

Promoting Reform in Egypt

Released October 2011

BLUEPRINT

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Human Rights First believes that building respect for human rights and the rule of law will help ensure the dignity to which every individual is entitled and will stem tyranny, extremism, and violence.

Human Rights First protects people at risk: refugees who flee persecution, victims of crimes against humanity or other mass human rights violations, victims of discrimination, those whose rights are eroded in the name of national security, and human rights advocates who are targeted for defending the rights of others. These groups are often the first victims of societal instability and breakdown; their treatment is a harbinger of wider-scale repression. Human Rights First works to prevent violations against these groups and to seek justice and accountability for violations against them.

Human Rights First is practical and effective. We advocate for change at the highest levels of national and international policymaking. We seek justice through the courts. We raise awareness and understanding through the media. We build coalitions among those with divergent views. And we mobilize people to act.

Human Rights First is a non-profit, nonpartisan international human rights organization based in New York and Washington D.C. To maintain our independence, we accept no government funding.

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Summary

This update to Human Rights First's April 2011 blueprint, *How to Seize the Moment in Egypt*, makes the case that the dramatic transformations taking place across North Africa present a unique opportunity for the United States to reshape its policy towards the region, placing human rights at the core of its bilateral relationships with governments. It identifies specific human rights benchmarks that must be met in Egypt's transition process if it is to deliver more representative, democratic governance to the Egyptian people. These are:

- The military takes definitive steps to cede executive power;
- Repeal of repressive legislation;
- An end to arbitrary detention and torture;
- An end to harassment and official defamation of independent civil society organizations;
- Protecting the rights of religious minorities; and
- An end to state domination of broadcast media and monopolistic control over the telecommunications and Internet sector.

It includes recommendations for the Supreme Council of the Armed Forces (SCAF), the ruling authority in Egypt, and for the Egyptian government as a whole, focusing on achieving progress towards the benchmarks identified above.

It also includes recommendations for the U.S. government, noting particularly that the U.S. government needs to strongly support its democracy assistance programs in Egypt, currently coming under attack by parts of the Egyptian government. It also emphasizes the importance of the bilateral military relationship between the United States and Egypt as a way to have a positive impact on the transition process currently underway in this key regional ally.

Introduction

A New Approach for U.S. Policy in the Middle East

Forced to endure decades of repressive, corrupt, and unresponsive government, people across the Middle East and North Africa are rising up to demand a better life. Protesters have many motives, from lack of economic opportunity to police brutality to unchecked official lawlessness and corruption. But central to all the protests is the demand for governments that respect human dignity—that is, for governments that uphold human rights.

In his "Address to the Muslim World" in Cairo on June 4, 2009, President Obama underlined his commitment "to governments that reflect the will of the people." He promised that the United States would support human rights "everywhere" and identified them: "the ability to speak your mind and have a say in how you are governed; confidence in the rule of law and the equal administration of justice; government that is transparent and doesn't steal from the people; the freedom to live as you choose." This is a reasonable encapsulation of the demands of the protesters.

The United States, a longtime supporter of repressive regimes in the region, bears its share of responsibility for the suffering there. The damage inflicted by these corrupt and sometimes brutal regimes will now have to be remedied by emerging governments that will need support from the international community, not least from the United States.

The United States now has an unprecedented opportunity to support the push for more representative government and in so doing to overhaul its approach toward the region. This is the ideal moment to place a commitment to human rights at the center of U.S. policy towards the Middle East. It is in countries like Egypt where the United States has a long history of providing financial assistance and cultivating close military and security cooperation that it now has the greatest opportunity to exert positive influence.

Events of the past ten months have demonstrated that the old paradigm for U.S. policy—trying to maintain stability in the region through close relationships with autocrats—has suffered a blow; a fatal blow, we hope. The stability engendered through repression has long been largely illusory. Since the end of the Cold War, there has been little stability in the Muslim World, and the region has provided more than its fair share of threats to U.S. strategic interests.

In recent years, authoritarian leaders like Mubarak found it politic to mask their dictatorial ways with a pretense of democratization and promises of reform that never came. This option of winking at sham reform while benefiting from cooperation in key strategic areas will now carry a heavier price for U.S. policymakers.

The choice going forward will be between unseemly alliances with unmasked dictators and brazen military autocrats or forging new partnerships with sovereign, democratic governments. The United States should make clear that it will have a new approach to its allies in the region based on building mutually supportive alliances with sovereign, democratic states. President Obama noted in Cairo that governments that support human rights are more stable, successful and secure. They make better strategic partners than the despots the U.S. government had supported for so long. **The United States must seek the stability it needs to protect its interests through the promotion of democracy and human rights, not through abetting autocrats and dictators.**

While change is inevitably unsettling, there is no reason for pessimism, which could be self-fulfilling. There is, however, a need for a new approach, and the patience to see it through.

The benefits of this new approach could be considerable: instead of U.S. alliances with dictators in the region becoming a rallying call for Al-Qaeda and other violent anti-American extremists, partnerships with democratic allies would improve the popular perception of the United States and thereby serve its interests.

Key Human Rights Benchmarks in Egypt

It is easy to talk in general terms about the desirability of a peaceful democratic transition in Egypt. To be real, this transition must include fundamental changes in many aspects of Egyptian law and policy and each change is likely to be resisted by entrenched interests and ingrained attitudes within Egyptian society. In many instances the United States will be challenged to have faith in its own rhetoric supporting democracy and representative government in circumstances where the outcome is unknown.

These are some of the key areas where change must occur if democratic transition is to have any real content:

The Military Takes Definitive Steps to Cede Executive Power

The ruling military council in Egypt, the Supreme Council of the Armed Forces (SCAF), is an element of continuity from the former regime. Since the 1952 Free Officers revolution the Egyptian military has been the power behind the throne in Egypt and former military officers have filled the office of the presidency from Nasser to Sadat to Mubarak. Under Mubarak, the military has enjoyed many privileges as well as developing extensive private business interests. The military now controls one of the biggest business empires in Egypt with little or no public scrutiny over its activities. It therefore has ample reason to seek to ensure that it emerges from the transition with its privileges as intact as possible.

Since coming to power after Mubarak's departure from office in February 2011 the SCAF has shown an increasingly troubling reluctance to fulfill its pledge to hand over control to a civilian government. The current timetable for elections in Egypt has parliamentary elections scheduled for November 2011 with presidential elections not to be held until after the drafting of a new constitution by a constitutional assembly appointed by the parliament. This could delay presidential elections until well into 2013. Until that point, the SCAF is proposing to exercise full executive power.

This may not have been a bad thing, if the SCAF could be relied upon to play a neutral political role, binding the country together during the uncertainties of the transition process and serving as the midwife of the emergence of a more representative government. However, the SCAF's refusal to remove long standing emergency legislation and its reliance on the sweeping repressive measures it permits; its resort to arbitrary detention, torture and the use of military courts to try civilians; its intimidation of the independent media and of threats against civil society organizations; and its disastrous mishandling of sectarian tensions, exemplified by the killing of over 25 and wounding of hundreds more unarmed mostly Christian protesters around the Maspero television building on October 9 has served to underline the point that **a purportedly democratic revolution headed by an unelected military council is a contradiction.**

The events of what has become known as Black Sunday on October 9 were a repetition of previous incidents when military police have used excessive force against unarmed protesters, including against Coptic Christian protesters outside the main television building in Cairo on March 14. The use of state-controlled media to incite the public against the Christian community on October 9 is an especially disturbing example of the SCAF's exacerbation of sectarian tensions, which, if further mishandled, could derail the transition process.

The military's repeated involvement and complicity in violence against unarmed civilians and other abuses has highlighted a further problem with the military's autocratic exercise of power: a lack of accountability. Military personnel involved in these troubling incidents have not been held accountable. In the aftermath of Black Sunday, the military has proposed that it can investigate itself, even though senior military leaders have made statements denying that the military is responsible for any of the deaths or injuries, and blaming the protesters and unnamed foreign hands for the violence.

Real change in Egypt will require the actions of the military, from upholding public order to its economic activities to its treatment of its citizens, to be made transparent and for mechanisms of accountability to civilian authorities to be firmly established in law.

Repeal of Repressive Legislation

An important indicator of the integrity of the reform process will be legislative change. Egypt has a very broad array of repressive legislation specifically designed to curtail basic freedoms of expression, assembly, and association and to stifle pluralistic politics. Fundamental reforms are needed in laws that undermine the independence of professional associations and nongovernmental organizations. The Emergency Law, law number 162 of 1958, has developed into a catchall measure that negates rights and freedoms provided for in the constitution and elsewhere in Egyptian law. It is highly regrettable that the SCAF chose to revive the application of the Emergency Law through its Decree 193 of 2011 in September, and also to broaden its application in a manner that invites abuse. For example, the decree provides for "the dissemination of false news and statements" to be considered a national security offense, thereby placing a constraint on freedom of expression. Similarly "obstruction of traffic" may also be a national security offense, thus limiting freedom of assembly.

Comprehensive reform of the constitution will not happen until a new, elected parliament is in place, as a minimum several months from now. Nonetheless, for elections to take place in any kind of atmosphere of freedom and fairness debilitating constraints on peaceful political activity must be removed. This means, among other things, removing the Emergency Law. **Elections that take place with it in place will lack credibility since political participation will be privileges controlled and constrained by the ruling military council, rather than rights guaranteed to all citizens by law.**

An End to Arbitrary Detention and Torture

Arbitrary detention and torture of detainees were common practices under the Mubarak regime. Political opponents, including nonviolent government critics, were sometimes targeted for this kind of abuse, but its use was also random and intimidatory, designed to deter dissent. Criminal suspects were also commonly brutalized and abused while in police custody. These abusive practices became the hallmark of Mubarak's authoritarian regime, undermining public confidence in the police and making a mockery of the rule of law.

Public dissatisfaction with the arbitrary and often brutal treatment people received at the hands of the security forces was one of the underlying causes of the unrest that led to the overthrow of the president. In this regard, the murder by police of Khaled Saeed outside an Alexandria Internet café in June 2010 became a symbol of police brutality and a focal issue for mobilization in the months leading up to January 25, 2011.

It is vital that Egypt's post-Mubarak rulers uphold public security through policing methods that abide by the rule of law and respect the rights and freedoms of the people. When abuses occur they must be independently investigated and those responsible held to account. The military police and the military justice system are completely unsuited to dealing with public order offenses involving civilians, and nonviolent dissent and criticism of the military or of government policy should not be subject to criminal sanction. More than 12,000 civilians have been tried by military courts in trials that fall short of international fair trial standards since the fall of Mubarak. Many of these people are now serving prison terms.

Egypt is in need of comprehensive reform of the security sector. The notorious State Security Intelligence Service may have been dissolved, but its repressive functions have passed to other equally unaccountable agencies like the Egyptian General Intelligence Service (EGIS). A reformed system must provide transparency and oversight of the activities of security agencies and must ensure that there is accountability when state security agents break the law and violate the rights of citizens. The foundation for the creation of such a system must be a process for the exposure of the wide-ranging abuses of the past, with those responsible for crimes held to account.

An End to Harassment and Official Defamation of Independent Civil Society Organizations

There has been no progress in reforming the restrictive legislation that permits the government to interfere with the functioning of independent nongovernmental organizations. The new constitution must include robust safeguards for the basic freedoms essential to the existence of independent civil society organizations, and a new law that permits freedom of association, expression, and assembly in practice for independent nongovernmental organizations, including those, like human rights organizations, that engage in public criticism of government policy must be passed.

These structural reforms are important benchmarks to aim for, but of more immediate concern are measures recently taken by Egypt's interim rulers to harass, defame and intimidate independent organizations and activists. The official attack on civil society has two related fronts. First there has been an increase in official statements and reports in the state controlled media accusing independent civil society organizations of receiving illegal foreign funds and acting in the interests of foreign powers against Egypt. These reports are often sweeping and defamatory, implying that independent civil society activity is illegitimate and against national interests. Such attacks were very common under the Mubarak regime and were used to undermine public trust in the work of civil society organizations and to deflect public attention away from the well-merited criticisms of government policies made by these organizations. Second, the Ministry of Justice is carrying out an investigation into the receipt of foreign funds by nongovernmental organizations. Minister of Justice Mohammed al-Guindi has announced that several organizations are to face charges for endangering national security by "sending sensitive information to foreign parties."

The government has instructed banks to provide it with information related to the financial transactions of nongovernmental organizations and has asked foreign donors, including the U.S. government, to provide information about the organizations to which they are providing funds.

The public announcement of such an investigation in itself places the legitimate activities of independent civil society organizations under a cloud of suspicion. The prosecution of leaders of organizations would interfere with the ability of those organizations to carry out their core functions and could result in their closure. Such a drastic move would be a serious challenge to the right of nongovernmental human rights organizations to seek and receive financial support for their activities from domestic and international sources.

This type of harassment of independent civil society organizations replicates the practices of the Mubarak regime and exemplifies the inability of the SCAF to provide the climate of freedom that is a necessary condition for future democratic development in Egypt.

Protecting the Rights of Religious Minorities

Egypt's interim government must do more to respond to the legitimate demands of the Coptic Christian minority so that their rights to equal treatment and protection will be upheld. Condoning or turning a blind eye to anti-Christian incitement and violence, seen most terribly on October 9, when state television broadcast the inflammatory falsehood that "Christians are attacking the army" inciting people in the area to come to the "defense" of the security forces and thereby contributing to chaotic violence, is extremely dangerous.

The military appeared eager to use exemplary, decisive force against a group of protesters in the misguided belief that this might help to deter further disruptive protests. It is disturbing that primarily Christian protesters were the chosen targets, raising fears that some in the military leadership appear to believe that they will be insulated from public criticism to some degree if they direct their violence against weaker, more vulnerable sectors of society. Moreover, Egypt's military and security establishment has a record, dating back to the Mubarak period, of playing on sectarian tensions to make the case for their own indispensability as guardians of stability. This counterproductive tactic needs to stop.

The interim government has not acted on its own proposals to ease sectarian tensions. The National Justice Committee, established by Prime Minister Sharaf in response to the May attacks on churches in the Imbaba district of Cairo, drafted a unified law on places of worship in June, designed to offer Muslims and Christians equal protection under the law. Christians have long faced restrictions on their ability to construct new churches or to repair existing ones. After receiving much critical feedback, the committee failed to produce a revised draft, leaving the problem unaddressed.

On October 11, after Black Sunday, Prime Minister Sharaf mandated that the committee finalize the revised law within two weeks.

In June, the National Justice Committee also drafted an antidiscrimination law. This draft was also widely criticized by religious communities and human rights organizations. The government failed to put forward any revisions or amendments until after October 9, and the law was not enacted.

On October 10, the cabinet announced an additional article to the antidiscrimination draft law that imposes more stringent penalties for violators, especially government officials. Under the law, a violator is “anyone who commits an act or abstains from committing an act which leads to discrimination between people or against a sect based on sex, origin, language, religion, or doctrine (resulting in) a violation of equal opportunities, social justice, or disturbing public peace.” These provisions reflect earlier suggestions made by Egyptian nongovernmental organizations in June.

A fundamental problem that has only been exacerbated by the government’s procrastination and inaction is the perception that the authorities are unwilling to act to protect the Christian minority from violence and attacks on church property. Severe incidents of violence against Christians, dating back to the latter years of the rule of President Mubarak, have not resulted in prosecution of those responsible for the deaths of scores of Christians. When churches are burned or vandalized the authorities encourage “reconciliation” in which victims are denied their rights and perpetrators escape punishment.

Current Egyptian law contains provisions that uphold religious freedom and outlaws discrimination, but too often these existing laws are not enforced. Talk of new laws will not reassure minority religious communities that the government is willing or able to protect them or treat them equally. The Egyptian government needs to adopt an approach that delivers protection, and nondiscriminatory law enforcement, not return to the old approach of manipulation and condoning of violence against religious minorities.

An End to State Domination of Broadcast Media and Monopolistic Control over the Telecommunications and Internet Service Provider Sector

Freedom of expression was curtailed in Mubarak’s Egypt by state domination of terrestrial broadcast media and of the largest, most widely available newspapers. These are the sources from which most Egyptians receive their news. Small independent newspapers and magazines, independent websites and blogs, and satellite television entered the media marketplace in recent years diversifying the information available to Egyptians. At the same time, the authorities managed news content by detaining and abusing bloggers who criticized government policy and exposed violations, or by prosecuting journalists and editors who crossed “red lines” of acceptable news reporting.

Despite these restrictions, new communications technologies such as cellphones, blogs and social networking sites became important tools in sharing information and organizing opposition to the government. So effective did these communications platforms become for the opposition that during the uprising the government notoriously took the draconian step of closing down access to the Internet almost completely and disrupting cellphone service throughout the country.

The legal framework that facilitates state interference, including unchecked surveillance of electronic communications and control over the media remain unchanged. Reform efforts in the laws governing the operation of Internet and cellphone providers, broadcast media and freedom of information have not advanced.

The authorities have become increasingly hostile towards the activities of independent journalists and broadcasters. For example, during the Maspero violent clashes on October 9, military police raided the offices of satellite TV stations al-Hurra and 25 January that were covering the incidents.

Recommendations

Recommendations for the Egyptian Government

1. The Supreme Council of the Armed Forces (SCAF) should indicate its willingness to definitively release its grip on executive power by a certain date. It must ensure that free and fair parliamentary elections are held in accordance with the established timetable and that these are followed by the drafting and implementation of a new constitution and the election of a new president within a specific timeframe.
2. The SCAF should immediately end the trial of civilians by military courts and the use of other exceptional courts. Those convicted by unfair trials in military courts must be retried in civilian courts.
3. The SCAF should revoke its decree expanding and enacting the Emergency Law so that elections can take place in an atmosphere in which basic political rights and freedoms are protected by law.
4. The government should end its campaign of defamation against independent civil society organizations. It should abandon plans and threats to prosecute human rights leaders for receiving foreign funds to carry out their legitimate activities, and it should revise its law governing the operation of nongovernmental organizations (NGOs) so that appropriate transparency and oversight can be exercised over foreign and domestic support for NGOs without the intrusive powers of current laws that strip NGOs of their necessary independence.
5. The government must step up its efforts to protect religious minorities, especially the Christian community. Acts of violence that have occurred against Christians and community property must be investigated and perpetrators held accountable. The government should speak clearly and publicly to affirm that all Egyptians are entitled to the equal protection of the law, regardless of religion, and to condemn violent attacks. There should be an end to institutionalized discrimination through the implementation of existing laws and the passage of revised laws, outlawing

discrimination and ensuring equal treatment under the law of Christian and Muslim houses of worship.

6. The government must order a thorough investigation into the events of Black Sunday to be carried out by a credible independent body, including representatives of the judiciary and independent civil society, with powers to question members of the armed services and other government officials involved in the incident. The involvement of state-controlled television in inciting violence against Christian protesters on October 9 should be part of this investigation. It should announce its findings publicly within a short period of time. Those implicated in violations should be referred for prosecution.

Recommendations for U.S. Policy

U.S. policy makers will be sorely tested as Egypt travels its bumpy road towards democratic transition. The intentions of enemies of democracy in Egypt were clear enough when, in the aftermath of the Maspero killings, false news reports circulated claiming that Secretary Clinton was promising to send military force to protect Egyptian Christians. The agenda of those spreading such falsehoods is to try to portray U.S. support for democracy and human rights as a cynical exercise in neocolonial power politics.

The overriding U.S. strategic goal must be in securing the success of the democratic transition in Egypt – a goal shared by the overwhelming majority of Egyptians. U.S. foreign assistance should be used in a manner that supports the realization of this long-term goal and policy makers should resist the temptation to withhold aid as a short-term punitive reaction to particular negative incidents that may occur.

1. The United States should take a clear public stand that further delays in the timeline for elections and the transition to civilian rule would be damaging to the good relations between the two countries. This message would be particularly effectively delivered by the military and the Department of Defense. Staying in control, if not in power as the formal office holders, increasingly appears to be the long term goal of

Egypt's military leadership. U.S. policy makers need to avoid giving their blessing to democratic back-sliding.

2. The U.S. government at all levels and through all branches, including especially the military and the Department of Defense, should use the rich, close relationships with Egyptian leaders to communicate a constant message: that the quality of the U.S. relationship with Egypt will be determined by the progress Egypt makes towards democratic governance that protects and upholds the basic rights and freedoms of all of its people.
3. U.S. aid is a critical building block for independent civil society in Egypt – and is an important element in shaping the role the United States wants to play in the new Egypt. The U.S. government, including the president, the secretary of state and the secretary of defense should take advantage of this moment of transition in Egypt to explain to the Egyptian government and to the Egyptian people the motives and basis for its democracy assistance programs in Egypt.
 - In particular, it should make clear that it provides funds to independent civil society organizations working in the fields of human rights and democracy promotion in accordance with guiding principles adopted by the State Department in 2006. Therefore, these funds are intended to be applied in all U.S. bilateral relationships, in accordance with international standards like the U.N. Declaration on Human Rights Defenders, adopted by the U.N. General Assembly in 1998 with Egypt's approval.
 - The U.S. government should continue to provide financial support to independent human rights and democracy promotion organizations in Egypt in a transparent manner and insist publicly and privately that the Egyptian government has no right to veto or obstruct funds designed to promote and protect universal principles, which the Egyptian government has agreed to uphold under international law.
 - The U.S. government should avoid assisting the Egyptian government to implement laws that violate Egypt's international legal obligations, such as laws restricting the ability of independent NGOs to operate free from government control and interference.
4. The U.S. government should support calls for a credible independent inquiry into the events of October 9 in Cairo.
5. The U.S. government should urge the Egyptian government to move forward with reforms in laws governing the Internet and telecommunications sector. The new regulations should provide safeguards for users, protect freedom of expression, and create a framework in which the powers of government, the obligations of companies, and the rights of users would all be clear. Implementation of such a law would be an important step in stabilizing the business environment and thereby attracting the foreign investment essential to Egypt's future prosperity.



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