



From Plebiscite to Contest? Egypt's Presidential Election

A Human Rights Watch Briefing Paper



From Plebiscite to Contest? Egypt’s Presidential Election

A Human Rights Watch Briefing Paper

Introduction	1
Political Rights and Demands for Reform	3
Free and Fair?	5
From Plebiscite to Election: Article 76 Amended	5
Government Restrictions and Harassment	7
Campaign Issues.....	9
Judicial Supervision of Elections	11
Election Monitoring.....	13
Appendix.....	14
Political Parties and Candidates	14

Introduction

On September 7, Egypt will hold its first-ever presidential election, as distinct from the single-candidate plebiscites that have so far characterized the “re-elections” of President Husni Mubarak. This election, however, is seriously flawed by requirements that effectively negate the possibility of any opposition leader from seriously challenging President Mubarak’s hold on power.

Mubarak, a former air force general whom President Anwar al-Sadat appointed as his vice-president, took over as president following al-Sadat’s assassination in October 1981. His control of the ruling National Democratic Party (NDP), which has an effective monopoly on formal political life in the country, ensured that he stood unchallenged in 1987, 1993, and 1999 plebiscites. This year Mubarak will face nine other candidates. Only al-Ghad (Tomorrow) Party’s Ayman Nur and al-Wafd (Delegation) Party’s Nu`man Gum`a are candidates with constituencies and party networks of any significance. (Nur, who has been most outspoken in his criticism of Mubarak, was jailed earlier this year and still faces trial on charges that appear to be politically-motivated.) Other small but established opposition parties boycotted the election, calling it a sham (see appendix).

Several well-known activists who had put themselves forward initially – democracy activist and sociologist Saadeddin Ibrahim, feminist and physician Nawwal al-Saadawi, and former member of parliament Muhammad Farid Hassanein – also withdrew. A major flaw in the revised constitutional amendment governing the presidential election is that it precludes the possibility of an independent candidate by requiring in effect the endorsement of hundreds of members of the ruling party. It is likely that the government insisted on this provision to ensure that the largest political opposition group, the Muslim Brotherhood, which remains banned and unable to participate legally in national politics, would not be able to put forward a candidate who might represent its agenda. (On August 21, in what many observers saw as a move that on balance favored Mubarak, Brotherhood Supreme Leader Muhammad `Akif urged members to vote rather than boycott the election but refrained from endorsing any candidate.)

The NDP’s dominance in all branches of government, its vast patronage network, state control of electronic and major print media, more than five decades of stultifying restrictions on independent parties and political activity, and an absurdly short campaign window of three weeks make it extremely unlikely that the election on September 7 will reflect the free choice of the electorate. If the September 7 election happens without the

serious fraud and intimidation that has characterized some other recent votes, this will be an important advance, but the main features of entrenched authoritarian rule remain very much in place and clearly put a free and fair election at this moment beyond reach. In the view of many Egyptians, the real test of electoral reform will come with the People's Assembly general elections, due to be called for November.

The biggest challenge facing the president and his party is not winning but generating a sufficiently large turnout to be able to claim a measure of popular legitimacy. The most serious recent incidents of police violence against opponents occurred when protestors urged the public to boycott the polls, as during the constitutional amendment referendum on May 25 and again in demonstrations on July 30 following President Mubarak's formal declaration that he would stand for a fifth term.

Political Rights and Demands for Reform

The significance of this election lies not in the possibility of unseating President Mubarak but in the fact that for the first time many Egyptians are boldly challenging his rule. It remains to be seen whether the motions of a contested election will deflect or amplify that challenge, which has raised demands for key political rights such as freedom of assembly and freedom of association. The key demand is to end the emergency law that has been in effect continuously since October 1981 and allows the authorities to ban demonstrations and public assemblies, detain individuals without charge for extended periods, and prosecute people before Emergency State Security Courts that do not meet international fair trial standards. The government has not suspended the emergency laws during the campaign, although it has generally not interfered with opposition rallies linked directly to the campaign.

Calls for reform coming from Western allies, especially the United States, contributed to Mubarak's about-face on the issue of contested elections. Since the September 11, 2001 attacks on New York and Washington, the Bush administration has emphasized the need for democratic reforms in the Arab world as one element in combating terrorism, and Washington has increasingly justified the invasion and occupation of Iraq in terms of advancing democratic rights in the region. President Bush prodded Egypt in his January 2005 State of the Union Address, and Secretary of State Condoleezza Rice abruptly cancelled a planned February visit to protest the jailing of Ayman Nur. When Rice did visit Cairo in June, she publicly urged the government to allow opposition groups freedom of assembly and access to the media, and repeated President Bush's call for international election monitors.

Washington contributed to Egypt's present ferment in other, unintended ways. Large street demonstrations in 2003 protesting the Iraq invasion and Washington's unstinting support for Israel's suppression of the Palestinian intifada were the catalyst for initial outspoken attacks on President Mubarak's authoritarian rule.

(Another key demand of demonstrators has been to end the widespread practice of torture by ordinary police and especially by the Ministry of Interior's State Security Investigations bureau. Interestingly, on issues of torture and long-term detention without charge, where its own conduct stands as an affront to fundamental human rights, Washington has been deafeningly silent.)

The popular challenge that forced President Mubarak's hand took organizational form in July 2004 when a coalition of individuals and groups, the Egyptian Movement for Change (*al-haraka al-misriyya min ajl al-taghyir*), initiated a petition campaign dismissing the latest cabinet shake-up as cosmetic, rejecting the apparent grooming of Mubarak's son Gamal for presidential succession, and calling for direct, contested presidential elections.

The first public protest calling on Mubarak to step down occurred on December 12, 2004, when the Movement for Change brought between 500 and 1,000 persons to the steps of the High Court in Cairo. The largely silent protestors taped their mouths with large yellow stickers bearing the single word *kifaya* (enough), a slogan that quickly became the operative name of the protest movement. By the spring of 2005 Kifaya protests had become weekly events, with chants of "No to Mubarak, his party, and his son," and "Mubarak, you failed us, what did you do with our money?"

Gamal Mubarak, who had been put in charge of "reforming" the NDP, insisted in July 2004 that ending the emergency law was "not among the priorities" of the NDP. It was "not wise to broach issues affecting domestic stability," he said. Today, virtually all candidates, even President Mubarak, call for ending the emergency law, though the president says that the government will offer new counter-terrorism legislation – what he termed "a firm and a decisive law that eliminates terrorism and uproots its threats."

Among Mubarak's challengers, Ayman Nur says that in addition to getting rid of the emergency laws he would release the thousands of persons detained without charge – around 15,000 by most estimates – and do away with "unnecessary bodies like the state security prosecutor." Al-Wafd's Nu`man Gum`a has also called for the end of emergency law and release of detainees. Nur and a number of candidates favor drafting a new constitution; al-Wafd Party program is less explicit but calls for a "parliamentary republic" where the elected legislature "supervises the executive."

Free and Fair?

The government has refused to allow international monitors to observe the September 7 vote, and the Presidential Elections Commission also ruled out monitoring efforts of Egyptian non-governmental groups. Past parliamentary elections, notably in October and November 2000, and by-elections in 2002, witnessed instances of violence and voter intimidation, along with widespread allegations of fraud and vote-rigging on the part of the authorities. A July 2005 report by Egypt's Judges Club charged that the May 25 referendum to amend Article 76 of the Constitution was itself plagued by serious fraud and vote-rigging.

From Plebiscite to Election: Article 76 Amended

Until it was amended in May, Article 76 of the Constitution specified that a presidential candidate had to secure one third of the votes of the People's Assembly, and that a candidate receiving two-thirds of the Assembly's vote would be the sole candidate. Because the NDP from its inception has controlled well over two-thirds of the Assembly seats, the incumbent's "re-election" was a foregone conclusion.

Despite long-standing calls to reform Article 76, NDP leaders initially insisted that there was insufficient time prior to the September vote. President Mubarak unexpectedly reversed that position on February 26. The People's Assembly passed the amended article on May 10. A national referendum on May 25 ratified it.

Under the amended Article 76, each legally recognized party may nominate a candidate to stand in the election regardless of how long it has functioned or whether it has any members in the People's Assembly (seven of the parties fielding candidates have no representation in the parliament and one party is less than a year old). This is a transitional arrangement: beginning with presidential elections scheduled for 2011, a party wishing to nominate a presidential candidate must have been established for at least five years and account for at least five percent of the seats in both the People's Assembly and the Consultative Council.

The amended Article 76 maintains a disproportionate role for the NDP by requiring that independent candidates secure endorsements from at least sixty-five People's Assembly representatives, 25 members of the Consultative Council, and support of ten Local Council members from at least fourteen governorates. NDP domination of all these bodies ensured that no independents could secure the necessary endorsements. This exclusion of

independent candidates has been one major factor underlying the calls of reform activists to boycott the May 25th amendment referendum and the September 7th presidential vote.

According to the government, 54 percent of registered voters turned out on May 25 and approved the amendment referendum by 83 percent. The Judges Club in July issued a scathing report that disputed the government's assertion that there had been full judicial supervision, stating that although a judge was present in every main polling station, each of these had as many as 400 branch stations, with the result that judicial supervision "did not exceed five percent of the branch polling stations." The majority of branch stations were under the charge of local state employees. At those stations headed by judges, voter turnout was low, in some cases not exceeding three percent, while the government reported turnouts of 90 and 100 percent at stations where judges were not present. "Moreover, many such heads of branch stations were done with their work and submitted the ballot boxes to the main stations long before closing time," the report asserted. Judges took photographs and videos showing government officials in polling stations filling out "yes" ballots themselves and excluding ballots on which voters had marked "no."

Government Restrictions and Harassment

As in election years past, the government detained hundreds of Muslim Brotherhood members and their leaders in early May, following large demonstrations in several cities calling for political reform. The charges were the usual: belonging to an illegal organization, and spreading propaganda to disturb “public security.” The group’s secretary-general, Mahmud `Izzat, was only released on bail on August 29, while prominent activist `Issam al-`Irian remained in detention as of this writing.

On May 25, the day of the constitutional amendment resolution, plainclothes security agents beat demonstrators calling for a boycott of the vote and riot police encouraged mobs of NDP supporters to beat and sexually assault female journalists as well as protestors. The government unleashed police violence again on July 30 against Kifaya activists, evidently to punish those daring to protest President Mubarak’s candidacy for re-election, announced two days earlier.

Among the opposition candidates, al-Ghad Party leader Ayman Nur received the most severe harassment. On January 29, after the NDP-controlled People’s Assembly took only a single day to strip Nur of his parliamentary immunity, security agents forcibly seized Nur in a downtown Cairo thoroughfare for investigation on criminal charges that he had forged signatures on the petition required to secure legal recognition of the party by the Political Parties Committee. The Office of Public Funds Investigation, under the authority of Minister of Interior Habib al-`Adli, brought the forgery complaint against him. The authorities held Nur for forty-five days before releasing him on bail. Nur’s trial began on June 28 but was suspended on July 6 after a key witness told the court that he had been coerced into testifying against Nur. His trial is scheduled to resume on September 25.

In early March, while Nur was in detention, the security services delayed publication of the first issue of his party’s newspaper, *al-Ghad*, and subsequently confiscated it. When Nur attempted to campaign by knocking on doors in his district, police intervened, claiming he lacked a permit. Then he was served with a court order for the demolition of the community service center he maintains in Bab al-Shi`riyya, his neighborhood and political base.

In the initial days of the campaign, though, Nur has campaigned in Cairo and other cities without interference. In Port Said police dispersed a small group of NDP supporters who tried to disrupt a Nur rally.

Al-Wafd party said on August 15 that it would file a complaint with the Electoral Commission regarding the way some governors and municipal administrators have obstructed their campaign by insisting on sizeable payments for each billboard and poster the party wanted to put up.

Campaign Issues

The amended Article 76 provides for the establishment of a ten-member Presidential Election Commission comprising five court justices ex-officio as well as five members nominated by the NDP-controlled People's Assembly and Consultative Council. Mamduh Mar'i, chief of the State Constitutional Court, heads the commission, which is mandated to supervise all aspects of the election and to receive complaints from parties and candidates.

The law issued to implement the amended constitutional article makes each candidate eligible for LE 500,000 (currently about U.S.\$86,000) and sets a ceiling of LE 10 million (about U.S.\$1.7 million) on campaign fund-raising and spending – a ceiling that only the NDP and al-Wafd are expected to reach. Ayman Nur is a wealthy lawyer with support in some business and professional circles. Many candidates are completely dependent on the state funding. The law also specifies the equal amount of radio and television airtime that each candidate gets.

Pro-Mubarak banners cover government buildings around the country. Prominent religious leaders, notably al-Azhar head Shaikh Muhammad Tantawi and Pope Shenouda III, the head of the Coptic Church, have endorsed Mubarak.

Observers have characterized the major Egyptian print media's treatment of President Mubarak and his campaign as "fawning." Egyptian state television, the four state-owned dailies, and the Qatar-based al-Jazeera satellite television network initially refused to run al-Wafd Party advertisement bearing the slogan "We are suffocating" and decrying Egypt's "eternal presidency, superficial parliament, spreading corruption, and weak government." The Egyptian major media outlets later agreed to run the ad but Egyptian television only agreed once the party removed the "We are suffocating" slogan. *Al-Ahram*, the largest daily, reportedly rejected an advertisement from the Egyptian Independent Committee for Monitoring the Election calling for monitor volunteers.

Al-Wafd also claimed that Nilesat, the satellite broadcast relay station in which the state has a large interest, refused to feed their candidate's campaign opening speech to al-Jazeera. Al-Ghad Party launched an Internet radio station after the state-controlled Egyptian Radio and Television Union rejected the party's application to establish a land-based FM station.

The Presidential Elections Commission banned a video advertisement from al-Ghad Party, scheduled for prime time television, on the grounds that it had received a complaint that the theme song was plagiarized. Party spokesperson Gamila Ismail protested, saying, “Even if this was the case, the matter should go to court. They have no right to stop our television campaign.”

According to the Egyptian Organization for Human Rights, in a report released on August 29, “the national newspapers have been conscripted for daily propaganda for the candidate of the ruling National Democratic Party.” Usama Soraya, the newly appointed editor of the largest daily, *Al-Ahram*, responded that this only reflected the fact that President Mubarak’s campaign generated more news than its rivals. The Cairo Institute for Human Rights Studies, an independent group, reported after the first week of the campaign that television channels controlled directly by the Ministry of Information have performed better than the state-run print media, although coverage of the Mubarak campaign remained disproportionately high. The CIHRS cited independent dailies *Al-Masri al-Yawm* and *Nahdat Misr* for providing excellent coverage and analysis.

President Mubarak has rejected Ayman Nur’s proposal that the candidates meet in a public debate. Nur has complained that his party has had no access to voter lists. “We can’t mount a proper campaign, we’re walking in the dark,” he said. “The electoral commission will only hand over voters’ lists two days before the polls while Mubarak’s team of course has them.”

The EOHR report of August 29 also cited numerous instances in which, it said, the NDP had utilized government vehicles, offices, and funds to promote President Mubarak’s candidacy, in violation of Article 21 of the presidential elections law. The report also cited complaints of opposition candidates of instances in which local officials removed posters and banners and security services urged shop owners to confine any candidate advertisements to those for President Mubarak.

Judicial Supervision of Elections

Egypt, with a population of 77.5 million, has an estimated 32 million eligible voters, though officials have not said how many possess the registration card necessary to vote. All Egyptians over eighteen years of age residing in the country (except persons in detention) are eligible to register.

Article 88 of Egypt's constitution requires that the judiciary supervise elections, but it does not specify the extent or nature of that supervision. In July 2000, the Supreme Constitutional Court ruled that all polling stations, not just the central station in each district, had to be supervised by the judiciary.

The Judges Club, which represents some 8,000 judges in its Cairo and Alexandria headquarters, began as a social organization concerned mainly with material issues such as salaries and benefits and has evolved into an unofficial professional association. In recent decades it has become a forum for public issues relating to the judiciary, rule of law, and the administration of justice generally. On May 13, an emergency general assembly attended by some 3,000 members issued an ultimatum to the government, saying they would refuse to certify the upcoming presidential election unless the government granted long-standing demands of the profession for greater independence. (At present, Egypt's judiciary has some strong formal institutional safeguards of its independence, but the Ministry of Justice controls some personnel matters and has a variety of informal mechanisms – such as offering lucrative non-judicial work or overseas assignments – to encourage political loyalty among judges.)

In past elections, judicial supervision has been incomplete, and reports flourished of auxiliary poll stations where NDP members voted multiple times, sometimes in the name of persons who had died, and prevented voters from casting ballots for opposition candidates. The judges are also demanding complete oversight of the elections, from voter lists to ballot boxes, as a condition for certifying the results.

The judges also asked the government to stage the election over several days, so that judges could actually monitor voting at auxiliary as well as 329 central polling stations. (For the May 25 constitutional amendment referendum, auxiliary stations reportedly numbered around 54,000.) The Presidential Election Commission has insisted that the vote will go ahead on a single day, but that the government would consolidate the number of auxiliary polling stations to about 10,000. Officials of the Commission have said that the

requirement for judicial supervision can be met by other employees of judicial institutions, such as prosecutors, and not only by sitting judges, and that there are 13,000 persons available to play this role; Judge Ahmad Makki, vice-president of the Court of Cassation, disputed this, saying that a “longstanding tradition of fraud in elections” required the presence of judges themselves.

The Minister of Justice reportedly forwarded the demands of the judges for independence from the executive – demands originally submitted in 1991 – to the Supreme Judicial Council in late 2004. The Council, which is structurally independent but generally aligns itself with the government, agreed that it rather than the ministry would control the budget and evaluate judges’ performances (with consequences for assignments and promotions). The Council however rejected the key third demand, namely, that sitting judges be given a voice in determining which of their colleagues will comprise the Council.

The Judges’ Club sent another memo to Mamduh Mar`i on August 17 reiterating the demand for full supervision of the elections and also stating that representatives of civil society organizations should be permitted to enter polling stations, contrary to the position of the election commission. The memo also stated that polling station supervisors should immediately provide to representatives of candidates copies of any reports submitted to the Presidential Elections Commission regarding obstacles or violations on the part of the security services.

The Judges Club has said it will announce its decision regarding participation on September 2. Although a decision to boycott would not be binding on all judges, this would represent an embarrassment to the government and almost certainly pave the way for a court challenge to the constitutionality of the election and its results.

Election Monitoring

The Egyptian government rejects any international role in monitoring the presidential election on the grounds that it would infringe on the country's sovereignty. `Usama al-Baz, a top presidential adviser, said that the combination of judicial supervision and international media coverage will guarantee "complete transparency." Prime Minister Ahmad Nazif in July said, "We have an independent election commission that has been already elected [*sic*] and will be running the election and supervising it. But of course the election will be monitored by the international media and it will be watched also by NGOs, people working in the country." But Mamduh Mar`i, the head of the commission, reportedly said on August 16 that Egyptian civil society institutions in fact would not be permitted to enter polling stations, as they have requested, and would receive no cooperation from the commission.

The Cairo-based Arab Center for the Independence of the Judiciary and Legal Profession has set up a "shadow election monitoring committee" comprising former judges and legal scholars to monitor the Presidential Elections Commission and receive complaints about the election process. Another Egyptian coalition, the Civil Society Election Monitoring Observatory, intends to coordinate monitoring activities of constituent NGOs including the Egyptian Organization for Human Rights and the Arab Network for Human Rights Information. Two other NGO coalitions, the National Campaign for Monitoring Elections and the Independent Commission for Monitoring of Elections, have charged that the government has been "completely uncooperative" and unresponsive to requests for permission to monitor polling stations. The government-appointed National Council for Human Rights has announced that it has recruited lawyers to receive complaints in every electoral district. The three NGO monitor coalitions, meanwhile, filed suit against the Presidential Elections Commission, and have said they intend to be present outside the polling stations regardless of whether they get permission to also be inside. Another group of activists have set up a Website for posting complaints relating to the election (www.shayfeen.com, a play on the Arabic *shayfinkum*, meaning "we are watching you").

Appendix

Political Parties and Candidates

The ruling National Democratic Party, along with the much smaller leftist Tagammu` (Progressive Unionist) Party and conservative al-Ahrar (Liberal) Party, emerged from the dissolution by decree of the Arab Socialist Union in 1977. The NDP has held a virtual monopoly on formal political life in Egypt ever since, always controlling well over two-thirds of the 454-seat People's Assembly and the 264-member Consultative (Shura) Council, as well as all provincial and local councils and leadership positions.

NDP and government officials also control the Political Parties Committee, which determines whether new parties receive legal recognition. Over twenty-seven years, the Political Parties Committee approved two of the applications submitted and rejected sixty-three. The Political Parties Court, a special court set up to hear appeals to the committee's rulings, reversed the committee and granted recognition in eight cases. This rejectionist stance of the committee changed only recently: On October 28, 2004 it approved the application of al-Ghad Party, after rejecting it on three earlier occasions. In mid-December the committee accepted the application of the Free Social Constitutional Party. Under a revised Political Parties Law passed in July 2005 by the parliament, its membership was expanded and altered to lessen the stranglehold of NDP members, but the revised law also expanded the committee's power to suspend a party's activities if it judges that its leaders espouse principles diverging from the approved platform or when the committee determines that suspension is in the national interest.

In May 2000 the Political Parties Committee froze the activities of al-`Amal (Labor) Party, originally a secular leftist but more recently Islamist opposition party, following violent street protests over the publication of a novel that the party's newspaper had denounced as being offensive to Islam.

There are now twenty-one recognized parties, including two recognized in recent months. The parties represented in the current People's Assembly are the NDP (404), al-Wafd (5), al-Tagammu` (6), Democratic Nasirist (1), and al-Ghad (6), along with thirty two independents, ten of whom are appointed by the president.

Al-Wafd Party, the leading nationalist party under the monarchy, was dissolved along with all other political parties by decree of the military junta that took power in 1952. The reformed party (therefore also known as the New Wafd) gained legal approval in 1983. Al-

Wafd initially aligned itself with the Nasirists and the Tagammu` to boycott the election, but subsequently broke ranks to participate. Some Egyptian observers interpret its decision to field a candidate in this election as a favor to President Mubarak in order to draw votes away from Ayman Nur, formerly with al-Wafd Party until he left four years ago to form al-Ghad Party.

The Presidential Elections Commission excluded al-Ahrar Party from the elections because two rival leaders claimed the right to run.

Among the candidates who can claim parties in name only is Ahmad al-Sabahi of the Umma (Islamic Nation) Party. Sabahi's straightforward Islamist agenda does not seem to discomfort the Political Parties Committee despite the law forbidding parties based on religion (the ostensible grounds for banning the Muslim Brotherhood). Sabahi's reputation lies in soothsaying and palm-reading rather than politics, and a book he published in 2004, *Integrity in Leadership and Society* won a LE 10,000 (about U.S. \$1,700) prize from President Mubarak.

The full list of candidates is as follows:

Name	Party	Year Established	Seats in Parliament
1 Muhammad Husni Mubarak	National Democratic Party (Al-Hizb al-Watani al-Dimoqrati)	1978	404
2 Ayman Nur	Party of Tomorrow (Hizb Al-Ghad)	2004	7
3 Nu`man Gum`a	Al-Wafd	1983	4
4 Wahid Fakhry al-Luxori	Arab Socialist Party of Egypt (Hizb Misr al-Arabi al-Ishtraki)	1985	0
5 Ibrahim `Abd al-Mun`im Turk	Democratic Unionist Party (Hizb al-Itihadi al-Dimoqrati)	1990	0

6	Ahmad al-Sabahi `Awadallah	Islamic Nation Party (Hizb Al-Ummah)	1982	0
7	Fawzi Khalil Ghazal	Misr 2000 Party	2001	0
8	El-Said Rifaat Mohamed El- Agroupdy	National Accord Party (Al-Wifak al-Qawmi)	2000	0
9	Mamdouh Mohamed Ahmad Qenawy	Free Social Constitutional Party (Hizb al-Dustur al-Igtima'i)	2004	0
10	Ossama Mohamed Shaltout	Solidarity Party (Hizb al-Takaful)	1995	0