

THE 2014 CONSTITUTION OF ARAB REPUBLIC OF EGYPT

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I. Origins and Historical Development of the Constitution

A. Brief historical background

The 1882 Constitution was the first constitution in modern Egypt, which was part of a wider reformation project aiming to establish modern institutions to remedy economic and political conundrums of the time. Egypt came under Ottoman rule in 1517 and its borders were enlarged by Mohamed 'Alī Pasha¹ following the conquest of some parts of what is now known as Sudan.² As such, Sudan was linked with Egypt and governed through the Turco-Egyptian administration.³ In 1876 a civilization project was undertaken, inspired by the legacy of the Khedive's⁴ grandfather, Mohamed 'Alī Pasha of Egypt. However, the project by Isma'il led to severe fiscal problems. The resulting debts gave the British and French reason to intervene in the affairs of Egypt and to extend their guardianship over the government.⁵

In 1882, Egypt's only legislative power, the Advisory Council of Representatives,⁶ began to urge Khedive Tawfiq to promulgate a constitution. Tawfiq addressed the demands of the members of the Advisory Council positively, but only in a modest way, by implementing a democratic system under an Ottoman mandate. The Constitution of 1882 created the first Egyptian parliamentary representation. This Constitution lasted only a few months until Britain formally established occupation of Egypt in July 1882.⁷ Thus the Constitution was abrogated and the British assumed both political and economic control of Egypt.

Meanwhile, Britain and Egypt signed the Condominium Agreement which declared joint

* I would like to thank Erin Houlihan for very helpful comments on an earlier draft. A special thankyou goes to Hazal Atay for her insightful suggestions and constructive feedback. I cannot thank her enough. Finally, I would like to thank my father, mother and sister, for always supporting me.

¹ Muhammad 'Alī Pasha is the creator of modern Egypt.

² *The Anglo-Egyptian Sudan* (British Information Services, New York, 1947).

³ Kevin Shillington, *Encyclopedia of African History, vol. 1 (A-G)* (Fitzroy Dearborn, New York, 2005), p. 1494.

⁴ Isma'il Pasha, known as Ismail the Magnificent, was the Khedive of Egypt and Sudan from 1863 to 1879.

⁵ M. Cherif Bassiouni and Mohammad Helal, *Al-Gumhūriyya Al-Thāniyya Fī Miṣr (The Second Republic in Egypt)* (Dar El Shorouk, Cairo, 2012).

⁶ The Advisory Council of Representatives was established on 25 October 1866. It consisted of 76 elected members. In addition, the Khedive appointed its Speaker (Chair) and his Deputy.

⁷ Cherif Bassiouni and Helal (n 5).

sovereignty over the Sudan on 19 January 1899.⁸ Ottoman rule over Egyptian territories continued even after British occupation and only ended at the time of the First World War when the Ottomans joined the anti-British Axis powers. Given the Ottoman's stance with Germany and Austria-Hungary, the British ended the legal relationship between Egypt and the Ottoman Empire through the Declaration of Protection to Egypt on 17 December 1914, which established a British protectorate over Egypt.

At the end of the First World War, Sa'd Zaghlul⁹ organized a delegation to present Egyptian claims for independence at the Versailles Conference, demanding that Egypt be accepted as an independent country. The delegation's demands were ignored. On 9 March 1919 the leaders of the Egyptian delegation were arrested and sent to exile in Malta. Their forced exile led to the insurrection of the 1919 revolution.¹⁰ Ultimately the British powers accepted the demands of the national political leaders of Egypt.¹¹ Thus in the February 1922 declaration, Britain unilaterally declared Egypt as an independent and sovereign state, thus putting an end to the protectorate.¹² However, as the declaration was accompanied by 'four reservations',¹³ this was not a fully realized independence.¹⁴ Despite these reservations, formal independence from Britain created a need for Egypt to redefine its political system. Drafting a constitution offered the country an opportunity to assert its independence and establish a measure of parliamentarianism. King Fouad I of Egypt appointed the 'Committee of Thirties' to draft a constitution.

In the draft constitution, the monarch's title became the 'King of Egypt and Sudan'. The constitution granted more powers to Parliament than the King.¹⁵ Yet when the draft was considered, both the King and the British powers expressed reservations about the text. The King, for his part, called for expansion of the powers granted to him by the constitution.

⁸ Shillington (n 3), p. 1494.

⁹ Saad Zaghloul was the leader of Egypt's nationalist Wafd Party, Egypt's main nationalist political party from 1923 to 1925, and heir to the anti-British 1919 revolution movement. It was in constant opposition to the King's powers. He served as Prime Minister of Egypt from 26 January to 24 November 1924.

¹⁰ Ellis Goldberg, 'Peasants in Revolt - Egypt 1919', (1992) *International Journal of Middle East Studies*, Vol. 24, no. 2.

¹¹ Cherif Bassiouni and Helal (n 5).

¹² Shillington (n 3).

¹³ Firstly, control over the Suez Canal was exempted to protect British imperial transport. Secondly, the British still reserved the leverage to intervene to protect Egypt in case of foreign interference. Thirdly, the British also reserved the right to intervene in the protection of foreign interests and minorities. Lastly, this declaration was not extended to Sudan, which was part of Egypt at that time.

¹⁴ Cherif Bassiouni and Helal (n 5).

¹⁵ Id.

Britain, in contrast, objected to the title ‘King of Egypt and Sudan’ granted to the King in the draft constitution.¹⁶ Ultimately, a committee of legal experts from the Egyptian government amended the provisions of the constitution and submitted the new draft to the King, which he approved. The Constitution promulgated in 1923 reformulated the King’s powers and title as the ‘King of Egypt’.¹⁷

In 1930 a political dispute escalated between the King and the government, leading to the government’s resignation. As a reaction to the resignation, the King repealed the 1923 Constitution, to be replaced by a new constitution, and Parliament was subsequently dissolved. The 1930 Constitution was drafted by the government to strengthen the powers of the King at the expense of Parliament. On 12 March 1935, under public pressure and in what later became known as the ‘Cairo Uprising’,¹⁸ the King abolished the 1930 Constitution and reestablished the 1923 Constitution, which stayed in force until 1952.

In 1952, the Constitution was this time disrupted by the ‘Free Officers’ military movement presided by Mohammad Naguib.¹⁹ The ‘Free Officers’ movement was led by a group of nationalist army officers of Egypt and Sudan who forced King Farouk to resign and took power. The ‘Free Officers’ movement was so-named for several terms until it became known in Egypt as the ‘1952 revolution’.²⁰ The 1952 revolution announced the demise of the 1923 Constitution and constitutional monarchy, and established the Egyptian republic.

Mohammad Naguib became the first President of the Arab Republic of Egypt. He issued a decree that appointed the committee of 50 which drafted the 1954 project constitution.²¹ The draft constitution was rejected by the technical office of Prime Minister Gamal Abdel Nasser and the decision was taken to commence drafting an entirely new constitution.²²

¹⁶ Id.

¹⁷ Id.

¹⁸ 13 November 1935 was the first day of the uprising when about 2,000 students from Giza University marched to Cairo. The demonstrations continued until studies were suspended indefinitely on 8 December, but this did not stop the uprising. On 14 November 1935 the demonstration, of around 4,000 students, clashed with British police on Abbas Bridge. The Cairo Uprising ended only when the King abolished the 1930 Constitution.

¹⁹ Naguib was a military officer and the president of the ‘Free Officers’ movement. In 1953 he became the first President of Egypt and desired a speedy return to constitutional government.

²⁰ The 1952 revolution was not called a ‘revolution’ until later. It was described initially as the ‘army movement’, was then known as the ‘blessed movement’, until it became the ‘blessed revolution’ and finally the ‘1952 revolution’.

²¹ Salah Eissa, *Dustor Fi Sandouk El Kemama (A Constitution in the Garbage Can)* (General Egyptian Book Organization, Cairo, 2001).

²² Id.

Later, after the ousting of Mohammad Naguib from his post in 1954, Gamal Abdel Nasser became his successor. The 1956 Constitution was drafted by a committee of leading jurists and political elite. It was presented to popular referendum on 23 June 1956 and passed by ‘99.8 percent’²³ voting in its favor.²⁴ In the meantime, the legal relationship between Egypt and Sudan was brought to an end by the cessation of the Condominium Agreement on 1 January 1956.

The 1956 Constitution was not in effect for long, as a union was formed between Syria and Egypt in 1958. This union led to the establishment of the United Arab Republic, governed under a quickly drafted constitution.²⁵ The union ended in 1961 due to Syria’s withdrawal, and a new charter was needed to fill the constitutional gap in Egypt. In 1962 a provisional constitutional declaration was issued and gave all state authority to the President. A popular assembly was elected in 1962 and gave birth to Egypt’s 1964 Constitution.²⁶ This Constitution stated in the preamble that it was merely provisional until a final constitution was drafted.

Nasser’s tenure of power continued until his death in 1970, when Anwar el-Sadat became his successor after a referendum. In 1971, Anwar Sadat issued a decree to form a constituent commission to draft the new document. The 1971 Constitution was then put to a referendum and passed by ‘100 percent’²⁷ in its favor.²⁸

The 1971 Constitution was amended in 1981. In October 1981, President Anwar Sadat was assassinated at a military parade celebrating Egypt’s 1973 victory against Israel. Sadat’s successor was his vice president, Mohamed Hosni Mubarak,²⁹ who ruled the country for almost thirty years. The 1971 Constitution was again amended in 2005 and 2007, before the occurrence of the 2011 revolution. This revolution began by gatherings of the public in the

²³ Dieter Nohlen, Michael Krennerich and Bernhard Thibaut, *Elections in Africa: A Data Handbook* (Oxford University Press, 1999), p. 340.

²⁴ Eissa (n 21).

²⁵ Nathan J. Brown, *Constitutions in a Nonconstitutional World: Arab Basic Laws and the Prospects for Accountable Government* (State University of New York, New York, 2002).

²⁶ Id.

²⁷ Nohlen et al (n 23), p. 340.

²⁸ Constitution Issue, Midan Masr Paper, April/May 2012, available at <http://www.midanmasr.com/en/pdfviewer/pdfs/Issue3English.pdf>.

²⁹ Mubarak is the former Egyptian military and political leader who served as the fourth President of Egypt from 1981 to 2011.

country's squares and streets, demanding 'bread, freedom and justice'. Then came demands to dismiss Mubarak.

The people's revolt between 25 January and 11 February 2011 led Mubarak to step down from office as he ceded control to Egypt's Supreme Council of the Armed Forces (SCAF³⁰).³¹ Following this, the SCAF took over the state, dissolved Parliament, and suspended the 1971 Constitution.³² Furthermore, the SCAF announced the establishment of a constitutional committee of eight people to prepare a technical report and draft amendments to the suspended Constitution. In March 2011 the amendments were approved in a referendum. However the SCAF did not re-institute them in the Constitution. The SCAF chose instead to issue the 'March 2011 Declaration',³³ which laid out a transitional framework in which the partly elected, partly appointed Shura Council (Upper House) and the elected House of Representatives' members would select 100 persons to form a constituent assembly to draft a new constitution.³⁴

The March 2011 Constitutional Declaration was followed by the elections for the two Houses of Parliament and the presidential elections, which were held respectively in late 2011 and early 2012. The elections saw the emergence of the Islamist parties as the prevailing political power, winning 71 percent of the seats in the House of Representatives and almost 90 percent in the Upper House,³⁵ while the Islamist Muslim Brotherhood's Freedom and Justice Party (FJP) candidate, Mohammed Morsi, won the presidential election over Ahmed Shafiq,³⁶ with 51.73 percent of the vote.

³⁰ The Supreme Council of the Armed Forces (SCAF) is a body of senior Egyptian military officers. There was no reference to the SCAF in previous constitutions.

³¹ Egyptian President Hosni Mubarak's resignation statement, available at <<https://www.theguardian.com/world/2011/feb/11/full-text-hosni-mubarak-resignation>> (visited 1 March 2018).

³² Hanafy Gebaly, *Constitutional Developments in Egypt in 2011* (report, European Commission for Democracy through Law (Venice Commission), Strasbourg, 2012).

³³ Zaid Al-Ali, Christopher Roberts and Amos Toh, *A Commentary on the Egyptian Constitutional Declaration dated 17 June 2012* (International IDEA).

³⁴ Gebaly (n 32).

³⁵ Parliament Elections results, available at <<https://carnegieendowment.org/2015/01/22/2012-egyptian-parliamentary-elections-pub-58800>> (visited 1 March 2018).

³⁶ An Egyptian politician and a former candidate for the presidency of Egypt. He served as Prime Minister of Egypt from 29 January 2011 to 3 March 2011 and was previously a senior commander in the Egyptian Air Force.

On 12 August 2012, Morsi forced Field Marshal Mohamed Hussein Tanfawi³⁷ and Sami Hafez ‘Anan³⁸ into immediate retirement and appointed general ‘Abd al-Fattah al-Sisi, who was serving at the time as the military intelligence chief, as the Minister of Defense.³⁹

On 22 November 2012 Morsi issued a Constitutional Declaration which banned any form of judicial review of the President’s decrees and the Constituent Assembly which had been based mainly among Islamists. As a result, several protests erupted across the state against the President’s powers in the Constitutional Declaration.⁴⁰

The Constituent Assembly finalized the drafting process of the Constitution on 29 November 2012. There were also a number of withdrawals from among the members of the Constituent Assembly due to the refusal to draft a constitution which established constitutional theocracy.⁴¹ Despite the withdrawal of twenty-six members, the Assembly voted by calling upon its reserve members to achieve a quorum.⁴² Thereafter the 2012 Constitution went to a referendum to be enacted as the official Constitution and was approved by 63.8 percent, with a turnout of 32.9 percent.⁴³

A few months after the adoption of the Constitution, fears that Egypt was becoming a theocracy started to spread through the public.⁴⁴ There was a constitutional mechanism for impeachment; however, impeachment could only take place before the People’s Assembly,⁴⁵ which had not yet been elected after its dissolution by the Supreme Constitutional Court as clarified in its Constitutional Adjudication section.

³⁷ Defense Minister of Egypt from 1991 until August 2012.

³⁸ The Chief of the General Staff of the Armed Forces from 2005 until August 2012.

³⁹ Diana Serôdio and Cornelis Hulsman, *The 2014 Egyptian Constitution: Perspectives from Egypt* (Tectum Verlag, Baden-Baden, 2017).

⁴⁰ ‘Protests erupt across Egypt after presidential decree’, *The Guardian*, 23 November 2012, available at <<https://www.theguardian.com/world/2012/nov/23/protests-egypt-presidential-decree>> (visited 1 March 2018).

⁴¹ ‘Egypt’s churches withdraw from Constituent Assembly’, available at <<http://english.ahram.org.eg/NewsContent/1/64/58411/Egypt/Politics-/Egypts-churches-withdraw-from-Constituent-Assembly.aspx>> (visited 1 March 2018).

⁴² ‘Timeline of Morsi and the Judiciary: One Year in Power’, available at <<https://dailynewsegypt.com/2013/06/29/timeline-of-morsi-and-the-judiciary-one-year-in-power/>> 1 (visited 1 March 2018).

⁴³ ‘Referendum 2012 results’, available at <<https://referendum2012.elections.eg/results/referendum-results>> (visited 1 March 2018).

⁴⁴ M. Cherif Bassiouni, ‘Egypt in Transition: The Third Republic’, (April 2015) Prism: The Journal of Complex Operations, National Defense University, Vol. 4, no. 4.

⁴⁵ Article 156, EG constitution 2012.

With this token, a youth group launched the *Tamarud* (Rebel) movement, gathering 22 million signatures petitioning for the removal of Morsi.⁴⁶ On 30 June 2013, millions of Egyptians poured onto the streets in support of the *Tamarud* movement's petition.⁴⁷

On 1 July 2013, the military gave the government a week to temper public opinion. Meanwhile, there were intense clashes in the streets between the pro-Morsi and anti-Morsi groups. As a result, the military gave both groups forty-eight hours to reach a political solution or face military intervention.⁴⁸ On 3 July 2013, after the forty-eight hours had passed, the military intervened and took Morsi into custody.⁴⁹ On the same day, the head of the army and the Defense Minister General Abd al-Fattah Al-Sisi appeared on national television to announce that Morsi had been deposed and Judge 'Adli Mansour, the President of the Supreme Constitutional Court, had been installed as the interim President.⁵⁰

B. Birth of the 2014 Constitution

On 8 July 2013, the interim President issued a thirty-three article Constitutional Declaration setting out a roadmap to amend the 2012 Constitution. On 20 July 2013 a presidential decree established a ten-member legal committee of senior judges and constitutional law professors, in accordance with Article 28 of the Declaration. This committee was established to propose amendments to the 2012 Constitution within a maximum period of thirty days from committee formation.

The committee's proposed amendments would then be presented to the fifty-member Constituent Assembly (C-50) representing different sectors of the society.⁵¹ On 1 September 2013, Mansour issued Presidential Decree No. 570 identifying the fifty appointed members to draft the constitution. The appointed committee was given sixty days to complete the new amendments and thirty days for public debate before it was put to a public referendum.

⁴⁶ Cherif Bassiouni (n 44).

⁴⁷ 'Millions flood Egypt's streets to demand Mursi quit', available at <<https://www.reuters.com/article/us-egypt-protests-idUSBRE95Q0NO20130630>> (visited 1 March 2018).

⁴⁸ Supreme Council of Armed Forces announcement, July 2013, available at <<https://www.youtube.com/watch?v=428YxKNfYMc>> (visited 1 March 2018).

⁴⁹ 'Army Ousts Egypt's President; Morsi Is Taken into Military Custody', New York Times, available at <<https://www.nytimes.com/2013/07/04/world/middleeast/egypt.html>> (visited 1 July 2018).

⁵⁰ Serôdio and Hulsman (n 39).

⁵¹ Michael Meyer-Resende, *Egypt: In-depth Analysis of the Main Elements of the New Constitution* (report, Directorate-General for External Policies of the Union, Policy Department, 2014).

In December 2013, the C-50 released a final draft which was later approved in January 2014 by a public referendum, with a turnout of 38.6 percent, in which 98.1 percent of voters supported the Constitution.⁵² The 2012 and 2014 Constitutions share 180 similar articles. Thus it may be concluded that the 2014 Constitution was an actual amendment to the 2012 Constitution. It is worth noting that most articles more closely resemble specific laws than constitutional text, which should ordain general principles and make reference to the laws issued by Parliament that detail the constitutional articles. It seems that the C-50 wanted to guarantee that the government could not use the Constitution to legalize unlawful acts. However, an overview of the main principles of the Constitution below will highlight what values the 2014 Constitution bestows to the Egyptian nation.

II. Fundamental Principles of the Constitution

The fundamental principles of the Constitution affirm the rule of law, protection of human rights, and distributions of power. Furthermore, an ambitious attempt was made to embrace and reflect the spirit of the revolution. As such, the Constitution sets forth the noble values of the people to propel the country forward towards a better future under the Constitution. Given the fact that the 2014 Constitution came about following the decline of an Islamist system, managed by the long-banned Muslim Brotherhood, the question of balancing the relationship between the state and religion was carefully considered. The details are expounded in subsection II.A. below in order to elucidate the underlying tensions between Islamists and secularists, and how these tensions have been reflected in Egyptian constitutions through time.

A. State and Religion

Egypt is not a secular country and as such the relationship between the state and religion is apparent in several places within the 2014 Constitution. The Constitution's preamble starts with '[i]n the Name of God, Most Gracious, Most Merciful' (*bi-smi llāhi r-raḥmāni r-raḥīm*).⁵³ Similarly, the Constitution mentions the three revealed religions, namely Judaism,

⁵² 'Egypt's new constitution gets 98% "yes" vote', available at <<https://www.theguardian.com/world/2014/jan/18/egypt-constitution-yes-vote-mohamed-morsi>> (visited 1 March 2018).

⁵³ (*Islamic basmala*).

Christianity, and Islam,⁵⁴ and the respective religious figures of each: Moses, the Virgin Mary and baby Jesus, and the prophet Mohamed (Peace and Blessings Be Upon Him).⁵⁵ This reflects how the state's identity is tied to only the three revealed religions. Furthermore, Article 2 is the cornerstone of the Islamic legal identity of Egypt. It declares Islam as the religion of the state, alongside a provision declaring that Islamic Shari'a principles are the chief source for all state legislation, applicable to all citizens. By contrast, Article 3 specifies certain matters which are to be governed by the principles of Christianity and Judaism. It states that the principles of confessional laws for Christians and Jews are the chief source of legislation regulating their personal status, religious affairs, and how they choose their religious authorities.

To understand what is meant by Islamic Shari'a principles as a source of legislation, a further overview of the historical place of Islam in the Egyptian Constitution will be clarified in what follows. Egypt and the reference to Islam in the Constitution have a long history dating back to 1923. The first constitutional reference to Islam was in Egypt's 1923 Constitution: Article 149 ordained that 'Islam is the religion of the State and Arabic is its official language', but it did not declare Islamic law as a source of legislation. Following the 1923 Constitution, the Constitutions of 1930, 1956, 1964, and 1971 adopted Article 149. Only the Constitution of 1958, drafted after the unification of Egypt and Syria, omitted the Article.

While drafting the 1971 Constitution, the Constitutional Drafting Committee agreed to adopt Islamic Shari'a principles as a source of legislation for the first time in Egyptian constitutional history, stating that 'the principles of the Islamic shari'a are a chief source of legislation'.⁵⁶

After the adoption of the 1971 Constitution and during the 1970s, the Islamists' powers increased, and they sought to amend the Constitution to make the principles of Islamic shari'a *the* chief source of legislation. The expectation was that such an amendment would oblige the courts to void any law inconsistent with Shari'a.⁵⁷

There was increasing criticism of the government for not making any effort to fully implement the constitutional obligation of enforcing Islamic Shari'a principles in the legal framework.⁵⁸ On 17 July 1979, one-third of the members of the People's Assembly proposed

⁵⁴ Judaism, Christianity, and Islam.

⁵⁵ 2014 Constitution, preamble.

⁵⁶ 2014 Constitution, Art. 2.

⁵⁷ Id.

⁵⁸ Rainer Grote, *The Arab Republic of Egypt: Introductory Note* (Oxford University Press, 2014).

that the Constitution be amended. According to the proposal to amend Article 2, this article would no longer provide that Islamic law was merely ‘a’ chief source of Egyptian legislation. Instead, it would provide that ‘the principles of Islamic *shari’a* are **the** chief source of legislation’. On 19 July 1979, the People’s Assembly approved the change in principle and following normal procedures. On 30 April 1980 the People’s Assembly overwhelmingly approved the amendment, and on 22 May 1980 a referendum ratified the amendment by ‘99%’⁵⁹ and it became applicable.⁶⁰ Therefore, the Constitution adopted Shari’a principle-based jurisprudence as the primary legal foundation of the country.

It may seem that amending the Constitution to make the principles of Islamic Shari’a ‘the’ chief source of Egyptian legislation rather than ‘a’ chief source would enable the courts to annul any law inconsistent with Shari’a on the basis of unconstitutionality.⁶¹ However, the Supreme Constitutional Court held that the constitutionality of any law in accordance with Article 2 would apply only to laws issued after the constitutional amendment.⁶² Further, subsequent judicial decisions demonstrated a liberal interpretation of Islamic Shari’a principles that were not restricted by the interpretation of classical Islamic scholars, but rather were based on the current economic and social circumstances of the state in accordance with the requirements of public welfare.⁶³

In the 2012 Constitution, Article 2 was maintained in its 1980 formulation, which stated that ‘Islam is the religion of the state and Arabic is its official language. The principles of Islamic Shari’a are the principle source of legislation.’ However, there was a heated debate related to both the place of Islamic Shari’a in the Constitution as a source of legislation and on what is meant by Islamic Shari’a principles. Therefore, Article 219 was added with the purpose of defining what is meant by Islamic Shari’a. This was done by including general evidence, the foundational principles of Islamic jurisprudence (*Usul al-fiqh*), and reliable sources from among the Sunni schools of thought (*madhāhib*).⁶⁴ That Article broadly defined what is meant by Islamic Shari’a, but still left much room for interpretation. On the basis of a certain

⁵⁹ Nohlen and ors (n 23), p. 340.

⁶⁰ Clark B. Lombardi, *State Law as Islamic Law in Modern Egypt: The Incorporation of the Shari’a into Egyptian Constitutional Law*, vol. 19 (Brill, Leiden, 2006).

⁶¹ Clark B. Lombardi, ‘Constitutional Provisions Making Shari’a “A” or “The” Chief Source of Legislation: Where Did They Come From? What Do They Mean?’, *American University International Law Review*, University of Washington School of Law Research Paper No. 2014-01 28, no. 3.

⁶² Grote (n 58).

⁶³ Id.

⁶⁴ 2014 Constitution, Art. 219.

interpretation, in some cases it could also be used to establish limitations on human rights. Article 44 was also added, prohibiting insulting or abusing all religious messengers and prophets, which could be interpreted in such a way as to permit constraining rights and freedoms. Further, Article 76 was added, stating that a person was not to be convicted of a crime and thus sentenced unless it was decreed in the Constitution or in law.⁶⁵ Therefore in the 2012 wording, the Constitution allowed for criminalization on the basis of the Constitution by relying on any article such as Article 219, as clarified earlier, creating criminal offences through a specific understanding of Islamic Shari'a. Also, Article 4 was added which was designed to give a larger role to Al-Azhar⁶⁶ by requiring an advisory opinion on all Shari'a matters.⁶⁷

In the 2014 Constitution, the most debated articles of the 2012 Constitution, which empowered the role of Islamic legislation, were removed. The preamble carries a reference (in a footnote) to specific Supreme Constitutional Court case law on Article 2, inserted in the preparatory work of the 2014 Constitution as the binding reference as to how Islamic Shari'a principles are to be interpreted.⁶⁸

B. The Rule of Law

The Constitution declares that the Arab Republic of Egypt is a democratic republic based on citizenship and that the rule of law is the basis of governance in the state.⁶⁹ Also, it includes several articles which are considered fundamental for a state based on the rule of law, such as the guarantee of a political system committed to multi-party contestation, the peaceful transfer of power, the separation and balance of powers, accountability for the use of public authority, and respect for human rights and freedoms,⁷⁰ and extended chapters on civil liberties.⁷¹ The rule of law chapter further elaborates on criminal justice guarantees such as due process and the right to litigate.

Furthermore, Article 95 states that '[p]enalties are personal. Crimes and penalties may only be based on the law'. Article 95 limits penalties for crimes only on the basis of the law. This is different from the 2012 Constitution, which stated that a person was not to be convicted of a

⁶⁵ 2012 Constitution, Art. 76.

⁶⁶ The main Islamic institution of Egypt and probably of the Islamic Sunni world.

⁶⁷ 2014 Constitution, Art. 7.

⁶⁸ 2014 Constitution, preamble.

⁶⁹ 2014 Constitution, Art. 94.

⁷⁰ 2014 Constitution, Art. 5.

⁷¹ 2014 Constitution, Arts. 51 to 93.

crime and thus sentenced unless it was decreed in the Constitution or in law,⁷² which allowed for criminalization on the basis of other articles, such as Islamic Shari‘a, as was expounded in Part II.A. on State and Religion.

Non-enforcement of court decisions is one of the main challenges for the justice sector in Egypt. Article 100 addresses this challenge by committing the state to guaranteeing the means of implementing court decisions as regulated by law. This Article adds that refraining from the enforcement of a court decision is a crime that is punishable by law. Moreover, upon the request of the prevailing party, the public prosecutor is required to commence criminal proceedings against a civil servant who refrains from implementing the decision or impedes its implementation.⁷³ This detailed constitutional article enhances the position of the prevailing party and empowers him/her *vis-a-vis* civil servants who refuse to abide by the law and enforce decisions of the courts in accordance with their jurisdictional power.

C. Constitutional Amendment

Article 226 states that amending the Constitution requires the approval of two-thirds of the House of Representatives. If the requested amendment is approved by two-thirds of the House’s members, the amendment is put to a public referendum.

Also, the same article includes, for the first time in Egyptian constitutional history, two inventory guarantees. First, the provision states that the articles on re-election of the President of the Republic may not be amended.⁷⁴ It was introduced in such a form so as to guarantee the principle of peaceful transition of power. The aim of the prohibition against amending the articles related to re-election of the President of the Republic is to prevent political tinkering by people in power in order to further entrench authority. The second guarantee is that the provisions relating to the principles of freedom or equality may not be amended unless the amendment provides further guarantees,⁷⁵ in order to mandate the protection of rights and freedoms.

III. Protection of fundamental rights

The protection of fundamental rights and freedoms in the 2014 Constitution is the most progressive and developed in comparison to any of Egypt’s previous constitutions. Protection

⁷² 2012 Constitution, Art. 76.

⁷³ 2014 Constitution, Art. 100.

⁷⁴ 2014 Constitution, Art. 226.

⁷⁵ 2014 Constitution, Art. 226.

of fundamental rights is asserted through more than forty articles in the Constitution, beginning with the preamble, which refers to the Constitution as being in line with the Universal Declaration of Human Rights, extending to a full section stipulating the rights and freedoms of citizens. The Constitution proclaims a comprehensive array of rights and liberties which have never been addressed in such detailed form in any previous constitution.

However, it is notable that there is a distinctive linguistic style which can be observed from studying how the state's commitments were drafted with regard to different rights and freedoms. Some rights were drafted using the phrasing the state 'ensures, guarantees or works on' (*Takfol*), which means that the state commits itself to ensuring the general circumstances for these rights to be implemented, while not engaging the state directly in enforcing and protecting such a right. This is known as 'an obligation of care', in contrast to 'an obligation to achieve'. But if the intention was to commit the state towards the full implementation of specific rights, the wording would be 'the state commits'. This would guarantee the state's constitutional obligation to be involved directly in the protection of such rights. This demonstrates the C-50's intention as to how they envisaged a different level of state commitments in relation to the provision and the safeguarding of specific rights. Some articles involve the commitments of both the 'obligation of care' and the 'obligation to achieve' for related rights, such as Article 13:

The state commits to protecting worker rights, and works on building balanced work relationships between the two sides of the production process. It commits to provide means for collective negotiations and works on protecting workers against the risks of work, ensures that conditions for professional security, safety and health are met, and prohibits arbitrary dismissal. The details are set out by statute.

Thus the level of the state's commitments can be understood from careful reading of each article in the Constitution. It can be concluded that of the entire bill of rights, only the rights that were drafted in the form of an 'obligation to achieve' will stand as a challenge in a court to the state's laws and policies for failure to make adequate progress. Otherwise, the state's commitments to the bill of rights are merely political. In this regard, certain rights and liberties will be given further consideration in the following sections because of their significance and/or their novel inclusion in the Constitution.

A. The Rights and Freedoms Guaranteed

1. Protection of Human Dignity

Human dignity became a significant concept in constitutions after the Second World War and following the adoption of the United Nations Charter (1945) and the Universal Declaration of Human Rights (1948).⁷⁶ Human dignity was mentioned in the 1971⁷⁷ and 2012⁷⁸ Constitutions. Indeed, one of the main demands of the 2011 revolution was ‘human dignity’ (*Krama Insanya*). As such, Egypt’s 2014 Constitution follows the same principle of providing legal protection for human dignity by stating that dignity is a right of every person that may not be infringed upon, and furthermore commits the state to respect, guarantee, and protect it.⁷⁹ The risk of the wording ‘human dignity’ is that it is ambiguous and thus open to wide or narrow interpretations. However, it may still play a role in the general protection of human rights and be especially valuable in securing the rights of vulnerable groups.

Also, the 2014 Constitution states that any form of torture is a crime without a statute of limitation.⁸⁰ The exclusion of time limitations is a positive advancement and guarantees that heinous acts cannot be excused simply by the passing of time. However, there was an omission in the drafting as it does not include a definition of what constitutes torture. This allows the House of Representatives to define ‘torture’ and leaves room for an interpretation narrower than what was initially expected or than the wider definition of torture provided in the Convention against Torture, which includes forms of ill treatment. Still, the Convention against Torture, which Egypt signed and ratified in 1986, is considered part of the national law. Thus the House is the entity responsible for defining what constitutes torture in the national law.

2. Freedom of Belief

Article 64 acknowledges the absolute nature of the freedom of belief. It further guarantees that for the followers of the revealed religions (Judaism, Christianity, and Islam), practicing religious rituals and establishing places of worship are rights established by law. The article precludes the adherents of faiths other than the three Abrahamic faiths from establishing places of worship and from free public practice of their faith. This could be interpreted as

⁷⁶ Doron Shulztiner and Guy Carmi, ‘Human Dignity in National Constitutions: Functions, Promises and Dangers’, (2014) American Journal of Comparative Law, Vol. 62, no. 2.

⁷⁷ 1971 Constitution, Art. 42.

⁷⁸ 2012 Constitution, Art. 31.

⁷⁹ 2014 Constitution, Art. 51.

⁸⁰ 2014 Constitution, Art. 52.

meaning that the practice of any faith is allowed in the private sphere, but that public practice and the establishment of places of worship is reserved for Jews, Christians, and Muslims.

The Constitution also states that the religious principles of Christian and Jewish Egyptians are to be the primary source of laws regulating all matters of personal status, religious affairs, and the selection of spiritual leaders.⁸¹ Likewise, the Constitution commits the House of Representatives in its first legislative term to issuing a law to mandate the building and renovating of churches, guaranteeing Christians the freedom to practice their religious rituals.⁸² This was issued in 2016 under Law No. 80.

Correspondingly, a range of articles offers extra protection to religious groups. For example, any assault on the personal freedoms of citizens is to be considered a crime with no grounds to foreclose the case by prescription.⁸³

The 2014 Constitution reflects the religious identity of the Egyptian community by affirming the three Abrahamic faiths. Even though it only specifies those faiths, it equates to all nationals enjoying freedom of belief.

3. Equality and Non-Discrimination

Equality and non-discrimination are mentioned in the Constitution's preamble. The Constitution asserts that it will achieve equality between all nationals in their rights and duties without any form of discrimination.⁸⁴ Furthermore, Article 11 guarantees equality between women and men in all civil, political, economic, social, and cultural rights.⁸⁵ However, the article also states that the practice of these rights should be in accordance with the provisions of the Constitution, which permits the limitation of rights in light of other constitutional provisions.

The Constitution asserts that public posts are to be based on merit,⁸⁶ allowing no favoritism or mediation on the grounds of religion, belief, sex, origin, race, color, language, disability, social class, or political or geographical affiliation.⁸⁷ The examples of discrimination are

⁸¹ 2014 Constitution, Art. 51.

⁸² 2014 Constitution, Art. 235.

⁸³ 2014 Constitution Art. 99.

⁸⁴ 2014 Constitution, preamble.

⁸⁵ 2014 Constitution, Art. 11.

⁸⁶ 2014 Constitution, Art. 14.

⁸⁷ 2014 Constitution, Art. 53.

given for the purpose of clarification, and not as restrictions of the prohibited channels of discrimination. This can be seen through the addition of the phrase ‘for any other reason’ as a means to include any other grounds. Article 53 stipulates that discrimination and incitement to hate are crimes punishable by law. Also, Article 53 provides for equality of citizens before the law, states that all citizens are equal in rights, freedoms, and public duties, and forbids discrimination based on sex. It commits the state to establishing an independent commission to ‘eliminate all forms of discrimination’. The issuance of a law to create a commission to prevent all forms of discrimination is, at present, an ongoing process. Article 9 moreover obliges the state to ensure equal opportunities for all citizens, men and women, without discrimination.

As a means to achieve equal opportunities for all people, the C-50 added an empowerment article for under-represented groups in the local councils. The empowerment article states that one-quarter of the seats are to be allocated to youths under thirty-five years old; one-quarter should be allocated to women; workers and farmers are to be represented by no less than fifty percent of the total number of seats; and these percentages should include a proper representation of Christians and people with disability.⁸⁸ Additionally, Article 244 commits the state to allow youths, Christians, persons with disability, and expatriate Egyptians to have appropriate representation in the first parliamentary term.⁸⁹

Even though Articles 180 and 244 appear to be very promising for empowering under-represented groups in local councils and the House of Representatives, the terms ‘proper’ and ‘appropriate’ representation are vague. Neither ‘adequate’⁹⁰ nor ‘appropriate’ representation⁹¹ are properly defined in the Constitution. As such, there is much room left for interpretation which may diminish the articles’ main substance and legal commitments.

4. Freedom of Assembly

Citizens have the right to organize public meetings, marches, demonstrations, and all forms of peaceful protest upon notification to the authorities and in accordance with the law.⁹² Citizens also have the right to hold peaceful private meetings without the need for notification. Additionally, security forces are forbidden from attending, monitoring, or eaves-dropping on

⁸⁸ 2014 Constitution, Art. 180.

⁸⁹ 2014 Constitution, Art. 244.

⁹⁰ 2014 Constitution, Art. 180.

⁹¹ 2014 Constitution, Art. 244.

⁹² 2014 Constitution, Art. 73.

those private meetings.⁹³ In 2013, prior to the issuance of the 2014 Constitution, Law No. 107 was adopted to organize the exercise of the freedom of assembly, and this provision remains in force. Law No. 107/2013 requires three days' notice to the executive authority and allows the authorities to ban the assembly for several reasons.⁹⁴ It was argued that this would not necessarily pave the way towards arbitrary prohibitions, as citizens still have the right to resort to the judiciary in case the authorities unreasonably ban an assembly.⁹⁵ However, the real challenge to the practice of the right to protest is the time it would take to obtain a judicial decision to annul the illegal administrative order banning the assembly.

5. Freedom of Association and Civil Society

Freedom of association and civil society is regulated by Article 75, which authorizes any non-governmental organization (NGO) or association to be established upon notification to the authorities. This was a progressive step, given the fact that the previous legal framework necessitated the approval of the administrative body for NGOs and associations to operate. As such, the article represents progress for civil society in Egypt. The only constitutional prohibition to an NGO's practice is any secretive military activity or quasi-military activity.⁹⁶

Subsequently, Law No. 70 of 2017, the 'Law of Associations and Other Foundations Working in the Field of Civil Work', was issued to organize the civil society field further. The Law prohibits any activity that may harm national security, public order, public morality, or which may encourage discrimination.⁹⁷ There are concerns about the legal terms employed, such as public order, because of their imprecise and unclear interpretations.

Additionally, the Law establishes the National Authority for the Regulation of Foreign Non-Governmental Organizations. The administration of the National Authority is to be governed by a Board of Directors, which shall be established by a decision of the President of the Republic, headed by a president, for a period of three years, renewable, and by representatives from the following bodies: the Central Bank of Egypt, the Money Laundering Unit, the Administrative Control Authority, the General Intelligence Directorate, the Foreign Affairs

⁹³ Id.

⁹⁴ Law No. 107/2013, Art. 10.

⁹⁵ Id.

⁹⁶ 2014 Constitution, Art. 75.

⁹⁷ Law No. 70/2017, Art. 14.

Ministry, the Ministry of Justice, the Ministry of International Cooperation, the Ministry of Defense, and the Ministry of Interior.⁹⁸

The primary task of the National Authority, as per the Law, is to organize all aspects related to the activities in Egypt of foreign associations or NGOs, whether by direct action or through cooperation with a national NGO. This may seem to limit the funding process for all the NGOs within the state. Thus some concerns have been raised regarding civil society's freedoms in light of the powers the National Authority (which is mainly composed of members of the executive authority) has over NGOs.

6. Freedom to form Political Parties

Citizens have the right to establish political parties by notification to the authorities as regulated by the law. The exception to this is for political parties whose form or practice is based on sex, discrimination, religion, origin, sect or geographic location, are anti-democracy, secretive, or have a military or quasi-military nature.⁹⁹

It is noteworthy that religion is included in these exceptions. In the 2012 Constitution, the limitation was merely on the formation of any political party based on religious discrimination. In the 2014 version, however, the Constitution prohibits any religious basis for political parties, which has reverted the limitation to its status in the 1971 Constitution. Lastly, political parties can only be dissolved by a judicial ruling, which represents a guarantee for the freedom of political life in Egypt.

7. Protection of specific populations

This section provides an overview of the groups that have been given heightened consideration in the Egyptian Constitution and which have been perpetually under-represented in historic decision-making positions in Egypt.

1. Protection of Elderly People

No constitutional guarantees have ever been provided to elderly people. The 2014 Constitution provides rights to the elderly in Article 83 and establishes the state's obligation

⁹⁸ 2014 Constitution, Art. 79.

⁹⁹ 2014 Constitution, Art. 74.

to guarantee elderly individuals' right to health and economic, social, cultural, and recreational rights, and additionally to provide them with an adequate pension. Furthermore, the state must enable them to participate in public life and take the needs of the elderly into account when planning public facilities.

2. Protection of People with Disabilities and Dwarves

The 2014 Constitution is the first Egyptian constitution to recognize people with special needs and those with dwarfism, and furthermore to guarantee their health, economic, social, cultural, entertainment, sporting, and education rights. Additionally, this Constitution commits the state to allocating a percentage of work opportunities to these individuals. It also provides that the state is committed to equip public infrastructure.¹⁰⁰

The 2014 Constitution also stipulates that people with disabilities should be represented in the first House of Representatives and local councils.¹⁰¹ Moreover, it states that the rights of children with disabilities should be protected by integrating them into broader society.¹⁰² The Constitution establishes the National Council for Persons with Disabilities.¹⁰³

3. Protection of Women's Rights

In the 2014 Constitution women enjoy a distinct place, beginning with the preamble, which refers first to national females and then to national males¹⁰⁴ (*'EL Mowatenat w el Mowatnon'*).¹⁰⁵

The Constitution guarantees unprecedented rights for women, including obliging the state to achieve equality between men and women, ensuring the representation of women in parliamentary assemblies and other leadership positions, and protecting childcare leave.

Women's rights and status provisions are included in the Constitution in Chapter One on 'The State' and Chapter Two on the essential elements of society, which affirms the status of

¹⁰⁰ 2014 Constitution, Art. 8.

¹⁰¹ 2014 Constitution, Art. 180.

¹⁰² 2014 Constitution, Art. 214.

¹⁰³ Id.

¹⁰⁴ In the Arabic language, there is a difference between male and female citizens: *Mowatnat* (females) and *Mowatnin* (males).

¹⁰⁵ There is a difference in Arabic between masculine and feminine subjects.

women in the considerations of the C-50. It also reflects that women's issues are regarded as societal issues and that the advancement of women can symbolize societal progress.

Article 11 of the Constitution is the chief cornerstone of women's rights as it includes various international principles. It declares that 'the State shall ensure equality between men and women in all civil, political, economic, social and cultural rights by the provisions of the Constitution.' Similarly, the article stipulates that the state must ensure the right of women to hold senior positions in the state and appoint them to judicial bodies. A societal-religious debate was sparked over the issue of women holding judicial positions. This was due to diverging opinions over whether this article conflicted with Islamic Shari'a principles. However, in 2013, a non-binding religious opinion (*fatwa*) was issued by the Grand Mufti of the Republic, Dr Shawki Allam, maintaining that women could take up positions in the judiciary and the public realm in Egypt according to Islamic Shari'a.¹⁰⁶

The state is committed to protecting women against all forms of violence and to ensuring that women can reconcile family duties with work requirements.¹⁰⁷ Article 11 places a constitutional duty on the state and the House of Representatives to review current legal provisions and to issue a range of laws to supplement women's protection against forms of violence, such as domestic violence, economic violence, under-age marriage, female genital mutilation, sexual harassment, and abuse. This article thus offers comprehensive protection against all forms of abuse and discrimination against women, but in light of the rest of the constitutional principles.

These articles have started to gain traction in the legal realm. In August 2016, Egypt's House of Representatives passed a bill raising the designation of female genital mutilation from a misdemeanor to a felony and in January 2017, a legislative parliamentary committee approved a draft bill increasing the penalty for sexual harassment.¹⁰⁸

Moreover, the state must ensure that women can reconcile their family duties with the requirements of their work, so that their professional obligations are not being fulfilled at the expense of their family duties or vice versa.¹⁰⁹ Finally, the Constitution requires the state to

¹⁰⁶ 'Women and Leadership positions', available at <<http://www.ahram.org.eg/NewsQ/239393.aspx>> (visited 1 March 2018).

¹⁰⁷ 2014 Constitution, Art. 11.

¹⁰⁸ See <<http://english.ahram.org.eg/NewsContent/1/64/269145/Egypt/Politics/-/constitution-gave-Egyptian-women-unprecedented-ri.aspx>> (visited 1 March 2018).

¹⁰⁹ 2014 Constitution, Art. 11.

safeguard women's access to maternity leave, protection in pregnancy and childbirth, and family care.¹¹⁰

4. Protection of the Child

The Constitution of 2014 is the first constitution to define what constitutes 'the child', and it provides for a greater range of rights than any previous constitution.

Article 80 states that

[a] child shall be considered as a child until the age of 18 years. Every child shall have the right to a name and identity card, compulsory free vaccination, health and family care or alternative care, basic nutrition, safe shelter, religious education and emotional and cognitive development ...

Additionally, the state has committed to establishing a special judicial system for child victims and witnesses.¹¹¹ Even if a child can be held criminally liable¹¹² or be detained, the state should endeavor always to act in the best interests of the child. The detention must be for a limited time in accordance with the law and the state should establish a child custody area separate from adult detention. Furthermore, the state is also committed to providing legal assistance for child victims and witnesses.¹¹³

Some of the rights of the child mentioned in Article 80 of the 2014 Constitution were already guaranteed earlier by the power of law, so it can be concluded that the C-50 provided these rights with constitutional protection as a way of blocking any attempts by the House of Representatives or the government to request amendment to the rights previously granted to the child by law. An example is what was already set out in the Egyptian Child Law (Law No. 126 in the 2008 version and Law No. 154 in the 2004 version), such as defining a child's age and parental relationship as a reason for a child to obtain citizenship. However, many people advocated reducing the age that classified a child under the law, as it was defined as those who have not yet reached the age of eighteen.¹¹⁴ One of the reasons behind these calls was the number of criminal acts committed by children according to the classification of the

¹¹⁰ Id.

¹¹¹ 2014 Constitution, Art. 80.

¹¹² Criminal responsibility shall apply to the child who has reached the age of twelve.

¹¹³ 2014 Constitution, Art. 80.

¹¹⁴ Egyptian Child Law, Art. 2.

law. One famous example was the ‘Zina Case’, where a five year old girl was raped and then killed by two perpetrators, both of whom were under eighteen years of age.¹¹⁵ In 2013, the court stated that it was not in a position to convict the perpetrators to more than a fifteen year sentence due to the limitation in the Egyptian Child Law and the international Convention on the Rights of the Child, which Egypt had signed and ratified.¹¹⁶ These instruments both hold that a child less than eighteen years of age cannot be imprisoned for more than fifteen years. As such, the court stated in the decision that the legislator should reconsider the age of the child in the legislation.¹¹⁷

The right to citizenship is granted whether the child was born to an Egyptian father or an Egyptian mother. The Constitution guarantees the right to citizenship for a child and provides him/her with constitutional protection, stating that nationality is a right for anyone born to an Egyptian father or mother as regulated by the law.¹¹⁸ Until 2004, Egyptian law limited the right to citizenship to children born to an Egyptian father; the parental relationship with the mother was not recognized as a reason for granting Egyptian citizenship under the nationality laws. In 2004, Law No. 154 was enacted to provide for equality between the Egyptian father and the Egyptian mother. Thereafter, anyone born to an Egyptian mother and a non-Egyptian father before the date of this Law’s entry into force was permitted to notify the Interior Minister of his/her desire to obtain Egyptian nationality. He/she would then be considered Egyptian once the ministerial decision was issued, or upon the expiration of a year from the date of the notification without the issuance of a decision of refusal. However, it was a legal provision which could be amended by the House of Representatives at any time.

In practice, the administration has occasionally tried to limit the child’s right of citizenship for various reasons, such as lack of formal documentation. In one case before the courts, a dispute arose between an Egyptian mother and the administration (the Civil Status Bureau) after the administrators refused to register the nationality of a girl born to a Palestinian father and the said Egyptian mother. The reason given for the refusal to grant the child Egyptian nationality was that she was a daughter resulting from a ‘common law marriage’¹¹⁹ between the parents,

¹¹⁵ The Port Said Child Criminal Court judgment (EG), Case 45/2013.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ 2014 Constitution, Art. 6.

¹¹⁹ Common law marriage is not an officially registered contract.

not a formal marriage.¹²⁰ On 15 February 2015, the Cairo Court of Administrative Justice issued a decision requiring the government to register Egyptian nationality for the children of common law marriages.¹²¹ The court held that in order to preserve the rights of children, formal documentation is not a required element for the legality of marriage. A marriage has religious legitimacy if it is voluntarily declared publicly. Formal documentation is a prerequisite for marital lawsuits, but its effects do not extend to a child's right to register his or her nationality.¹²² Thus it seems that if the constitutional article was not present and if the child's right of citizenship was merely based on the Law, perhaps the court would not have decided in favor of the child's right to obtain the citizenship of his/her mother.

Lastly, the Constitution protects children's rights to education, health, and social care, and protects them from exploitation in the areas of work and against all forms of violence.¹²³

8. Basic Rights

1. Right to Health

The Egyptian Constitution states that every citizen shall have the right to access health care services of proper quality.¹²⁴ The state should furthermore ensure the maintenance of public health facilities that provide services to the people, and promote their efficiency. Moreover, there should be an equitable geographical spread of facilities over the state¹²⁵ to avoid the centralization of high quality services in the major cities while ignoring the rural areas or smaller cities. The state is also committed to establishing a comprehensive health insurance system for all Egyptians, covering all diseases.¹²⁶ 'All diseases' includes any condition, even those that require high-cost treatment. The law regulates citizens' contributions or exemptions therefrom according to their rates of income,¹²⁷ which is a fair inclusion in accordance with the principle of equality between people.

¹²⁰ Amr Shalakany, *Judges and Revolution, Vol II, Landmark Decisions of the Egyptian State Council* (AUC Press, Cairo, forthcoming 2019).

¹²¹ Id.

¹²² Id.

¹²³ 2014 Constitution, Art. 80.

¹²⁴ 2014 Constitution, Art. 18.

¹²⁵ Id.

¹²⁶ Id.

¹²⁷ Id.

Additionally, the Constitution criminalizes the refusal to treat, in its various forms, any person in an emergency or life-threatening situation.¹²⁸ This was a welcome addition as it was in response to certain private hospitals refraining from providing urgent medical assistance to people in cases of non-compliance with their financial obligations.

Most notably, the state is committed to allocating a proportion of government spending to health that is not less than three percent of Gross Domestic Product (GDP), with a promise to gradually increase this contribution to conform to global rates. This constitutional financial allocation is considered an innovative way to bind the state by minimum expenditure in some services so as to reach a minimum accepted standard. Indeed, it is a remarkable gain for Egyptians as it safeguards a minimum expenditure on health regardless of the state's commitments to other financial expenditures. However, the full adoption of policies and laws by the state are still pending. Furthermore, the situation of non-adherence to the state's constitutional financial allocation commitments raises the question of whether any legal consequences would follow for failure to make such an allocation in the state budget, or whether the consequences would be merely political.

2. Right to Education, Knowledge and Culture

Throughout Egypt's constitutional history, there have been several different degrees of protection of the right to education. Under the 1971 Constitution, the right to free education and primary education was mandatory. Later, under the 2012 Constitution, and in response to the poor quality of public education in the countryside over past decades, those drafting the Constitution resolved that 'every citizen has the right to high-quality education'. They also required that the state must allocate a 'sufficient percentage of the national revenue to technical education', yet failed to indicate what that sufficient percentage should constitute.¹²⁹

It is clear that the 2014 Constitution tries to amend the defects of the previous constitutions as none had provided any expenditure mandate for the state on education, whether for university, primary education, or scientific research. Article 19 of the 2014 Constitution commits the state to allocating a percentage of government spending that is no less than four percent of GDP for education. Explicitly, it commits the state to spending two percent of the Gross

¹²⁸ Id.

¹²⁹ 2012 Constitution, Art. 58.

National Product (GNP) for university education and one percent for scientific research,¹³⁰ to be gradually increased until global rates are reached. In the light of the challenging economic conditions during the time that the 2014 Constitution was drafted, Article 238 was added to provide a transitional period which would allow the state to gradually increase the expenditure on education, health, and scientific research until it reached the allocated constitutional guarantees in the fiscal year 2016-2017.

Article 48 of the Constitution affirms citizens' right to culture, the obligation of the state to guarantee and support it, and to make cultural materials of all kinds available to all categories of people, without discrimination due to financial capacity, geographic location, or otherwise. The state is hence committed to preserving the cultural identity of Egypt in its diverse cultural streams.¹³¹ This means that the state should refrain from attempting to obliterate the cultural identity of a social group or to give preference to a particular cultural group over others. This article acts as a safety measure against attempts by any future government to abolish any part of the Egyptian identity.

B. Limitations and Interpretation

It is clear that the 2014 Constitution has guaranteed an array of rights and freedoms that exceed those of any previous constitution. However, there are many legal guarantees which could be undermined through claw-back clauses.¹³² The 2014 Constitution addresses the challenges of claw-back clauses through Article 92, which restricts any authority from altering the main essence of the constitutional principle. It states that the Constitution protects all of the listed rights and freedoms and that these may not be deferred or diminished, even under law. The actual language of Article 92 is as follows:

Rights and freedoms of individual citizens may not be suspended or reduced.
No law that regulates the exercise of rights and freedoms may restrict them in such a way as infringes upon their essence and foundation.

This means that no law or judicial interpretation that regulates the exercise of rights and freedoms may limit their practice in a manner that infringes upon their essence and foundation.

¹³⁰ 2012 Constitution, Art. 23.

¹³¹ 2012 Constitution, Art. 47.

¹³² Meyer-Resende (n 51).

The Supreme Constitutional Court exclusively decides on the constitutionality of laws and the interpretation of legislative texts.¹³³ Therefore, the Supreme Constitutional Court must decide what constitutes the core and essence of a right in the case of an unconstitutionality appeal against any law or regulation.

IV. Separation of Powers

Given that Egypt has undergone two national uprisings, each seeking a better country based on democratic principles, its form of government has been changed progressively in the 2014 Constitution. This builds on revisions that were made in the last two constitutions which provided more independence to the judicial authority and empowered the House of Representatives relative to presidential powers. The 2014 Constitution has succeeded to a large extent in distributing legislative power so that every authority has the capacity to carry out its own respective functions. Nonetheless, the constitutional guarantees of independence and separation of powers cannot be achieved unless every authority in the state is strong enough to protect its own independence and political will is maintained.

A. The Executive – A Hybrid Presidential System

The 2014 Constitution adopts a semi-presidential form of government. Its articles show that that the system is neither a parliamentary republic nor presidential. Furthermore, it stands between the two extremes of the excessive presidential powers of the 1971 Constitution and the limited powers of the President before the House in the 2012 Constitution.

1. The President

The 2014 Constitution deems that the President ‘is the head of state and head of the executive branch of government. He defends the interests of the people, safeguards the independence, territorial integrity and safety of the nation, and abides by the provisions of the Constitution and carries out his responsibilities in the manner prescribed therein.’¹³⁴

The President is elected directly by the people and can only serve for two consecutive four year terms.¹³⁵ This is one of the articles which may not be amended (as mentioned above in Section II.C. on Constitutional Amendment). The Constitution specifies the qualification and eligibility requirements for presidential candidacy, which were first introduced in the 2012

¹³³ 2014 Constitution, Art. 192.

¹³⁴ 2014 Constitution, Art. 139.

¹³⁵ 2014 Constitution, Art. 140.

Constitution. For instance, a candidate must be an Egyptian citizen and cannot have ever held any foreign citizenship, and nor can his/her parents or spouse have held foreign citizenship.¹³⁶ Also, the presidential candidate should have fulfilled his obligatory military service (or obtained legal exemption in accordance with the law), and be at least forty years old on the day of the opening of registration of candidates.¹³⁷ Further requirements for presidential candidacy can be added through legislation, as is permitted by the Constitution.¹³⁸

The President has the power to appoint five percent of the House of Representatives' members.¹³⁹ While five percent is a small number, it is not a democratic process for a representative body. Though in a more mitigated form, the influence of the executive on the legislature stems from the historic constitutional trajectory. This is not an uncommon provision, but is notable for transitional democracies. In a way it ensures the representation of under-represented groups, such as Christians, women, and youths.

The President also retains the power to declare a national state of emergency, but the decision must be ratified within seven days by an absolute majority in the Assembly. The state of emergency can be declared for up to three months and renewed only once; in this case, the renewal requires a two-thirds majority in the Assembly.¹⁴⁰ This is seen as a limitation of presidential powers and reinforces the balance of powers.

The President is declared to be the Commander in Chief of the Armed Forces but cannot deploy troops to external fighting missions except after consultation with the National Defense Council (NDC)¹⁴¹ and only on the approval of the Assembly with a two-thirds majority.¹⁴² If the House of Representatives is not in session, the President must obtain an advisory opinion from the Supreme Council of the Armed Forces and the approval of the

¹³⁶ 2014 Constitution, Art. 141.

¹³⁷ Id.

¹³⁸ Id.

¹³⁹ 2014 Constitution, Art. 102.

¹⁴⁰ 2014 Constitution, Art. 154.

¹⁴¹ The NDC is an institution that supervises national security procedures. Its membership consists of the Prime Minister, the Speaker of the House of Representatives, the Minister of Defense, the Minister of Foreign Affairs, the Minister of Finance, the Minister of the Interior, the Chief of the General Intelligence Service, the Chief of Staff of the armed forces, the Commanders of the Navy, the Air Forces and Air Defense, the Chief of Operations for the armed forces, and the Head of Military Intelligence.

¹⁴² 2014 Constitution, Art. 152.

Council of Ministers and the National Council for Defense.¹⁴³ The President may call for a referendum on issues relating to the supreme interests of the country.¹⁴⁴

The President has the right to dissolve the House of Representatives, but the decision must be based on a reasoned decree and confirmed by a referendum before taking effect.¹⁴⁵ The House is suspended until the referendum is held.¹⁴⁶ Requiring a written reasoned decree and a referendum is a progressive guarantee that was present in the 2012 Constitution. Thus the Constitution aims to balance the powers of the President with a check and balance mechanism, giving leverage to the will of the people.

According to Article 146 the President appoints a Prime Minister, who establishes the government through the confidence of Parliament. In case the Prime Minister does not obtain the confidence of Parliament, the President must nominate the candidate of the largest parliamentary bloc. If this individual does not obtain confidence either, then the House of Representatives is automatically dissolved.

The President has been granted constitutional authority to choose the Ministers of Justice, Interior, and Defense.¹⁴⁷ Thus even where the government was formed from the majority bloc, the Prime Minister would likely be pressed to agree with the President on the selection of these Ministers. As such, under the 2014 Constitution the President retains most of the power in the selection process of the government.

Thus Article 146 creates for the House of Representatives a self-dissolution mechanism which can be very risky. It is not necessarily the case that the largest parliamentary bloc will represent the majority. Therefore, it may happen that the bloc's candidate will not be granted confidence. Under the new two-step process, Parliament is under pressure to accept the nomination, as it may be dissolved.¹⁴⁸

2. The Government

The government is composed of the Prime Minister, the Prime Minister's deputies, the ministers, and their deputies. The Prime Minister heads the government, oversees its work,

¹⁴³ Id.

¹⁴⁴ 2014 Constitution, Art. 157.

¹⁴⁵ 2014 Constitution, Art. 137.

¹⁴⁶ Id.

¹⁴⁷ 2014 Constitution, Art. 146.

¹⁴⁸ Bernard Rougier and Stéphane Lacroix, *Egypt's Revolutions: Politics, Religion, and Social Movements* (Palgrave Macmillan US, 2016).

and directs it in the performance of its functions.¹⁴⁹ The government determines public policy ‘in collaboration’ with the President of the Republic and prepares draft legislation and decrees.¹⁵⁰ The President may call the government for a meeting to discuss important matters and presides over the meetings that he/she decides to attend. The 2014 Constitution highlights that if the President is temporarily unable to perform his duties or if the presidential office becomes vacant for any reason, the Prime Minister will stand in, as detailed in Article 160.

B. Legislative Authority (House of Representatives)

The 2014 Constitution adopts a unicameral system,¹⁵¹ abolishing the bicameral experience that was heavily criticized in the past for being inefficient and for spending from the state revenue. The House of Representatives is composed of no less than 450 members elected by direct, secret public balloting for a term of five years.¹⁵²

The speaker of the House and his/her deputies are elected by the members. Parliament has exclusive legislative powers but the President can return legislation to the House for reconsideration.¹⁵³ The House can overrule the presidential decision by a two-thirds majority.¹⁵⁴

The fact that the Egypt’s 2014 Constitution was drafted after a revolution and following an uprising had significant economic and political repercussions. Within this context, it seems that the C-50 decided to ensure that the House of Representatives had constitutional tools to remove the President and curb presidential misconduct. By way of empowering the House, the 2014 Constitution provides the House with two constitutional tools to unseat the President from his position: the power of impeachment and withdrawal of confidence, which are described below.

Article 159 states the cases under which the President may be impeached by Parliament (with a two-thirds majority) for any breach of the Constitution. These are high treason or committing any other crime. Although Parliament has the power to impeach the President, the article states that the House may not vote on the impeachment until the General Prosecutor

¹⁴⁹ 2014 Constitution, Art. 163.

¹⁵⁰ 2014 Constitution, Art. 167.

¹⁵¹ 2014 Constitution, Art. 101.

¹⁵² 2014 Constitution, Art. 102.

¹⁵³ 2014 Constitution, Art. 123.

¹⁵⁴ Id.

has investigated the case.¹⁵⁵ This is to ensure balance between powers. As the President has no role in the selection of the General Prosecutor, the prosecution process is insulated from executive influence. However, some of the judiciary members of the special tribunal are selected by the President, as described below in Section II.C. on the judiciary, which may raise some considerations about the impartiality of the trial. On the other hand, if the General Prosecutor and the referendum were to approve the impeachment, it is highly unlikely that the President would exert political influence over the court members.

If an impeachment decision is reached, ‘the President of the Republic [is] to cease all work [in which] this is treated as a temporary impediment preventing the President from carrying out presidential duties until a verdict is reached in the case.’¹⁵⁶ The President will be judged by a special panel formed by members of the judiciary; the prosecution is to be carried out by the General Prosecutor before a special court headed by the President of the Supreme Judicial Council, comprising membership of the most senior deputy of the President of the Supreme Constitutional Court, the most senior deputy of the President of the State Council, and the two most senior Presidents of the Court of Appeals. Even so, Article 159 has been criticized because the court of impeachment does not include any member of the House of Representatives during its formation.¹⁵⁷ The impeachment court is likely to be set up in its current form, to ensure the principles of the rule of law and a fully fair trial: not a political trial under the influence of political parties.

Compared to previous constitutions, the House of Representatives has also gained powers relative to the President in specified cases. For example, the House is empowered to initiate a ‘recall’ procedure through which the President can be removed from office during his term for reasons other than those mentioned in Article 159. The House can withdraw confidence from the President through a motion signed by at least a majority of the members of the House and with the approval of two-thirds of its members.¹⁵⁸ The Constitution does not limit the grounds under which the House can withdraw confidence from the President, which creates a form of mutual balance since the President also has the power to dissolve Parliament. The withdrawal must be approved by a referendum, leading to new presidential elections. If the result of the referendum does not support recall, the House of Representatives is dissolved

¹⁵⁵ 2014 Constitution, Art. 159.

¹⁵⁶ Id.

¹⁵⁷ Mohamed Abdelaal, ‘Holding the Executive Accountable in Egypt Impeachment: A Losing Case’, (2015-2016) University of Baltimore Journal of International Law, Vol. 4, no. 1.

¹⁵⁸ 2014 Constitution, Art. 161.

automatically.¹⁵⁹ However, it is unlikely that a confidence withdrawal would happen, as the House would be dissolved automatically in the event of failure of the referendum and additionally because the President appoints five percent of parliamentary members.¹⁶⁰

To enhance government accountability, the 2014 Constitution states that the House of Representatives may pass a no-confidence vote against any member of the government, or its head, by a plurality of votes, and that the motion can be put to a vote only after formal interrogation of the minister or Prime Minister. The government has the power to transform an individual no-confidence motion into a collective no-confidence motion by declaring its solidarity with the minister or Prime Minister. If this transpires, then the government must resign.¹⁶¹

It is prohibited to hold a position in the government in addition to membership in the House of Representatives. If a member of the House is appointed to the government, his or her place in the House becomes vacant as of the date of this appointment.¹⁶² This is a positive move towards safeguarding the principle of separation of powers.

The Constitution allows flexibility with regard to the electoral system. It states that the legislature is free to adopt the majoritarian system, a proportional list, or a mixed system of any ratio. This can be seen as beneficial by providing the flexibility to follow any electoral system in the future to respond to changing circumstances. On the other hand, providing several options could also lead to a legal conundrum—if it becomes a tool serving some political interests—by moving from one option to another for the benefit of a specific political party. The legislature may also decide how to draw electoral districts, requiring only that the outcome is a fair representation of residents and governorates.¹⁶³

C. Independence of the Judiciary

Egypt's constitutions have consistently affirmed judicial independence, but they have varied in the forms of independence guaranteed. The 2014 Constitution declares the independence of the judiciary¹⁶⁴ and specifies its budgetary independence. To achieve such independence, the Constitution requires higher councils of judicial bodies to be consulted when any legislation

¹⁵⁹ Id.

¹⁶⁰ Nathalie Bernard-Maugiron, 'Should the 2014 Egyptian Constitution Be Amended to Increase Presidential Powers?' (2016).

¹⁶¹ 2014 Constitution, Art. 131.

¹⁶² 2014 Constitution, Art. 164.

¹⁶³ 2014 Constitution, Art. 102.

¹⁶⁴ 2014 Constitution, Art. 184.

related to their work is being drafted. After the budget is thoroughly discussed in Parliament and approved, it is included for the first time as a single figure in the state budget.¹⁶⁵ The Constitution also mentions elements of independence for the members of judicial bodies and organs but declares that these elements shall be regulated by law.¹⁶⁶

The judicial authority is governed by Articles 188 to 195 and is divided into two main categories. The first category deals with the judicial bodies that have the power to dispose of cases (the Supreme Constitutional Court, the Council of State (administrative courts), and the General Judiciary (the ordinary courts)). The second addresses the judicial organs (such as the Administrative Prosecutor Authority and the State Law Authority), which have no power to dispose of cases.

The primary court structure in Egypt is made up of three courts. The first is the Supreme Constitutional Court, which will be further discussed in Section VI. on constitutional adjudication. The second is the Council of State, which is composed of three departments: judicial, advisory, and legislative. The Council of State is exclusively competent to adjudicate in administrative disputes, disciplinary cases, and disputes pertaining to its decisions. It is also competent to issue opinions on the legal issues of some administrative bodies, as determined by law (the advisory section). It may review and draft bills or resolutions of a legislative character (the legislative department).¹⁶⁷ The third element is the public prosecution and ordinary courts which settle all disputes and crimes except for matters over which another judicial body is competent.

The judicial organs are governed by Articles 196 and 197. There are two judicial organs which practice judicial functions but do not have a court system. First, the Administrative Prosecution Authority investigates financial and administrative irregularities and cases referred to it by the administration. Second, the State Cases Authority undertakes legal representation of the state in lawsuits and disputes to which the state is a party. All other functions of these judicial bodies and organs are governed by the law.

The selection process for the heads of the judicial bodies and organs is constitutionally determined only for the President of the Supreme Constitutional Court¹⁶⁸ and the General

¹⁶⁵ 2014 Constitution, Art. 185.

¹⁶⁶ 2014 Constitution, Art. 186.

¹⁶⁷ 2014 Constitution, Art. 190.

¹⁶⁸ See Section IV. on constitutional adjudication.

Prosecutor.¹⁶⁹ The Constitution is silent on the selection of the heads of the other judicial bodies, which is therefore left to the law. The selection mechanism for the heads of the judicial bodies and organs is determined by laws which were issued before the promulgation of the 2014 Constitution. The main independence guarantee is that the selection process is based on selection among the vice presidents of the judicial body or organ, after consulting the general assembly formed within each judicial body or organ, and finally, approval by the President.¹⁷⁰ The President's approval is ceremonial.

The judicial custom over the last several decades until 2017 was that the President was the most senior judge in each judicial body or organ. The situation changed with the enactment of Law No. 13 on 27 April 2017. This Law amended the legal basis of the selection mechanism for the appointment of the heads of the judicial bodies and organs, except for those bodies whose selection processes are already dealt with within the Constitution (i.e. the President of the Supreme Constitutional Court and the Public Prosecutor). According to the new selection process, the head of the relevant judicial body/organ is appointed by the President from among three nominations sent to him/her by the relevant supreme council of each judicial body/organ. These nominations must be from among the seven most senior vice presidents of the judicial body/organ. If the relevant judicial authority does not send the nominations within the required term, the nominations provided are fewer than the required three nominations, or the nominations do not accord with the conditions required in the law, the President has the power to appoint the chief of the judicial body/organ from among the seven most senior vice presidents of this body/organ.

Law No. 13/2017 is controversial since it has been argued by some judges that the Law violates judicial independence. Notably, at the time of writing an appeal against the Law is before the Supreme Constitutional Court. The appealing parties are requesting annulment of the Law on the basis of unconstitutionality.¹⁷¹ The case may be resolved in 2019, either by rendering the Law unconstitutional or by affirming its constitutionality.

D. Independent Institutions

¹⁶⁹ 2014 Constitution, Arts. 189 and 193.

¹⁷⁰ Law No. 46 of 1972 on the Judicial Authority, Art. 44; Law No. 47 of 1972 on the State Council, Art. 83; Law No. 75 of 1963 on the State Lawsuits Authority, Art. 16; and Law No. 117 of 1958 on the Administrative Prosecution Authority, Art. 35.

¹⁷¹ 'Constitutionality of the law of appointment of the heads of the judicial bodies and organs', available at <<https://www.elwatannews.com/news/details/2896538>> (visited 20 July 2018).

The 2014 Constitution includes some national institutions, bodies, and councils, such as the National Election Commission, the National Media Council; the National Council for Human Rights; the National Council for Women, for Motherhood and Childhood, and for Persons with Disability; the Central Bank; the Central Audit Office; and the Central Administrative Control Authority.¹⁷²

The national councils, independent bodies, and regulatory agencies possess legal personality, technical, financial, and administrative independence, and must be consulted on any law or regulation that is related to their fields of operation.¹⁷³ In general, a law shall be issued for each council and body which establishes that body or agency and stipulates guarantees for its neutrality and independence.¹⁷⁴

Nevertheless, given the significance of the section on human rights in the Constitution, Article 99 empowers the National Council for Human Rights to report to the prosecutor's office any human rights violations and to 'enter into an ancillary civil lawsuit on the side of the injured party at its request.'

The President of the Republic appoints the heads of the independent bodies and regulatory agencies upon the approval of Parliament with a majority of its members, for four years, renewable once.¹⁷⁵ These bodies must present annual reports to the President, the House of Representatives, and the Prime Minister at their time of issuance, to provide time for the executive to take appropriate action within a period not exceeding four months from the date of receipt.¹⁷⁶ Furthermore, independent bodies and regulatory agencies must notify the appropriate investigative authorities of any evidence of violations or crimes they may discover.¹⁷⁷

The Constitution states that these are independent institutions, but it does not include guarantees of independence or set out concrete elaboration as to how their independence is ensured. Given that the presidents of these bodies and councils are appointed by the President of the Republic, their independence is questionable.

¹⁷² 2014 Constitution, Arts. 214 and 215.

¹⁷³ 2014 Constitution, Art. 214.

¹⁷⁴ 2014 Constitution, Art. 216.

¹⁷⁵ Id.

¹⁷⁶ 2014 Constitution, Art. 217.

¹⁷⁷ Id.

V. Local Decentralization

Decentralization is enshrined in the Constitution by declaring that ‘the State shall ensure economic, financial and administrative decentralization’.¹⁷⁸ However, the local administrative system remains essentially the same as in the previous constitutions. The local organizational structure is based on local units with legal personality: namely governorates, cities, and villages.¹⁷⁹ The Constitution commits the state to supporting the administrative units with financial, technical, and administrative assistance;¹⁸⁰ it also states in Article 176 that all of the support should be for the sake of decentralization, and that the local units have independent financial budgets.¹⁸¹

In addition to the resources allocated to them by the state, the Constitution provides that the law will define the timeline for transferring powers and budgets to the local administrative units.¹⁸² This allows the local units to follow the same state rules and procedures to collect taxes and fees of a local nature as resources for the local administration.¹⁸³ The C-50 did not add a clause stating when the law organizing the financial transformation into the local administrative units would be issued. At the time of writing, no law has been issued to advance the process of decentralization.

Article 179 delegates the legislator to regulate the manner in which governors and heads of other local administrative units are elected or appointed, and their competencies. It seems that the C-50 wanted to provide the legislator with the flexibility to determine the selection process of the governors and heads of other local administrative units. This allows the legislator the freedom to determine whether it will be through elections or selection by the government. Currently, the selection of governors is determined by the government, which limits any constitutional protection for effective decentralization because the selection process shall continue to be appointment depending on the law.

As an example of the balance of powers, there is a council in every local unit, elected directly by secret ballot for a term of four years.¹⁸⁴ The electoral system includes a range of representation requirements: 25 percent comprised of youth under 35 years old and 25 percent

¹⁷⁸ 2014 Constitution, Art. 176.

¹⁷⁹ 2014 Constitution, Art. 175.

¹⁸⁰ 2014 Constitution, Art. 177.

¹⁸¹ 2014 Constitution, Art. 178.

¹⁸² 2014 Constitution, Art. 176.

¹⁸³ 2014 Constitution, Art. 178.

¹⁸⁴ 2014 Constitution, Art. 180.

for women, with the condition that 50 percent of the council shall be made up of workers and farmers, as well as ‘fair representation’ for Christians and people with disability.¹⁸⁵ Although this seems like a promising way to ensure diverse composition in the council, the article does not clarify what is meant by ‘fair representation’ for Christians and people with disability. This could lead to the view that the clause is merely ink on paper.

The elected local councils are empowered to supervise local development plans and monitor the local executive authority’s activities through various tools, including submitting questions and withdrawing confidence.¹⁸⁶ However, Article 181 stipulates that any such decisions can be overturned by the central government under the following three conditions: (i) if they are considered to harm the public interest, (ii) if they exceed the local council’s competencies, or (iii) if the acts might lead to harm to other local units. One could argue that the article is vaguely worded, especially the phrase ‘harming the public interest’. These words do not have a precise definition, which could affect the implementation of the article. Therefore, there are doubts as to whether the local councils will be able to enjoy their authority independently from the central local administration. This imprecise wording may also affect the entire decentralization project in the long run.

VI. Constitutional Adjudication

Section Four of the Constitution on the system of governance, from Article 191 to Article 195, defines the competencies and the exclusivity of constitutional adjudication to the Supreme Constitutional Court (SCC). The SCC is an independent judicial body based in Cairo. If necessary, it may convene anywhere else in the country, with the approval of the General Assembly of the Court.¹⁸⁷ According to Article 193, the structure of the SCC is the Court, the Commissioners of the Court, and the General Assembly. The Court is composed of a president and a sufficient number of vice presidents, yet unlike in the 2012 Constitution, the specific number of Court judges is unspecified.¹⁸⁸ The Commissioners of the Court are made up of a president, a sufficient number of vice presidents, counselors, and assistant counselors.¹⁸⁹

¹⁸⁵ Id.

¹⁸⁶ Id.

¹⁸⁷ 2014 Constitution, Art. 191.

¹⁸⁸ 2014 Constitution, Art. 193.

¹⁸⁹ Id.

The Constitution guarantees the SCC's independence financially, administratively, and judicially. Financial independence is guaranteed as the SCC has an independent budget, which is incorporated in the state budget as a single figure.¹⁹⁰ The General Assembly of the Court is responsible for the Court's affairs and its judgment is required in any matters related to the Court.¹⁹¹

The General Assembly of the Court selects the president of the Court from the three most senior vice presidents of the Court. The General Assembly also selects the vice presidents and members of the Authority of Commissioners. Once the selection is made by the General Assembly, the decree is approved by a decision of the President of the Republic. However, that approval is merely ceremonial, for administrative purposes.

The judges and commissioners are independent and cannot be removed. Their work is subject only to the authority of the law, which also governs their work requirements.¹⁹²

In the earlier constitutions, the constitutional competencies of the SCC's jurisdiction were limited to the constitutionality of laws. However, the 2014 Constitution provides constitutional protection for the jurisdiction of the SCC, which was granted by Law No. 48 of 1979. The Constitution states that the SCC shall exclusively supervise the constitutionality of laws and regulations, interpret laws, adjudicate disputes relating to the affairs of its members, decide on jurisdictional conflicts which may arise between judicial bodies and judicial organs, and adjudicate disputes over the execution of final judgments.¹⁹³ The SCC Law defines the Court's other competencies and regulates the procedures that are to be followed before the Court.¹⁹⁴ Article 26 of Law No. 48/79 authorizes the SCC to issue authoritative interpretations of legislative texts in cases of conflict between different judicial bodies on the application. According to Article 29 of the Law, if a court has doubted the constitutionality of the applicable law in a disputed case, the court shall stay the proceedings and refer the constitutional issue to the SCC to obtain a ruling. A party to a dispute may also challenge the constitutionality of the law applicable to his or her case before the court hearing the case. The court must decide whether the challenge is 'plausible' and if so, should either refer the case to

¹⁹⁰ 2014 Constitution, Art. 191.

¹⁹¹ Id.

¹⁹² 2014 Constitution, Art. 194.

¹⁹³ 2014 Constitution, Art. 192.

¹⁹⁴ Id.

the SCC on its own, or authorize the challenger to raise the constitutional issue before the SCC.¹⁹⁵

Article 195 of the Constitution stipulates that the rulings and decisions of the SCC shall be published in the Official Gazette, shall be binding on all state authorities, and shall have absolute authority over them from the date of the publication of the judgment. In some exceptional cases, the decision of unconstitutionality will have a retroactive effect.¹⁹⁶ This occurs when the decision is related to provisions of criminal law where convictions were handed down on the basis of an unconstitutional law.¹⁹⁷ In such cases, the decision is notified to the General Prosecutor with instructions to issue the necessary order, such as releasing the convicted person.¹⁹⁸

The SCC has played a major role in the protection of constitutional legitimacy throughout Egypt's history. During the Mubarak era, the SCC invalidated a series of laws on constitutional grounds, becoming the institution trusted to challenge the government's acts.¹⁹⁹ For example, on July 2000 the SCC decided the unconstitutionality of a law that gave the Ministry of Interior a major role in supervising parliamentary elections. The SCC's decision ensured full judicial supervision over the elections.²⁰⁰

Following the removal of Mubarak, the SCC issued two important decisions that had a major impact on the development of political events.²⁰¹ On 14 June 2012, the SCC dissolved Egypt's House of Representatives on the basis of unconstitutionality.²⁰² The Court's ruling stated that one-third of the seats were supposed to have been reserved for independents, while in reality candidates linked to the main parties had also been allowed to contest those seats. Thus one-third of the seats were invalid, thereby invalidating the formation of the House.²⁰³ On the same day, the SCC decided that the Political Isolation Law was unconstitutional. This was

¹⁹⁵ Clark B. Lombardi, 'Egypt's Supreme Constitutional Court: Managing Constitutional Conflict in an Authoritarian, Aspirationally Islamic State', (2008) *Journal of Comparative Law*, Vol. 3, p. 234.

¹⁹⁶ Grote (n 58).

¹⁹⁷ Id.

¹⁹⁸ Law No. 48/79, Art. 49.

¹⁹⁹ Grote (n 58).

²⁰⁰ Bruce K. Rutherford, *Egypt after Mubarak: Liberalism, Islam, and Democracy in the Arab World* (Princeton University Press, 2014).

²⁰¹ Grote (n 58).

²⁰² Jan Claudius Völkel, 'Sideline by Design: Egypt's Parliament in Transition', (2017) *Journal of North African Studies*, Vol. 22, no. 4.

²⁰³ 'Egypt court orders parliament dissolved', available at <<https://www.ft.com/content/02c5e588-b61c-11e1-a511-00144feabdc0>> (visited 1 March 2018).

a law that forbade political rights for any person who had served in a senior position during the Mubarak era.²⁰⁴ The Court held that such a law deprived citizens of enjoying their political rights without a judicial decision. On 8 July 2012, President Morsi reinstated the dissolved House, ignoring the SCC's decision dissolving the House.²⁰⁵ The next day the SCC released a statement condemning the presidential decree and reaffirming the binding nature of the Court's verdicts. By 11 July 2012 the presidency announced its abidance by the SCC's verdict.

The SCC has developed jurisprudence through the application of international law instruments in its decisions. The SCC held in Case No. 22, Judicial Year 8, decided on 4 January 1992, that the Court had to consider applying any international standards that are recognized and applied by democratic states.²⁰⁶ The SCC has used international law instruments to clarify the ambiguity of the Constitution and to provide additional legal authority.²⁰⁷ For example, the SCC has affirmed the right to education by referencing the Universal Declaration of Human Rights (UDHR); the International Covenant on Economic, Social and Cultural Rights; the UNESCO Convention against Discrimination in Education; the European Convention on Human Rights Protocol; and the African Charter for Human and People's Rights.²⁰⁸ The SCC also cited the decision of the International Court of Justice that reflected the transformation of the fundamental principles of the UDHR from a recommendation into a binding instrument of international law.²⁰⁹ It seems that the effect of this SCC decision is that what are considered to be recognized human rights principles by democratic states, including the UDHR, are to be considered as constitutional norms in harmony with other constitutional norms, and thereby will be enforced by the SCC.²¹⁰ The methodology of the SCC in applying international law instruments to clarify constitutional provisions was also used in a decision that found binding international arbitration

²⁰⁴ Rutherford (n 200).

²⁰⁵ 'Egypt's Morsi makes bid to reinstate Islamist-dominated parliament', available at <https://www.washingtonpost.com/world/egypts-morsi-makes-bid-to-reinstate-islamist-parliament/2012/07/08/gJQAQTnDWW_story.html?noredirect=on&utm_term=.ff219c002f7e> (visited 1 March 2018).

²⁰⁶ Megan L. McMillan, 'Egypt's Interpretive Incorporation of Human Rights: The Supreme Constitutional Court's Use of International Sources and Prospects for Its Article 2 Analysis', (2007) *Transnational Law and Contemporary Problems*, Vol. 16, p. 1089.

²⁰⁷ *Id.*

²⁰⁸ *Id.*

²⁰⁹ Adel Omar Sherif and Kevin Boyle, *Human Rights and Democracy: The Role of the Supreme Constitutional Court of Egypt* (Kluwer Law International, The Hague, 1996).

²¹⁰ *Id.*

unconstitutional.²¹¹ In doing so, the Court also cited provisions from the French Civil Procedure Code and the Romanian Civil Procedure Code.²¹²

VII. International Law and Regional Integration

The Egyptian Constitution states in the preamble that it is part of the Arab nation and enhances its integration and unity. Egypt affirms being part of the Muslim world, belonging to Africa, and proud of its Asian dimension.²¹³ It is also clear that Egypt is involved in the affairs of regional structures and organizations, such as the African Union, the Arab League, and the United Nations. Egypt has also been a significant player in founding the League of Arab States.²¹⁴ Furthermore, Egypt participated in the drafting of significant international conventions which have protected and guaranteed an array of rights and freedoms for citizens under their jurisdiction.²¹⁵ Egypt also played an important role in the preparation of the African Charter on Human and Peoples' Rights.²¹⁶ However, from a legal perspective, the Egyptian Constitution does not refer explicitly to any regional legal integration. Therefore, the general principles that govern international treaties and covenants through Articles 93 and 151, which are clarified below, apply for any regional document to which Egypt becomes a party.

The 2014 Constitution tries to uphold international obligations through Article 93, by committing the state to respect and consider the agreements, covenants, and international conventions of human rights ratified by Egypt. It further states that '[t]he ratified conventions have the force of law after publication.'²¹⁷ Thus it is not acceptable to apply international treaties or conventions before ratification.²¹⁸

Egypt is a monist country. As such, ratified international agreements become part of the national law and are to be applied by the courts without any additional legislation required. The Court of Cassation has ruled that ratified agreements have the status of law.²¹⁹ National

²¹¹ Id.

²¹² Id.

²¹³ 2014 Constitution, preamble.

²¹⁴ See <http://www.lasportal.org/ar/aboutlas/Pages/HistoricalOverView.aspx>.

²¹⁵ Sherif and Boyle (n 209).

²¹⁶ Id.

²¹⁷ 2014 Constitution, Art. 151.

²¹⁸ Duncan B. Hollis, Merritt R. Blakeslee and Benjamin Ederington, *National Treaty Law and Practice* (Martinus Nijhoff Publishers, Leiden, 2005).

²¹⁹ Id.

courts have implemented the obligations of ratified treaties even when they contradict those in previous laws, on the basis of *lex posteriori derogat lex priori*.²²⁰

According to the Constitution, the President of the Republic is the state's representative in its foreign relations and shall conclude treaties and ratify them after the approval of the House of Representatives.²²¹ In the case of treaties related to peace, alliances, and the rights of sovereignty, voters must be invited to a referendum, and these treaties can be ratified only after announcing the referendum result indicating approval.²²² Additionally, no treaty may be entered into that conflicts with the provisions of the Constitution or that may result in surrender of any part of the territory of the state. The referendum requirements and the sovereignty guarantee were not present in any previous Egyptian constitutional document.²²³

The case concerning the right to strike is an illustrative example of a judicial precedent which epitomizes the impact of international treaties in the Egyptian legal framework. In 1986, the 'Supreme State Security Court'²²⁴ in Cairo rendered a significant decision in what is known as the 'railway workers strike case', based on Egypt's ratification of the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1982 and Article 151 of the 1971 Constitution.²²⁵ In brief, thirty-seven workers sabotaged the work of two railway lines, which led to damage amounting to 300,000 EGP/17,000 USD.²²⁶ The list of criminal acts, according to the prosecution memorandum, included that the striking workers stopped working at the railway line and invited other public servants to participate in the strike, which led to harm to the public.²²⁷ The Court recognized the right to strike based on the ICESCR that Egypt had signed.²²⁸ The Court added that the absence of a law that organized the right to strike did not change the fact that the right to strike is a full right of all citizens.²²⁹ Furthermore, the Court reasoned that even if the state did not issue such a law, this omission could not be a means for the state to deprive its citizens of a right that it should be obligated to protect.²³⁰ Finally, the

²²⁰ Id.

²²¹ Id.

²²² Id.

²²³ Id.

²²⁴ Article 171 of Egypt's 1971 Constitution used the words 'State Security Courts' and declared that the law would regulate their competence.

²²⁵ Sandra Coliver, *Secrecy and Liberty: National Security, Freedom of Expression and Access to Information* (M. Nijhoff, The Hague, 1999).

²²⁶ The Emergency Supreme State Security Court, EG, Appeal no. 4190 for the Judicial Year 86.

²²⁷ Id.

²²⁸ Id.

²²⁹ Id.

²³⁰ Id.

Court laid down the precedent of obliging the state to abide by the provisions of the international conventions that it had signed and ratified.

VIII. Conclusion

The 2014 Constitution was welcomed by most Egyptians as it includes rights, freedoms, and democratic guarantees through details that were not present in any previous constitution in Egypt. Although constitutions are supposed to be guidelines for legislators to consider when drafting legislation, in the case of the 2014 Constitution, the C-50 tried to set out several rights and freedoms in a way that had never been described in such a manner before, to ensure protection of citizens' rights. In addition to the bill of rights, the Constitution prohibits the suspension or limitation of any of the rights and freedoms stipulated therein.

Nevertheless, without a clear vision of how and when to implement and enforce its articles fully, the implementation of the Constitution and exercise of the acknowledged rights remain in abeyance. *De facto*, there is no constitutional requirement for Parliament or the government to have an implementation plan for the Constitution within a clear time frame. The Constitution does not oblige Parliament to issue laws organizing constitutional rights, freedoms, and guarantees, and does not require the government to issue development plans and regulations within a clear time frame, although there was supposed to be such a requirement for the government to do so.

Throughout Egypt's history, the judiciary has played a fundamental role in defining the rights, freedoms, and guarantees bestowed to every citizen. The judiciary's rulings have been regarded as the lifeline for citizens in protecting the rule of law and constitutionalism. It is hoped that under the 2014 Constitution, the rule of law and constitutionalism will become reality in the form of fair and equal laws and institutions that ensure the abidance of those principles.

In conclusion, even though the 2014 Constitution is promising in terms of democratic rights and freedoms, its fate depends on a determined political will and the establishment of independent, effective, transparent, and accountable authorities and institutions that will work together to turn these constitutional articles into reality by efficient mechanisms, strategic plans, and laws.

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