



منتدى البدائل العربي للدراسات
Arab Forum for Alternatives



Global Partners
Governance

Relations between Parliament and Other Institutions:

Constitutional Principles and Practical Problems

March 2016

Prof. Adam Cygan

Mohamed ElAgati

Nouran ElSayed Ahmed


SEFSAFA PUBLISHING HOUSE
WWW.SEFSAFA.NET

Relations between Parliament and Other Institutions: Constitutional Principles and Practical Problems

رقم الإيداع: 2016/9237

الترقيم الدولي: 978-977-5154-75-0

جميع الحقوق محفوظة ©

عدا حالات المراجعة والتقديم والبحث والاقتباس العادية، فإنه لا يسمح بإنتاج أو نسخ أو تصوير أو ترجمة أي جزء من هذا الكتاب، بأي شكل أو وسيلة مهما كان نوعها إلا بإذن كتابي.

No part of this book may be reproduced or utilized in any form or by means, electronic or mechanical including photocopying, recording or by any information storage and retrieval system, without prior permission in writing of the publishers.

الناشر
محمد البعلي

إخراج فني
علاء النويهي

الآراء الواردة في هذا الكتاب لا تعبر بالضرورة عن رأي دار صفصافة.



منتدى البدائل العربي للدراسات
Arab Forum for Alternatives



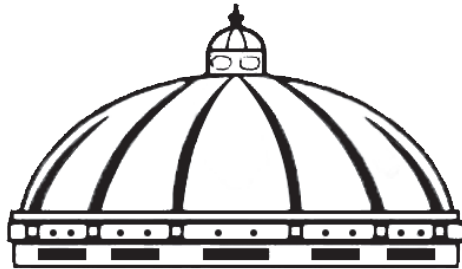
Global Partners
Governance

Publishers: Global Partners Governance and the Arab Forum for Alternatives



SEFSafa PUBLISHING HOUSE
WWW.SEFSafa.NET
elbaaly@gmail.com

دار صفصافة للنشر والتوزيع والدراسات
5 ش المسجد الأقصى - من ش المنشية - الجيزة - ج م ع.

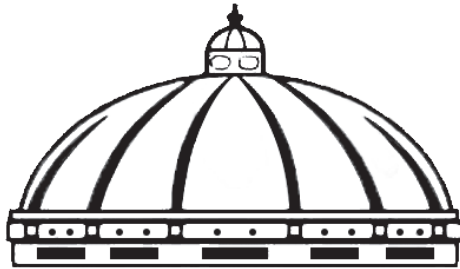


Relations between Parliament and Other Institutions:

Constitutional Principles and
Practical Problems

Contents

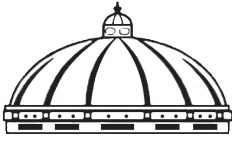
7	Relations between the House of Representatives and other Institutions
9	1- Introduction
11	2- The Institutions of State and the Separation of Powers
18	3- The House of Representatives and the Judiciary
20	4- Inter-Institutional Cooperation
21	5- Checklist for Developing Relations between the House of Representatives and other State Institutions
23	Challenges facing the relationship between legislative authority and other authorities and constitutional institutions in Egypt
25	1-The relationship between the legislative and executive authorities
32	2-The relationship between the legislative and judicial authorities
35	3-Oversight and independent apparatuses and their role in the Egyptian context



Relations between the House of Representatives and other Institutions

Prof. Adam Cygan

Professor of Law at the University of Leicester, UK



I- Introduction

The institutions of the Egyptian State are the House of Representatives (Parliament), the Executive (Presidency and Government) and the Judiciary. These institutions have all been allocated specific constitutional functions.

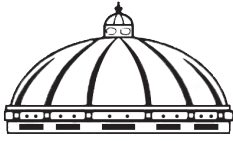
Within established democracies the relationship between these State institutions is based upon the principle of the **separation of powers** whereby the balance of power should not be concentrated in any one branch, but it should be distributed such that each branch can independently carry out its own respective constitutional functions. Going forward in Egypt, **the House of Representatives should occupy a central position in establishing an institutional equilibrium and securing accountability of the Executive.**

However, it is common in many states, including Egypt, which are undergoing a process of constitutional transition that there will be a legacy of political culture and practice, which may create initial barriers to effective co-existence and cooperation between institutions. In particular, it is often the case that pre-existing Executive dominance continues to overshadow the relationship with other institutions following constitutional reform.

Within Egypt, it is therefore likely to take time for the State institutions to develop and establish new practices and procedures which enable them to fulfil their constitutional functions. As an initial response, the House of Representatives should seek to **establish a**

positive working relationship and effective dialogue with all branches of the Executive in order to help secure its position as the institution which represents the Egyptian people. This should be **supported through the creation of effective procedural rules for both plenary and committee in order that the House can maximise the impact of its work.**

As noted above, it is imperative that **institutions cooperate and communicate with each other** in order that the interests of citizens are better defended on a day-to-day basis. To help facilitate the transition and embed the principles of the new Constitution the process could be assisted through the **creation of inter-institutional agreements** between the Executive and Legislature which would regulate the exercise of constitutional powers and provide a procedural framework for resolving disputes.



2-The Institutions of State and the Separation of Powers

The principal institutions are usually taken to be the Executive, the Legislature and the Judiciary.

The separation of powers refers to the idea that the institutions of State should be functionally independent and that no individual should assume powers that span these institutions.

The purpose of the separation of powers is to **prevent the concentration of political and legislative power** in any one of the State institutions and enables the judiciary to, independently, resolve disputes which may arise in accordance with the Constitution.

In the France and other Presidential systems, a strict separation between the Presidency (Executive) and Parliament (Legislature) is often a fundamental constitutional principle. By contrast, in the United Kingdom the theory of separation has enjoyed much less prominence and the Government (Executive) and Parliament (Legislature) are closely entwined. The Prime Minister and a majority of his or her ministers are Members of Parliament and sit in the House of Commons.

The primary functions of the legislature are:

1. law making;
2. pursuing accountability of the Executive ;

3. control over public finances;
4. control over public appointments

The primary functions of the Executive are:

1. to formulate and deliver policy objectives;
2. propose annual State budgets;
3. enforce the law which has been enacted by the legislature;
4. responsibility for the government administration system;
5. conduct foreign relations;
6. to deliver public services such as healthcare, education etc

The primary functions of the Judiciary are:

1. to deliver the administration of justice;
2. to act as guardian of the constitution and, if appropriate declare laws; invalid with the constitution;
3. to resolve constitutional/institutional disputes ;
4. if requested, to provide legal advice to the executive;

The fulfilment of these constitutional roles in Egypt will require close cooperation between the State institutions, and the House of Representatives, using its representative mandate, should consider itself central to developing political and constitutional dialogue in Egypt.

Through using opportunities offered by both plenary meetings of the House and within specialised parliamentary committees, **MPs have a number of procedural opportunities through which to conduct inquiries, participate in parliamentary debates and ask parliamentary questions** in order for the House to fulfil its constitutional role of securing accountability of the Executive.

The House of Representatives and the Executive (1) – Relations with the Government

Under the Constitution the Executive, in the form of the government, is accountable to the House of Representatives and the pursuit of **accountability of the government should be the core function of all MPs** whether in plenary or committee. In addition, the House should consider how, through its procedures, it could improve transparency (openness) of the government.

It is essential that, from the outset, the House of Representatives establishes effective Rules of Procedure for securing political accountability of the government and carrying out legislative scrutiny.

In order to improve accountability and transparency **MPs should consider using opportunities for oral and written questions to the Prime Minister and Ministers, together with committee hearings and parliamentary debates in order to request information relating to all aspects of policy.**

Parliamentary procedures for securing effective accountability can take several forms and the Rules of Procedure should consider including the following:

- regular opportunities for direct questioning of the Prime Minister and ministers within the Chamber;
- overseeing the relationship between the Prime Minister (and government) and the President;

- using specialised committees to conduct policy inquiries and to scrutinise legislative bills;
- requesting written responses from ministers in relation to policy/administrative decisions;
- permitting all recognised groups within the House allocated time to initiate debates within the chamber;
- Enabling MPs to introduce petitions to the House which represent public concerns about legislation or policy.

It is therefore crucial that the House of Representatives establish working methods which **combine opportunities for scrutiny of the government in both plenary and specialised committees.**

With respect to the work of parliamentary committees please see the accompanying Practice Note on the Role of Parliamentary Committees, which sets out in more detail, how parliamentary committees may contribute to improving Executive accountability.

It is though worth highlighting here that the overriding objective is to ensure that the House has in place a **strong committee structure which shadows the work of the Prime Minister as well as ministries and their ministers.** The House should also consider what arrangements are required in order to review the work of the Presidency. One option would be for a **constitutional affairs committee to include oversight of the Presidency within its remit as well as reviewing the work of the government.** This could provide a more coherent overview of the Executive.

In addition, the House should, when appropriate, **consider establishing specialist committees and ad hoc committees** to engage in technical legislative scrutiny and carry out specific policy based inquiries. This will provide increased opportunities to challenge the government. The use of ad hoc committees could also assist with providing increased opportunities for MPs to be involved in the House's detailed committee work.

The House will also need to consider appropriate and **effective measures for securing fiscal and budgetary control over the Executive**. In addition to existing opportunities for control of budget and financial planning, for example, through the Budget and Planning Committee in existing bye-laws, consideration should also be given by the House to the **creation of a Public Accounts Committee and a Finance Committee** (see further the Practice Note on the Role of Committees).

Relations between the House of Representatives and the Executive (2)- Relations with the Presidency

Within the current political climate, where the Presidency has significant popular support, the House will need to use the procedures and practices available to it in order to secure effective accountability and maintain its position within the Constitution. There are several identifiable challenges, which may potentially face the House in its relationship with the Presidency, and the House will need to consider the precisely what parliamentary rules of procedure are necessary to address these challenges.

At the core of the relationship between the House of Representatives and the Presidency is the need to **maintain the autonomy of the House** in order that it can fulfil its legislative, representative and constitutional functions.

The relationship between the House of Representatives and the Presidency will be dependent upon, in large part, the **House and Presidency being committed to forging good relations and avoiding conflict**. Should conflicts arise, the House and Presidency should have a procedural framework for resolving these efficiently.

The Constitution is broadly silent on how the relationship between the House and Presidency should function and it will therefore be **incumbent on the two institutions to take advantage of the opportunities which will present themselves to build good relations and have an open dialogue**. In addition, MPs should this use **all the mechanism within both the plenary and in committees to review the work of the Presidency and, possibly through the Office of the Speaker, raise any concerns directly with the Presidency**.

One immediate opportunity to develop a dialogue arises from the relationship between the House and the Prime Minister. The Presidency appoints the Prime Minister and who, as noted in the preceding section, remains directly accountable to the House of Representatives (Article 163 of the Constitution). Under Article 167 of the Constitution the government determines public policy ‘in collaboration’ with the Presidency and prepares draft legislation and decrees.

Additionally, under Article 167, the Presidency may call the Prime Minister and government to meetings to discuss ‘important matters’, and this arrangement **offers enhanced opportunities for scrutiny by the House both before and after such meetings**. Such scrutiny could take place either in plenary or within a specialist committee, for example, a constitutional affairs committee.

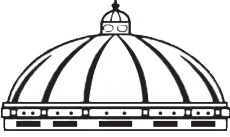
The House may also want to consider how it will review the possible exercise of any Presidential veto of legislation which the House has

previously approved. Under the Constitution the Presidency can veto legislation and this veto can only be over-ruled only by a 2/3 majority of members of the House. Here the constitution borrows an element of the US model without, however, including the detailed corresponding checks and balances that are required for a powerful Legislature.

It therefore falls upon the House to develop effective internal practices and procedures to review the exercise of the Presidential veto including the opportunity of allocating this task to a specialist committee. One possibility would be for this to be undertaken by a **constitutional affairs committee which could explore the potential options for presenting a compromise legislative proposal to the Presidency.**

Should the Presidency exercise a veto over a bill, the House could also consider creating a procedure by which the Speaker is requested to **commence a dialogue with the Presidency** in order to avoid a potential political disagreement that could polarise Egyptian society or create a political impasse.

The Egyptian Constitution, by comparison with, for example, the French Constitution, does not include a provision which requires that acts of the Presidency are countersigned by the Prime Minister. In Egypt, the Presidency can act without the need for a countersignature of the Prime Minister and this could create challenges for the House to scrutinise such acts. Moreover, this could lead to circumstances where the Presidency acts contrary to the will of the House and the House will need to consider carefully the rules of parliamentary procedure which could be used to sufficiently mitigate against this. For example, a **constitutional affairs committee could, through its oversight of the Presidency, anticipate such instances and request that the Speaker of the House open a dialogue, in advance, in order to avoid a political conflict arising.**



3- The House of Representatives and the Judiciary

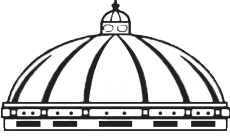
The relationship between the Judiciary and any political institution will always be sensitive.

The crucial point is that **the work of the House of Representatives should not interfere with the independence of the Judiciary.** Moreover, the House of Representatives has an important political and legislative role in protecting this independence under Article 186 of the Constitution. The House of Representatives should seek to formulate a position, both politically and procedurally, by which it is a ‘guardian’ of judicial independence.

Procedurally the House could consider the **establishment of a Judicial Affairs/Human Rights committee**, which monitors both political and judicial aspects of human rights protection, and considers compatibility of legislative acts, Presidential actions and judicial decisions with the Constitution. Such a Judicial Affairs/Human Rights committee could also oversee operation of Judicial Authority Law No.46/1972.

There are several challenges which the House faces with respect to its relationship with the Judiciary. Firstly, in relation to monitoring human rights in Egypt, the House of Representatives, whether in plenary or in a specialised human rights committee, should not appear to be politically motivated in its work.

Secondly, is the substantive matter of the allocation of funding for the judiciary and the requirements of Article 186 of the Constitution. It is necessary that the House ensures that funding arrangements for the judiciary, which are proposed by the Executive as part of annual State budget, are neither politically motivated nor should they compromise the independence of the judiciary.



4- Inter-Institutional Cooperation

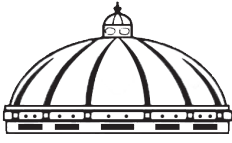
Inter-institutional cooperation is essential in order for the Constitution, political and legislative processes to function.

The House should consider whether it is appropriate to formalise institutional relationships through specific inter-institutional agreements. The advantage of such agreements is that they could provide a more formal framework through which to govern relationships between the House with the all branches of the Executive.

The existence of inter-institutional agreements could help to establish a new political dialogue and promote both accountability and transparency. Such agreements could also indicate to the public that political institutions in Egypt recognise the importance of cooperation. Inter-institutional agreements would offer a procedural framework within which to maintain good relations between the political institutions as well as mechanism for resolving political disputes.

There could be several inter-institutional agreements which are agreed over time covering various aspects of relations between the House/Executive and the House/Presidency.

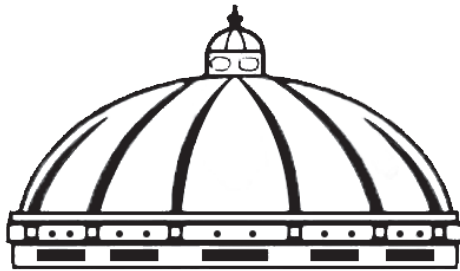
With respect to the House, such agreements could be made between the Office of the Speaker of the House of Representatives and the Presidency and the Speaker and Prime Minister's office.



5- Checklist for Developing Relations between the House of Representatives and other State Institutions

1. Focus on developing a comprehensive political dialogue with all branches of the Executive as part of a wider strategy which seeks to encourage a shift away from Executive dominance.
2. Consider the role the Speaker of the House and how this office may represent the House in its relations with the Executive.
3. Consider carefully how to use parliamentary time, procedures and practices to maximise influence.
4. Appointment of a constitutional affairs committee could act as a focal point for the scrutiny of the House's relationships with all branches of the Executive.
5. Be flexible and consider the appointment of ad hoc committees where there may be a
6. need for a more specialist inquiry.
7. Use a mixture of plenary sessions and specialist committees to pursue Executive accountability.
8. Pay close attention to the legislative agenda and try to anticipate potential conflict points with the Presidency.

9. Ensure that the public is aware of the work of the House especially in areas such as human rights.
10. The House should pay particular attention to its relationship with the Judiciary with respect to funding and appointment in order that its independence is not compromised.
11. Explore the use of inter-institutional agreements as a framework for good practice in relations between the House and all branches of the Executive.



Challenges facing the relationship between legislative authority and other authorities and constitutional institutions in Egypt

Mohamed ElAgati

Director of the Arab Forum for Alternatives

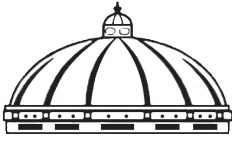
Nouran ElSayed Ahmed

Researcher at the Arab Forum for Alternatives⁽¹⁾

1- Research Assistant: Sherouk ElHariry

The political system has witnessed a clear change in light of the provisions of the Constitution of 2014, which stipulated the structure of this system and the authority granted to its various sub-institutions as well as established new institutions and structures which are expected to play a significant role in the system. The formation of new bodies comes as a response to the changes imposed on both the relationships between the different structures and the relationships between those structures and the existing ones, the most prominent of which is the legislative authority (the Parliament).

This paper mainly seeks to review the most prominent challenges expected to be encountered by the legislative branch in terms of its scope of authority and power over other institutions. Such challenges are closely related to the nature of the Egyptian political context and are not confined to particular laws or constitutional rules. They are also expected to affect any future attempt to formulate a set of organizational rules regulating the House of Representatives



I- The relationship between the legislative and executive authorities

Over many decades, the Egyptian political system has been characterized by the **executive authority's domination** over all other institutions within the system. At the forefront of these institutions is the legislative authority, whose work is consequently affected by this domination. The relationship between these two authorities is therefore known to be controversial on more than one level, starting from the **model of the political system in Egypt**. This model tended to embrace a semi-presidential system, that is, the executive authority is shared by both the President and the Prime Minister. The version of semi-presidentialism in Egypt, however, is a corrupt one, since in practice the President fully dominates the political system and the government and is granted all powers, with the Cabinet merely acting as his secretariat. In addition, the absolute powers given to the President are not clearly regulated by oversight rules (with the exception of high treason charges, which do hold him accountable). Nor are there clear rules to hold the Prime Minister accountable. The Prime Minister himself used to enjoy immunity before 2011 by virtue of the Constitution of 1971.⁽²⁾ Only ministers can be held accountable or have confidence withdrawn

2- See Article 127, the Constitution of 1971, <http://faculty.ksu.edu.sa/74394/Documents/%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%201971%20PDF.pdf>.

from them. This **domination by the executive authority expanded to reach the Parliament's scope of work before 2011** with draft laws submitted to the House of Representatives by the government and the President enjoying supremacy over other drafts submitted by the parliamentarians themselves.

The draft laws of the government and President were approved as-is or with only minor amendments, which has increased public awareness of the House of Representatives' role and its influence even on its own work.⁽³⁾ For example, the House discussed and approved 921 draft laws during the sixth legislative term (1990–1995), while it discussed only 49 motions for resolutions submitted by parliamentarians out of a total of 101 motions.⁽⁴⁾ Likewise, during the legislative term from 1995 to 2000 the total number of draft laws discussed and approved exceeded 600, yet only 127 resolution motions were debated by the House.⁽⁵⁾ Special attention was thus devoted to draft laws submitted by the government, made evident by the ease with which they could be discussed and enacted by the House in accordance with the procedures of the Bylaws of 1979. Such draft laws were referred directly to the concerned special committees, while those submitted by parliamentarians were referred to the Proposals and Complaints Committee which used to oppose the discussion of rejected proposals. “In 2011, during the first session, 66 draft laws were submitted to the House, of which only 38 (barely half) saw their debates completely finalized. These draft laws were meant to amend existing laws. Out of the 38 draft

3- Hassanain Tawfiq Ibrahim, "Egyptian Political System: Balance among Powers and the Problem of Legitimacy", 13 October 2011, Al-Jazeera's website, <http://studies.aljazeera.net/files/2011/08/201187105658651422.htm>.

4- Azza Wahba, "Legislative Performance of Arab Parliaments: A Comparative Study", Programme on Governance in the Arab Region, <ftp://pogar.org/LocalUser/pogarp/legislature/wahby1a/section4.html>.

5- Azza Wahba, *Ibid*, <ftp://pogar.org/LocalUser/pogarp/legislature/wahby1a/section5.html>.

laws, only 21 were approved; 5 were rejected by the Proposals and Complaints Committee, and 1 was included under another draft law.”⁽⁶⁾ The majority of draft laws were submitted by the National Democratic Party (NDP) parliamentarians at that time.⁽⁷⁾

The controversial relationship between the legislative and executive authorities remained steady and has been the theme of many discussions and arguments since 2011. This relationship was also accompanied by a heated argument over the nature of the desired relationship between the two authorities. Such an argument erupted between two sides, one of which adopted the vision that the parliamentary system was the most appropriate and perfect one thanks to the broadness of legislative authority powers meant to overcome the political legacy of the President’s absolute authority and regard his post as merely honorary. The second side, on the other hand, believed that the political culture of Egyptian society disfavours a full parliamentarian system and is rather more inclined to adopt the semi-presidential system, with the powers of both the President and the executive authority being subject to wide-scale reforms that maintain their balance—particularly where their relationship with the legislative branch is concerned.⁽⁸⁾ The dispute between these two groups seems to have continued even after the issuance of the Constitution of 2014, which advocates semi-presidentialism and grants the Parliament enormous powers compared to those of the President.

6- Ahmad Hamdoon, “House of Representatives Practices under 1979 Bylaws: A Theoretical and Practical Study”, MADA for Media Development, p. 16.

7- Azza Wahba, *Ibid*, <ftp://pogar.org/LocalUser/pogarp/legislature/wahby1a/section4.html>.

8- Dr. Amr al-Shobki, “The Constitution and the Executive Authority”, a paper presented during a workshop themed “The Political System under Egypt’s New Constitution: Visions and Recommendations”, 23 October 2012, pp.13-14.

This dispute, however, is expected to remain vivid in light of two essential variables: the fact that the semi-presidential system has not yet been applied, and the act of attacking and questioning what some people call “the monstrous authority of the Parliament” set against the President’s powers. The probability of parliamentary powers turning into a “monster” becomes more worrying when the Parliament is capable of withdrawing confidence from the President or removing him from his post,⁽⁹⁾ which can potentially destabilize the constitutional institutions in Egypt. Such a pretext has been exploited to oppose a full-fledged parliamentarian system with the Egyptian political culture centred on the icon of the President, who “enjoys power and dominance.”⁽¹⁰⁾ In parliamentarian systems, the President is entitled to dissolve the Parliament whenever necessary but only after a public referendum is conducted. This is a controversial situation, particularly when the need arises to amend constitutional provisions which are expected to include the Parliament’s authority. Consequently, the process of approving and adopting a new set of bylaws shall face obstacles if the Constitution is amended and the need arises to cope with this amendment. The result would eventually be a state of confusion and fuss inside the Parliament.

The absence of clear-cut boundaries between the executive and legislative authorities is expected to continue breeding more disputes during the upcoming period. The executive branch exercising exceptional authority is one aspect of this lack of boundaries. The President has enacted as many as 400 laws on issues that have been regarded as unnecessary. Such ultimate powers raise doubt and

9- Article 161, the Constitution of 2014, <http://www.sis.gov.eg/Newvr/consttt%202014.pdf>.

10- Politicians: Parliament afraid of removing President from post, latter unhesitatingly dissolves it, El-Badil Newspaper, 31 December 2014, <http://elbadil.com/2014/12/31/%D8%B3%D9%8A%D8%A7%D8%B3%D9%8A%D9%88%D9%86-%D9%8A%D8%AF-%D8%A7%D9%84%D8%A8%D8%B1%D9%84%D9%85%D8%A7%D9%86-%D9%85%D8%B1%D8%AA%D8%B9%D8%B4%D8%A9-%D9%81%D9%8A-%D8%B9%D8%B2%D9%84-%D8%A7%D9%84%D8%B1%D8%A6/>.

concern over the future of the executive branch's broadening powers and interference in the law-making process when compared to the situation before 2011. This might affect the role played by the House of Representatives, bearing in mind that the practice contributes to enhancing the legislative institution's culture and power.⁽¹¹⁾

The exercise of oversight by the House of Representatives, or the Parliament in general, has provoked controversies regarding the unbalanced relationship with the executive authority. The legislative authority has thus been unable to conduct oversight due to the domination of the executive authority. Parliamentarians had previously employed only a small number of certain oversight tools which involved easy and fast-paced procedures. Consequently, many parliamentarians were incapable of differentiating between the different tools available. Some tools, such as the withdrawal of confidence, have never before been employed in the history of the Egyptian system. This can be attributed to two factors: the executive authority's domination over the Parliament, and the Speaker and the Office Board interfering in or preventing the use of some oversight tools in the past.

For instance, both the Speaker and the Office Board were previously entitled to oppose the presentation of oversight reports and the addressing of questions to the government, and to deem requests for briefing to be invalid for failing to fulfil the prerequisite conditions or else convert them into questions to be replied to in writing. Should a parliamentarian oppose such procedures, the whole issue is referred to the General Committee for a decision.⁽¹²⁾ In

11- Mostafa Kamel al-Sayed, "The Downfall of Power Separation in Egypt", Al-Shorouk Newspaper, 13 December 2015, <http://www.shorouknews.com/columns/view.aspx?cdate=13122015&id=e4bd6dbe-70bb-40d7-be72-08f23c2384ec>.

12- Article 194, The People's Assembly Bylaws of 1979, http://www.parliament.gov.eg/Bylaws_home.aspx.

the case of questions, the bylaws permit only the asking individual to request an explanation from the minister to whom the question is addressed or to comment on the latter's reply (in brief and only once). They also permit the Speaker to allow the chairperson of the special committee to determine the topic of the question and to allow another parliamentarian to provide a brief commentary on the minister's reply if the topic is related to an issue of public interest.⁽¹³⁾ This is why discussions were futile and questions and inquiries were fruitless. It is thus necessary to introduce the different parliamentary oversight tools to the parliamentarians and enhance their ability to differentiate between them, in light of the powers granted to the House of Representatives with regard to the government and the President of the Republic. Such powers assign parliamentarians a heavy responsibility toward the conditions experienced by the country and necessitate their knowledge of when to use each tool.

It is remarkable to shed light on the legacy of the sole party culture and the transition to the dominant party culture. This issue is closely related to the executive authority's domination over the legislative one and to the structural context of political parties in Egypt. This structure was known to be deformed and authoritarian within the framework of what was called "the domination of the sole party" from 1952 to 1976 and later called "the limited multi-party system" with the National Democratic Party, chaired by the President of the Republic, dominating the political scene.⁽¹⁴⁾ The NDP thus dominated

13- Article 188, The People's Assembly Bylaws of 1979, http://www.parliament.gov.eg/Bylaws_home.aspx.

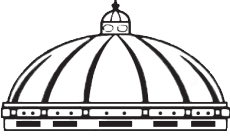
14- Ahmad Taha, "Post-Revolution Party Life in Egypt between Emergence and Hindrance", 29 November 2012, <http://www.jadaliyya.com/pages/index/8647/%D8%A7%D9%84%D8%AD%D9%8A%D8%A7%D8%A9-%D8%A7%D9%84%D8%AD%D8%B2%D8%A8%D9%8A%D8%A9-%D9%81%D9%8A-%D9%85%D8%B5%D8%B1-%D8%A8%D8%B9%D8%AF-%D8%A7%D9%84%D8%AB%D9%88%D8%B1%D8%A9-...-%D8%A8%D9%8A%D9%86-%D8%A7%D9%84%D8%A5%D9%86%D8%B7%D9%84%D8%A7%D9%82->.

over the government and its formation as well as over the Parliament by supporting party members with the State's potential and ensuring the renewal of their terms.⁽¹⁵⁾

Consequently, NDP leaders seized important posts and seats inside the House of Representatives: they held the Speaker position; won memberships in the Office Board, controlled the way it was formed, and limited the number of its members; and seized chairmanship and membership in special parliamentary committees while determining the power they enjoyed. This is how the NDP's members won the majority of seats and directed the House the way it liked—something which was proved by the House's practices under the Bylaws of 1979.⁽¹⁶⁾ Under the NDP's dominance, the House enacted legislation and approved the draft laws submitted by the government with the majority of parliamentarians (namely the party's members) giving their consent. In addition, parliamentary oversight was either poor or absent in some cases. This situation represents the main challenge faced by the parliamentary experience—preventing the domination of a certain party or trend—and underscores the importance and necessity of including provisions that ensure the fulfilment of this goal in the new bylaws.

15- Mohamed ElAgati et al., "From Pretended Democracy to Participative Democracy: Towards a New Egyptian Constitution", Experiences and Visions, 2012, p.5.

16- Proposed Paper of Philosophy of Change in the Bylaws of the People's Assembly, MADA for Media Development, p.7.



2- The relationship between the legislative and judicial authorities

Before 2011, the relationship between the legislative and judicial authorities was limited to the relationship between the Parliament and the Court of Cassation, and between it and the Supreme Constitutional Court. Under the Constitution of 1971, the People's Assembly was the only authority qualified to decide upon the valid election of its members, while the Court of Cassation was qualified to investigate contested elections that were presented to the Assembly.⁽¹⁷⁾ The relationship between the Parliament and the Supreme Constitutional Court was an indirect one, confined to the latter deciding upon the constitutionality of legislation by virtue of Article 175 of the Constitution of 1971. There were other instances in which the political system in Egypt witnessed cooperation between the legislative and judicial authorities. The Egyptian parliamentary elections of 2005, for instance, were supervised by the judiciary in a way that ensured no electoral fraud.

After 2011, the relationship between the two authorities became tense as the Society of the Muslim Brotherhood clashed with the legislative and executive authorities at the time. An attempt was also made at the Shura Council to forcibly pass a law pertaining to the

17- Article 93, the Constitution of 1971, <http://faculty.ksu.edu.sa/74394/Documents/%D8%AF%D8%B3%D8%AA%D9%88%D8%B1%201971%20PDF.pdf>.

judicial authority.⁽¹⁸⁾

Another endeavour was to decrease the powers of the Supreme Constitutional Court in the draft of the Constitution of 2012, in which the Parliament and its members played a remarkable role in the Egyptian Constituent Assembly of 2012 (CA).⁽¹⁹⁾ Egypt's presidency at that time also tried to restore the dissolved parliament through a decision made by the President. Such incidents caused tension in the relationship between the Parliament and the judicial authority, a state which was expected to affect the neutrality of the former's work as well as attempts to avoid adding more complications, particularly as far as laws related to the judiciary are concerned. These laws required the judiciary's consent by virtue of the constitutional provisions. It is thus necessary to include in any future bylaws some procedures which organize and govern the way such bodies participate in the process of issuing laws. Doing so is expected to eventually restrict the Parliament's power to pass laws.

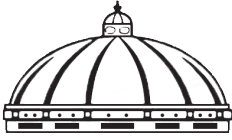
Nevertheless, there are other challenges in the relationship between the two authorities. One of these is related to the great powers enjoyed by some judicial entities over the Parliament. The Court of Cassation,⁽²⁰⁾ for instance, has become entitled (by virtue of the constitution no. 107) to make unilateral decisions regarding appeals—unlike the situation before 2011, when the People's Assembly also took part in this process. Such an issue will pose a major challenge to the upcoming Parliament as far as the timing of considering membership-related appeals is concerned. Essential

18- The Egyptian Shura Council approves in principle judicial authority act, BBC website, 25 May 2013, http://www.bbc.com/arabic/middleeast/2013/05/130525_egypt_shura_law.

19- Egypt's Upcoming Constitution. Unresolved Problems and Disputes, 16 October 2012, Al Arabiya Institute for Studies, <http://www.alarabiya.net/articles/2012/10/16/244110.html>.

20- See the workshop themed "Different Visions and Initiatives of the House of Representatives' New Bylaws", held at Al-Ahram Center for Political and Strategic Studies, Cairo, 30 August 2015.

to this challenge are these two questions: Will consideration be postponed until new bylaws that conform to this constitutional text are created? What are the fundamental steps for considering and deciding upon appeals by the court, in light of the Bylaws of 1979 and until new bylaws are created?



3- Oversight and independent apparatuses and their role in the Egyptian context

The relationship with these apparatuses remains controversial in the Egyptian political system. They have long been marginalized and their role and powers remain unclear to average citizens. Besides, no information is available about the reports they conduct and the progress and outcomes of the follow-up visits they conduct. There are plenty of oversight apparatuses in Egypt, though. According to some statistics, their number has reached 30 bodies.⁽²¹⁾

A specific formula of the relationship between these apparatuses and the Parliament and People's Assembly is absent. Consequently, the most important oversight apparatuses in Egypt (namely, the Administrative Control Authority, the Egyptian Financial Supervisory Authority, and the Central Bank of Egypt due to their broad scope and the diversity of the entities they supervise) are directly affiliated with the executive authority—namely, the President of the Republic, the minister in charge, or the executive authority.⁽²²⁾ The Accountability State Authority (ASA), the most renowned supervisory apparatus in Egypt, is an exception since it was affiliated with the President of the Republic from its establishment through 1975. By virtue of the law governing it, after 1975 the ASA became a body that assisted

21- Oversight Apparatuses and Executive Authority in Egypt: Who Monitors Whom?, Yanair Gate, April 2015, <http://yanair.net/?p=5227>.

22- The new law of supervisory apparatuses provokes more legislative chaos and the executive authority's control of the supervisory apparatuses, the Egyptian Initiative for Personal Rights, 3 August 2015, <http://eipr.org/pressrelease/2015/08/03/2428>.

the People's Assembly in its work.⁽²³⁾ The act regulating the ASA was amended in 1998 and it became affiliated once again with the President of the Republic.

The new situation in Egypt has witnessed the issuance of a new constitutional text that is unprecedented, as is the case with Article 216 of the Constitution of 2014 which reads: "The President of the Republic appoints the heads of independent bodies and regulatory agencies upon the approval of the House of Representatives." In spite of the good quality of this formula, the political context poses challenges in this regard, beginning with the legacy of daily work and practice inside these apparatuses and their long-term, one-sided relationship with the executive authority. The relationship between the Parliament and these apparatuses is not expected to be stable at first, particularly those apparatuses which have had no direct relation to the Parliament before. This also creates controversy over the initial work of the Parliament and the way the relationship with these apparatuses will be organized, especially considering the fact that no rules regulating this relationship are stipulated in the bylaws, unlike the case of the ASA. There is also a need to amend the laws regulating the work of these apparatuses to make them conform to the constitutional rules which are expected to be marked with controversy. The attempts made by both the executive authority and the Presidency to interfere in the regulation these apparatuses became apparent when the President of the Republic issued a law granting him the right to remove leaders and members of independent authorities or supervisory apparatuses from their posts.⁽²⁴⁾ This is

23- The Accountability State Authority Act, http://www.asa.gov.eg/attach/137_cao_law_2.pdf.

24- The Presidential decree which entitles President to displace heads of supervisory authorities and apparatuses, Al Wafd Newspaper, 11 July 2015, <http://alwafd.org/%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D9%88%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1/877999-%D9%82%D8%B1%D8%A7%D8%B1-%D8%AC%D9%85%D9%87%D9%88%D8%B1%D9%8A-%D9%8A%D9%85%D9%86%D8%AD-%D8%A7%D9%84%D8%B1%D8%A6%D9%8A%D8%B3-%D8%AD%D9%82-%D8%B9%D8%B2%D9%84-%D8%B1%D8%A4%D8%B3%D8%A7%D8%A1-%D8%A7%D9%84%D9%87%D9%8A%D8%A6%D8%A7%D8%AA-%D9%88%D8%A7%D9%84%D8%A3%D8%AC%D9%87%D8%B2%D8%A9-%D8%A7%D9%84%D8%B1%D9%82%D8%A7%D8%A8%D9%8A%D8%A9>.

regarded as a violation of the House of Representatives' authority to share this right with him, an issue that will probably create controversy when the House discusses and passes this law.⁽²⁵⁾

Before 2011, Egypt witnessed the existence of a number of apparatuses and structures which were concerned with specific issues, such as those related to women's rights or human rights. None of those entities, however, played a significant role or had a direct impact on the legislative authority in the country. At that time, the legislative branch was mostly represented by bodies acting as consultative authorities to the President of the Republic, assisting him in devising the State's general policy in all fields of national activity.⁽²⁶⁾ These bodies were gradually turned into places offering chairs and posts as rewards to those who were close to the regime after their retirement. After 2011, however, the situation changed and these councils were dissolved under the rule of the Muslim Brotherhood leaders.

The Constitution of 2014 has maintained a number of existing special national councils as well as established new ones such as the National Council for Human Rights (NCHR), the National Council for Women (NCW), the National Council for Childhood and Motherhood (NCCM), and the National Council for Disability Affairs (NCDA). Also formed were a number of other apparatuses and entities such as the National Media Council (by virtue of Article 211), the National Press Association (by virtue of Article 212), the National Media National

25- Dispute on the President entitling himself to displace members of independent and supervisory authorities from their posts, Al Youm al Sabee', 12 July 2015, <http://www.youm7.com/story/2015/7/12/21%D8%AC%D8%AF%D9%84-%D8%AD%D9%88%D9%84-%D9%85%D9%86%D8%AD-%D8%A7%D9%84%D8%B1%D8%A6%D9%8A%D8%B3-%D9%86%D9%81%D8%B3%D9%87-%D8%B3%D9%84%D8%B7%D8%A9-%D8%A5%D8%B9%D9%81%D8%A7%D8%A1-%D8%A3%D8%B9%D8%B6%D8%A7%D8%A1-%D8%A7%D9%84%D9%87%D9%8A%D8%A6%D8%A7%D8%AA-%D8%A7%D9%84%D9%85%D8%B3%D8%AA%D9%82%D9%84%D8%A9-%D9%88%D8%A7/2262631#.VnC2dXgrLIU>.

26- Abdalnasser Qandeel, "Specialized National Councils: From Practice to Potentiality of Development", El Mahrousa Center for Socioeconomic Development Forum, April 2015, <http://elmahrousacenter.org/wp-content/uploads/115.pdf>.

Press and Media (by virtue of Article 213), the National Security Council (by virtue of Article 205), the National Defence Council (by virtue of Article 203), and the National Elections Commission (by virtue of Article 209).

New powers were granted by the Constitution to these councils because their consent was a prerequisite for passing legislation that fell under their mandate. However, the situation is facing a major challenge when it comes to ensuring a healthy and stable relationship among these different apparatuses on the one hand, and between the apparatuses and the Parliament on the other hand—particularly with the absence of previous expertise in this regard and in light of the diversity of the apparatuses. What could be problematic is the existence of parallel entities known as the “Presidency-affiliated special councils” which are expected to be announced in the future. This could affect work progress and the relationship the Parliament can develop with each of the two parallel entities.⁽²⁷⁾

Finally, the relationship between the Parliament and the various authorities and institutions in Egypt remains one of the most complex issues faced by the upcoming Parliament. This complexity is attributed to the tendency of many state institutions to enjoy independence, in addition to the laws pertaining to some apparatuses and structures (the establishment of which comes by virtue of certain laws and certain timings—namely, the parliamentary session). Such challenges emerge from the prevailing political culture, the central heritage of the Egyptian State, the blurred regulations governing the relationship between the Parliament and other apparatuses and institutions, and the limited expertise of the Parliament and other sides in this field.

27- Al-Sisi: Announcement of specialized councils' formation within week, 50% of members youngsters, Sada el-Balad Newspaper, September 2015, <http://www.el-balad.com/1170455>.