of work, the opposition has successively walked out of the Constituent Assembly. These actions point to the fact that those opposing the president, and the Islamist forces supporting him, have chosen the path of confrontation, especially with the assembly reporting that a consensus has in fact been reached regarding the controversial sections in the draft constitution. The president's estimations that the political opposition forces, in alliance with some judicial groups – especially the constitutional court, who are working towards undermining the transitional process and creating a power vacuum – forced him to issue his constitutional decree, triggering much controversy.

Four of the six sections in the constitutional decree could have been passed with no real opposition, and possibly with a great deal of public support. However, the other two sections triggered major concerns even amongst some of the president's supporters. The first section deals with the fortification of the president's decisions and decrees since coming to power. The second one relates to powers conferred on the president to take exceptional measures in order to protect the country from risks. Both sections were also slammed by the judicial system. This, in turn, provided the opposition with concrete and substantiated reasons to escalate their criticism of and opposition to the president. On Tuesday, 27 November 2012, a mass anti-Mursi demonstration was arranged in Tahrir Square. This was led by senior figures from the opposition coalition, Muhammed al-Baradei, Amr Moussa, al-Sayed al-Badawi and Hamdeen Sabahy. Slogans that were raised at the demonstration, which served to increase the opposition's confidence, called for the overthrow of the president.

However, taking to the streets was a double-edged sword; on Saturday, 1 December 2012, pro-presidential forces organised an unprecedented mass rally in Egypt's Nahda Square where numbers were estimated to have exceeded two million. There is no doubt that the Islamist forces, which pledged to organise the rally, wanted to send out a clear message that the majority of the public are in support of the president. But mass rallies were not the only means to assert positions. In a very short session, from the afternoon of 29 November to the morning of 30 November, the Constituent Assembly concluded its vote on a draft constitution, section-by-section. The next day, on Saturday, 1 December, in an official ceremony the president received the draft Constitution from the president of the Constituent Assembly. He then called on the people to take part in a referendum on the draft to take place fifteen days from this call, just as the text of the constitutional decree, approved by the people in March 2011, states.

By so doing, the scope of the crisis has become wider, leading to more conflict. The opposition initially raised the banner of rejecting specific sections in the draft constitution and restructuring the Constituent Assembly. Thereafter, it demanded the abolition of the first constitutional decree, and ended up demanding the abolition of the constitutional decree, and stopping the process of the referendum on the draft constitution.

Since 2 December, the opposition's position has taken on a radical turn, particularly after the announcement of its allies in Egypt's Judges Club that they would refuse to supervise the referendum, and calling on judges to go on strike and suspend court operations. Although the Supreme Judicial Council (the supreme authority of the judicial institution) the next day declared that they had agreed to supervise the referendum and rejected the call to strike, the opposition began to address the president in a tone of warning. On 4 December, the opposition organised another demonstration, where the leaders decided to head from Tahrir Square towards the presidential palace, known as the al-Ittihadiya Palace. When evening came, the palace was surrounded by demonstrators. Demonstrators there raised provocative slogans and threatened to storm the palace, prompting crowds of supporters of the President to head to the area the next day, 5 December. Due to the small number of the opposition supporters, the President's supporters initially managed to take control of the area surrounding the palace with relative ease. But soon after, unknown demonstrators returned to the area of the palace and opened fire. This resulted in five deaths among the president's supporters and one among his opponents, sparking renewed clashes between them.

On 6 and 7 December, the crisis reached its peak, particularly after the withdrawal of the president's supporters from the area surrounding the presidential palace and after the president gave his speech, in which he called for a national dialogue, on 8 December. Friday evening was marked by opposition protestors attempting to break into the presidential palace. They then retreated after rumours spread that the president's

supporters were on their way to the palace to protect the legitimacy it symbolises. Although the picture of the conflict and the tense situation implied that Mursi's position as a president was at stakes, the fact of the matter is that the opposition was heading to a dead end, which it no longer knew how to get out of.

The opposition refused to join the national dialogue, without the president fulfilling their demands at first. However, around forty people, consisting of public figures, political leaders and constitutional scholars, participated in the dialogue. A statement made by the leadership of the armed forces was issued on the morning of the dialogue. The statement expressed the concerns of the military regarding the repercussions of the crisis, and it called for a national dialogue and commitment to a legal and constitutional solution. Late Saturday night it was announced that an agreement had been reached by participants in the national dialogue according to which the first constitutional decree would be cancelled by means of a second decree which would entail the President's revocation of both the second and sixth sections in the first constitutional decree, with emphasis on fortifying the president's constitutional decrees as well as dismissing the attorney-general. Also, the second decree asserts that the date of the referendum remains on schedule, on the grounds that the president cannot change the date of the referendum two weeks before the scheduled date.

Noteworthy is the vice president's, Mahmoud Mekki, assertion that a sufficient number of judges expressed their willingness to supervise the referendum, which is difficult to be sure of until the day before the referendum.

Presidency: Crisis and Confusion

The president's justifications for issuing the first constitutional decree were probably valid. However, the repercussions of it and the way it was declared did not go as planned. The confusion in dealing with the crisis continued despite the president quickly realising the miscalculation he made in the constitutional decree.

Leaks from the presidency's office stated that there were detailed reports revealing a multi-level conspiracy, including leaders of the opposition, key figures from the former regime, and judges in the Constitutional Court, as well as Arab leaders from Gulf – all conspiring to overthrow the president. However, and notwithstanding intimations in the president's speech, and in a media interview with the vice president, the evidence of such a conspiracy was not disclosed to the public. Large segments of the population were left in the dark, they couldn't see the motives of the president and the reasons for his fears, nor did they trust the attitudes and language of the opposition leaders.

Sufficient efforts have not been made to deal with the reaction of the president's advisers on excluding them from the decision-making process before making the decree,

which resulted in the resignation of four of the president's advisers, and Samir Morkus, his only Coptic assistant. There is no doubt that the evening of Wednesday 5 December was decisive in light of the resignation of the advisors who held the Muslim Brotherhood accountable for the bloody clashes that claimed the lives of six demonstrators. Many have thought that the presidential palace was not under threat due to the small number of opposition protestors who decided to have a sit-in in front of the place , and that the president didn't require a mass of supporters to disperse them.

On the other hand, it seems that the opposition was taking the lead in most of the stages of the crisis. The president did not speak to the people except on three occasions. On one of these occasions, despite the enormous moral power which his presidential status grants him, when he delivered his speech in a ceremony for receiving the draft constitution, he avoided addressing the core cause of the crisis. And by losing control of the initiative, it seemed as though the president was forced to make successive, albeit minor, compromises, though somewhat belatedly. Only after the president's call for a national dialogue on the Thursday evening of 6 December, did he regain adequate control over the situation, when he showed willingness to discuss all controversial aspects of the decrees in the dialogue meeting.

It did not really help the president that most of his supporters were Islamists, particularly from the Muslim Brotherhood and Salafis, who portrayed the crisis as being a conflict between the advocates of Islam and Shari'a and those opposing these values and positions. In essence, the conflict was a political one and related to governance and power. Even the division between opponents to the president's actions and his supporters was not conclusive in creating a situation of two opposing parties: Islamists and secularists. What appeared, however, during the three weeks of intense crisis is that the country was merely witnessing a battle over Islam and Shari'a. This is what weakened the position of the President, being a president of all Egyptians.

Miscalculations of the Opposition

The Opposition did not agree or dare to declare the real goals behind the mobilisation against the president. Badawi, the leader of the Wafd Party, is the only figure to have shown respect to the legitimacy of the president, despite his opposition to the constitutional declaration and his demanding a reconsideration of the draft constitution. Inconsistency between the opposition's real and declared objectives has played a major role in them making successive, major mistakes.

In frequently refusing to have a dialogue with the president, the opposition leaders appeared to be the intransigent party which insists on pushing the country towards instability. The declaration made by the opposition coalition to boycott the national dialogue session, although it was the coalition that first called for such a dialogue, has

caused great losses at the national level. The president, in spite of the slow-paced progress of the presidential institution, has revealed relative flexibility since the start of the crisis, while the opposition continued to exacerbate the issue. A broad section of Egyptians across the country felt that the opposition's real aim was to topple the president and not simply overturn the constitutional decree or the draft constitution.

Whatever the opposition's real goal might have been, it is clear that its leadership did not realise the nature of the balance of power. Some opposition leaders blatantly called for military intervention, without bothering to carefully examine the political situation and the willingness of the leadership of the armed forces, who were not part of the internal political conflict, to maintain the stability of the country. The opposition resorted to using the power of the street without realising that their capabilities of rallying the masses could never match that of the president's. The opposition bet on the judges, without realising that its allies in the Judges Clubs, and the constitutional court judges, do not necessarily have control over the judicial body.

Moreover, the opposition did not succeed in refuting the claims about their ties with Arab countries hostile to the revolution and the new regime, or in facing the accusations of aligning with the dissolved National Party networks and former regime figures, and in answering questions related to the sectarian nature of the mass rallies. Indeed, the frequent visits of the opposition leaders to one Gulf Arab state which is operating against the post-revolution regime, has come to be known to the Egyptian people; and the presence of supporters of the former president in Tahrir Square; as well as the confession made by al-Baradei in an interview with the Financial Times that the supporters of Mubarak are in fact supporting him, have all raised a growing perception that there is a counter revolution underway, and this is not merely a matter of a political opposition attempting to achieve the goals of the revolution. Furthermore, the high proportions of Egyptian Copts amongst the opposition has generated feelings that the opposition leaders are threatening the future of the country by using sectarian divides and exploiting fears of religious minorities.

The End of the Crisis

There is no doubt that the crisis, at least how it developed, ended up in favour of the president. The national dialogue resulted in the issuing of a new constitutional decree cancelling the first decree and which has nonetheless weakened the president's position. This without changing its content and has emphasised that the constitutional referendum should take place on the stipulated date. Along with a broad segment of Egyptian society having hailed the results of the dialogue, the president acted, within the next few days, with a great deal of responsibility. The president continued his consultations with national leaders and public figures, including Badawi and Muhammad Hassanein Heikal, and reaffirmed his support of any national consensus leading to a constitutional

amendment as soon as the next parliament is established. However, it is difficult to know exactly when this crisis will end once and for all. As with every major political crisis, there will still be repercussions and complexities whose resolving will depend on the conditions of executing the constitutional referendum, and on its results. Once the referendum is conducted under credible judiciary supervision, with the agreement of a substantial majority on the draft constitution, then there is no choice for the opposition but to join the national dialogue and try to reach consensus with other powers on the sections that must be amended, and the mechanisms of amendment. But if the draft constitution does not get the approval of people, then the country will slide back to its original state, where a new constituent assembly will be formed by direct public vote. However, this crisis has other results which should not be overlooked. The first one is explicit, and the second is implicit.

- The first one is the harm inflicted upon presidential institutions as a result of intense disagreement about the constitutional decree and the approval of the constitution in light of a context of extreme division and polarisation, regardless of the stances of the majority and minority.
- The second one relates to the return of the imbalance between the military and all civilian political spaces of power. Whether it is the statement made by the armed forces addressing the people, which came out in support of the president's call for dialogue and which the president seemingly knew about in advance, or the invitation by the minister of defense on Tuesday evening, 11 December, to a large contingent of political, media, artistic and sports figures at a social gathering attended by the president in order to calm the atmosphere before the referendum, that the army stood out as the most rational and balanced force, the last resort for stability.

There is no sign, yet, that the army wants to return to the political arena or to go against its legitimacy. But it is clear that the balance achieved by Mursi on 12 August 2012 for a civilian-led Egypt, which is autonomous of the army, when he toppled the Supreme Council of the Armed Forces, has been shaken by this very complex crisis.

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