

Position Paper - 17 February 2019 - <http://nazra.org/en/node/637>

## The Constitutional Amendments Do Not Establish A Democracy that Supports Women in Politics

The government's disposition toward citizens' rights and freedoms is a measure of its openness and an indicator of the type of relationship it holds with them. The constitution stands as the most powerful reflection of that relationship. Egypt certainly has a long-standing tradition of drafting constitutions as a political process. Throughout that tradition, granting certain rights or consolidating some forms of government were constantly pursued and this is evident in Egyptian constitutions since 1923. Citizen participation has always been an integral part of drawing Egyptian constitutions up, with advocacy playing a role in guaranteeing rights for all, men and women.

Egyptian women played a major role in the country's transformations throughout history, especially in drafting constitutions. Since Egyptian women participated in the 1919 Protests, their rights have become a key issue in the public sphere. Demands were put forward to include some rights for women in Egyptian constitutions<sup>1</sup>.

Nazra for Feminist Studies is issuing this paper in February 2019, after the Egyptian Parliament's general session of February 14, when Parliament referred the Constitutional Amendments Proposal (suggesting amendments to several articles in the 2014 Egyptian constitution) to the Constitutional and Legislative Committee for review. In this paper, we shall discuss the overall state of women's rights in Egypt in light of the proposed amendments, as we attempt to answer some basic questions: will amendments to the 2014 Constitution benefit women? Do the proposed amendments include more rights for women? Do Egyptian women in 2019 need constitutional amendments that would extend the president's term, hence detract from the principle of separation of powers and other rights and freedoms (including women's rights), already guaranteed by the 2014 Constitution? Finally, would raising women's quotas in Egyptian elected councils be conducive to women's right to participate in politics or is women's limited participation attributed to more complex factors?

To view the full paper [click here](#)

Egyptian women played a role in the public sphere during many historical events, such as the 1919 Protests. The first female martyr was reported to have been killed on April

---

<sup>1</sup> "Highlights of Egyptian Feminist Movement Demands Throughout its History" [*Lamaḥāt min Maṭālib al-Ḥaraka al-Niswiyya al-Misriyya 'abra Tarīkhaha*]. 'Awraq Al-dhākira Collection, 2006. Women and Memory Forum. Dr. Hala Kamal. <http://www.wmf.org.eg/publication/3-لمحات-من-مطالب-الحركة-النسوية-المصرية>

10, 1919 during these protests. Women's issues then started to be raised, paving the way for their active participation in the public sphere and sowing the seeds of women and feminist movements that prioritize women's issues as national issues. This early participation of women in the struggle for national liberation yielded Article 3 of the 1923 and 1930 constitutions which states, "Egyptians are equal before the law. They are entitled to the same civil and political rights and shall fulfil the same mandates and public duties. They shall not be subjected to discrimination for their race, language or religion . . ."<sup>2</sup>.

Women's and feminist movements continued to develop, and women started to participate more actively in the public sphere and demand more rights. This was evident after 1952, with a new Egyptian constitution in the making after the fall of the monarchy. Women took the lead in demanding their rights, beginning with the right to representation in the committee responsible for drafting the constitution. In addition, they demanded other rights, notably the right to political participation, as both voters and candidates. This battle was particularly crucial in Egyptian women's struggle for their rights. Doria Shafik led many advances to lobby parliament members to support the cause, including a protest of 1500 Egyptian women in 1951. The protesters headed to the Egyptian Parliament, demanding the right to political participation for women and calling for the amendment of the Personal Status Law and for equal pay to both sexes. They also went on a hunger strike to emphasize their commitment to their demands<sup>3</sup>.

Women who demanded these rights paid dearly for their activism. Doria Shafik was placed under house arrest until she passed away in 1975. Other procedures were also taken to tighten the grasp on the public sphere, including dissolving political parties, nationalization of NGOs like Bint al-Nīl (Daughter of the Nile) previously run by Shafik and mass arrests of the regime's political opponents at the time. However, these women's activism came to fruition when their demands were included in the 1956 Constitution. For the first time in history, Egyptian women had the right to vote and to run for different elections. Rawya Ateya represented women in the first Parliament after enactment of the new constitution. Moreover, Article 43 of the 1954 Constitution stated that, "[t]he law shall regulate women's and children's labor. The state shall establish organizations that would help women balance their work and family duties. The state shall also protect children from exploitation and moral, physical and psychological neglect". Also, Article 19 of the 1956 Constitution states, "[t]he government shall help women balance their work and duties to the family"<sup>4</sup>. It is noteworthy how this

---

<sup>2</sup> 1923 Egyptian Constitution, issued on April 19, 1923, as per royal decree number 42 for 1923.

<sup>3</sup> <https://bit.ly/2yjELzZ>

<sup>4</sup> 1956 Egyptian Constitution, issued by the Revolution Leadership Council and published in *Al-Waqa'i' al-Misriyya* (Egyptian Gazette), January 16, 1956, issue 5 (special issue, *mukarrar*).

phraseology of the state's role in helping women balance their roles in the public sphere and in the family recurs in all subsequent Egyptian constitutions (1971-2012 and 2014). Discrimination against women is inherent in this article, since women's role in the family is traditionally considered their "primary" role, followed by their role in the public sphere. In this view, women's participation in the public sphere rests on fulfilling that primary role. A feminist approach to the different phraseologies of this article only reveals how rife with contradictions and inconsistencies the Egyptian state's attitude toward women's roles and what it needs from them is. Despite long decades of Egyptian women's struggle, they have not successfully resolved these contradictions or fully set them straight.

Women continued to play a role in the public sphere and demand their rights, and the women's and feminist movements kept developing. The 1971 Constitution was then introduced, with Article 11 worded as follows, "[t]he state is committed to helping women balance their family and professional duties and shall ensure that they are equal to men on all political, social, cultural and economic levels, without prejudice to Islamic shari'a"<sup>5</sup>. Evidently, the article was not changed, except for the emphasis on Islamic shari'a which corresponds to the state's new policy at that time. This was also manifest in the amendment of Article two of the constitution, when Islamic shari'a was designated as a fundamental frame of reference for legislation.

Efforts to amend the 1971 Constitution continued. In 2005, Articles 76 and 192 pertaining to the presidential term were amended. People objected to these amendments and President Mohammed Hosni Mubarak did not reap their benefit since he had to step down upon the January 25 Revolution in 2011. Women participated in many protests against these amendments, such as the May 2005 protest known as "Black Wednesday", when mass sexual assaults on women protesters were reported<sup>6</sup>.

Mohammed Hosni Mubarak stepped down on February 11, 2011 and endeavors were made to draft a new constitution. The new 2012 Constitution was detrimental to women's basic rights, which should have been guaranteed by it. In its preamble, the constitution states that, "[w]omen and men are two halves of one whole. They are partners in both the country's progress and responsibilities". However, Article 10

---

<http://constitutionnet.org/vl/item/msr-dstwr-am-1956-walmnshwr-fy-jrydt-almqay-alsryt-fy-16-kanwn-althanyynayr-1956-aldd-5>

<sup>5</sup> 1971 Egyptian Constitution, published in the Official Gazette, issue 36 (*mukarrar alif*), September 21, 1971.

<http://constitutionnet.org/vl/item/msr-dstwr-am-1971-almnshwr-fy-aljrydt-alrsmyt-fy-12-aylwlsbtmbr-1971-alrqm-36-mkrr>

<sup>6</sup> <https://eipr.org/tags/الأربعاء-الأسود>

reduces women to “mothers”, family breadwinners, divorcees and widows. The focus on all these different marital statuses demonstrate regarding women as “subordinates”. Women are always dependents and are never perceived as autonomous individuals in this new Egyptian social contract. Ultimately though, this view is consistent with the concept of “citizenship” as proposed in the document that the Constitutional Committee chose to omit the “principle of non-discrimination based on race, origin, language, religion or creed” from (Article 33)<sup>7</sup>.

On June 30, 2013, then Egyptian Minister of Defense Abdel Fattah el-Sisi removed President Mohammed Morsi from office and the 2012 Constitution was suspended. Interim President Adly Mansour then issued an order to form a ten-member committee tasked with constitutional amendment, as per Article 28 of the Constitutional Declaration. The Declaration also resulted in the formation of the 50-Member Committee in September 2013, as per decision number 570 for 2013. The Committee was to study the constitutional amendments proposed by the initial 10-member committee. A referendum on the draft was held on January 14-15, 2014. The new constitution was passed on January 18, 2014<sup>8</sup>.

The Egyptian 2014 Constitution came as a victory for the feminist movement and women’s groups. It guaranteed many constitutional political, social and economic rights for women. The constitution encompasses important and broad principles that regard women as citizens equal to men, sharing the same homeland. Previous Egyptian constitutions lacked these principles, whether they were new constitutions or amended ones. The victories and rights guaranteed by the current 2014 Constitution established the principles of democratic government, rooted in equality between men and women in all walks of life. It endorsed crucial and effective principles for building a true democracy. These principles include, but are not limited to, the principle of transfer of power and separation between the three powers (legislative, executive and judicial), where none exercises the functions of the other. In addition, there is the anti-discrimination principle, criminalizing all forms and types of discrimination in society and the principle of decentralization on the level of local governance. It also designates quotas for women, ensuring fair representation for all in local administrations. The fifth principle included in the constitution is laying the foundation for transitional justice and

---

<sup>7</sup> Blog Post: Al-Mar’a fil Dustūr “Maqhūra wa Ma’ Tla wa Muṭallaqa wa ’Armala”: Kulluhunna Sawa’ [Women in the Constitution are Oppressed, Breadwinning Mothers, Divorcees and Widows: All the Same].

<http://www.nazra.org/node/168>

<sup>8</sup> Egyptian Constitutional Declaration, issued by the Office of the President, published in the Official Gazette, issue 27 (*mukarrar alif*), July 8, 2013.

<http://constitutionnet.org/vl/item/msr-lln-ldstwry-lsdr-n-rys-ljmhwry-wlmnshwr-fy-ljryd-lrsmy-ldd-27-mkrr-fy-8-tmwzywlyw-2013>

securing proper representation for women in all legislative, parliamentary, executive and judicial institutions. The sixth principle is fighting all forms of violence against women and criminalizing them. Finally, the constitution guarantees the state's commitment to observe and adhere to the international covenants and treaties to which it is signatory.

For the first time in history, the Egyptian constitution guarantees equality between women and men. It straightforwardly criminalizes violence against women, ensures women's right to hold different positions (including positions in the judiciary) and adopts a fair electoral system that secures women's participation, thanks to affirmative action policies in local elections (designating a 25% quota for women). The constitution also approved the establishment of an Anti-Discrimination Commission. Lastly, some of its articles give room for discussing women's rights and demanding the constant improvement of their status.

It is noteworthy that many of these articles in the constitution have not been brought into force since the constitution was passed in 2014 and until February 2019. For instance, the Anti-Discrimination Commission has not been established, women have not held some positions in the judiciary, the law on violence against women has not been passed and policies are inefficient in protecting women from violence. These are only examples of inequality between women and men, which is inconsistent with the constitution. Meanwhile, on its fourth session dated February 3, 2019, the current Parliament proposed constitutional amendments that would violate the principle of transfer of power, as these amendments suggest extending the presidential term from the current four years to six years. These amendments also give the current president an exception, allowing him to run for two more terms. These amendments are unconstitutional and inconsistent with Article 226, which states,

“[t]he President or 20% of Parliament members may propose amendments to one or more articles in the constitution. Both the article(s) and justification behind their amendments shall be stated in the proposal. In all cases, Parliament shall discuss the proposal within 30 days of receipt. Parliament shall decide if the proposal is fully or partially approved based on majority votes. If the proposal is rejected, no further proposals for amending the same articles shall be made until the next parliamentary session. If Parliament approves the proposal, members discuss the articles covered by it within sixty days of the approval. If a third of members approve the amendments, a referendum shall be held within thirty days from issuing that approval. The amendments shall be effective as of the date of announcing referendum results, if most valid votes support them. In all cases, articles on presidential reelection and ones pertaining to principles of freedom

and equality shall not be amended, unless the proposed amendments are to bring about further guarantees of their proper implementation<sup>9</sup>.”

In this paper, we discuss the constitutional amendments and our reservations to them as per the following points:

- Constitutional amendments proposed by the Egyptian Parliament in its fourth session on February 3, 2019;
- Analysis of the amendment targeting raising women’s quotas by a minimum of 25% in future Parliamentary Councils;
- Discussion of the constitutional amendments proposed by Parliament, while posing questions about whether they are conducive to women’s political participation or are meant to cement authoritarian rule and the exclusion of women from political and public spheres;
- Highlighting rulings in the 2014 Constitution that have not been enforced and discussing how they promote women’s effective and steadfast political participation in Egypt.

### **Constitutional amendments proposed by the Egyptian Parliament in its fourth session on February 3, 2019**

The General Committee drew up a report on a proposal submitted by more than 20% of Parliament members to amend some articles in the constitution. The proposal was submitted on February 3, 2019, by 155 members (more than 20%), in written form, to Parliament Speaker Professor Ali Abdel Aal. The proposed amendments included replacement of paragraphs two and three in Article 102, paragraph one in Article 140 (with the incorporation of necessary transitional articles), paragraphs one and five in Article 160, paragraph two in Article 189, paragraph three in Article 190, paragraph one in Article 200, and paragraph two in Articles 204, 243 and 244. It also included the addition of eight new articles and the omission of Articles 212 and 213, as per Article 226 of the constitution and Article 140 of Parliament bylaws. In the same session, Parliament Speaker announced that the proposal has been referred to the General Committee to review Article 133 of Parliament’s bylaws in relation to the amendments, as per Article 141 of the same bylaws. The General Committee held two meetings for that purpose on February 3 and 5, 2019.

### **Analysis of Articles to Be Replaced in the Egyptian Constitution in 2019**

**Article 140:** Amendment of paragraph one of this article shall extend the presidential term to six years, instead of the current four years. The premise behind the amendment

---

<sup>9</sup> Article 226, Egyptian 2014 Constitution. <http://dostour.eg/2013/topics/general-transitional/transitional-5-2/>

is that realistically, the current presidential term is too short and incompatible with the country's current stability. The amendment also suggests drawing up a new transitional article stating that the change shall be applicable to the current president and calls for amending any other relevant articles.

**Article 160:** Amendment of paragraph one in Article 160, entailing the appointment of a Vice President or more who shall support the President as he performs his duties and act as president in case of his absence. If the VP position is vacant or he is unavailable, the Prime Minister shall be appointed Acting President instead. The Acting President may not propose amendments to this article during his term.

**Article 185:** The proposal calls for establishing a Supreme Council of Judicial Institutions, responsible for affairs pertinent to all judicial institutions and headed by the President as the leader of the state, based on the premise that it is needed for practical reasons. It shall review issues relevant to all judicial institutions and establish straightforward procedures for the selection of these institutions' leaders out of five nominated by their Supreme Councils.

**Article 190:** The amendment proposed to this article shall limit the review and proposal of bills and relevant decisions to ones referred to the State Council only.

**Articles 189, 193:** Amendment of Article 189, paragraph two and Article 193, paragraph three is intended to establish a unified procedure for the appointment of the Attorney General out of three nominated by the Supreme Judicial Council. The President shall appoint the candidate. The five most senior Deputy Chief Justices of the Supreme Constitutional Court shall be nominated for the post of Chief Justice, and the President shall appoint the candidate. Two candidates shall be nominated for the position of Deputy Chief Justice: the first nominated by the Court's General Assembly and the second by the Court's Chief Justice, with the President also choosing the candidate to fill the post.

**Article 200, 204:** Amendment of Article 200, paragraph one shall transform the role played by the Armed Forces and consolidate its role in protecting and developing the constitution and safeguarding democratic principles and civil statehood. The amendment of Article 204, paragraph two shall give military courts jurisdiction over cases that involve crimes against certain establishments that must be protected by the military.

**Article 234:** Amendment of this article is based on the supposed stability of the Egyptian state currently.

**Articles 243, 244:** Amendment of this article shall be conducive to the proper representation of workers, peasants, youth, Christians, Egyptian expats and the handicapped, since their representation was previously temporary and limited to one legislative session. Their initial limited representation was a success, as it upheld the principle of citizenship and the strengthened the social fabric of the nation.

**Article 102:** Amendment of Article 102, paragraphs one and three shall secure women's representation in Parliament by mandating a constitutional quota of 25% of seats for them at the minimum. The amendment shall also omit the phrase "equal representation of candidates" as far as division of electoral districts is concerned, due to practical application issues.

It is evident that Parliament's proposed constitutional amendments target the principles of transfer of power, decentralization, empowerment of the elected Parliament rather than the President and provision of more rights for citizens of both sexes. If the majority of referendum votes are in favor of these amendments and they are passed, they shall constitute a breach of democratic principles and the principle of transfer of power and bolster a regime that denies citizens their inalienable rights. It shall also deny citizens of both sexes the chance to be part of a safe public sphere, where they can exercise their rights and feel empowered, including workers, peasants, youth, women, Christians and others.

### **Analysis of the Proposed Amendment on Raising Women's Quotas in Future Parliamentary Councils**

This paper shall approach the proposed amendment to Article 102 using feminist analysis. Women's quotas or those of other marginalized groups often come under fire. Some raise concerns about potential affirmative action procedures that may give jobs to unqualified women in different fields. Others reckon that affirmative action policies may be exploited by certain powers to reach their own ends. We believe in the importance of affirmative action policies in favor of women, regardless of their ideologies and backgrounds. However, we also believe that promoting further political representation for women in the context of other constitutional amendments that may put political participation altogether to death and bolster a nondemocratic regime is not truly empowering for women. On the contrary, it may even detract from their political rights.

We must regard women's political participation as a core public issue in any democracy and not only as a matter of numbers (an outlook which may be appropriate and necessary only during certain periods to empower women). In the absence of democracy and lack of democratic mechanisms that allow women to play a role in the public sphere like men, exclusion of some women who disagree with the regime and



rising violence against women with the state not doing enough to fight it, it is impossible to regard raising women's quotas in and of itself as proper affirmative action. Affirmative action should not only raise women's quotas but should also allow women of different backgrounds and ideologies to exercise their political rights and act as positive role models for other women and to motivate them to fight the battles of public and political life.

Separating the proposed amendments to Article 102 from the rest of the constitutional amendments and centralizing only raising women's quotas may not truly empower women. It may not open new horizons for their political participation or promote women running for different seats in elected councils, with confidence in winning majorities and even aspiration for more, like the potential of a woman president to the Arab Republic of Egypt one day. The myopic focus on women's quotas irrespective of the larger democratic atmosphere governing it may exclude many women, rather than boost their representation and empower them.

### **Highlighting Unenforced Rulings in the 2014 Constitution; Discussing How they Promote Women's Effective and Steadfast Political Participation in Egypt**

Noting the constitutional rights granted by the Egyptian 2014 Constitution, we believe that it represents a turning point in how Egyptian constitutions regard women and their rights. Most of these constitutional rights, nonetheless, have neither come into effect nor been recognized and turned into laws and policies by either the executive, legislative or judicial branches of government. For instance:

- The Anti-Discrimination Commission has not been established: Some MPs of both sexes repeatedly proposed bills pertaining to the establishment of this commission in different legislative sessions. However, it still has not been established.
- Women have not been appointed in certain government posts, especially in the judiciary: Article 11 of the constitution grants some inalienable rights to women, including the right to employment in all government and judicial institutions without any exceptions. Nonetheless, some institutions still completely exclude women, as is the case in the State Council and the Public Prosecution Office. Some women MPs have attempted to raise the issue in Parliament by proposing bills on employing women in the judiciary during different legislative sessions, but they remain pending. Other women have resorted to litigation to gain this right to no avail so far.

- Working to end violence against women: Different bills have been proposed by women MPs on a comprehensive law on violence against women, but none of these bills have been passed until now.
- Article 93 states Egypt's commitment to the enactment and implementation of international treaties and covenants to which it is signatory. Though Egypt signed many international treaties and covenants guaranteeing civil, political and social rights to women, the state's approach to them and its commitment to giving women these rights is still lacking. Many other policies and practices are still needed to protect women and their rights.
- Local governance: It would befit the current Parliament to issue a law on the representation of youth, workers, peasants and the handicapped as per Article 180, in addition to designating a 25% quota for women in local State Councils. Moreover, it is time for Parliament to pass the Local Governance Law, with its decentralization of local elections and to use it as a tool to fight corruption, let more citizens of both sexes play a role in decision-making and allow them to take part in local participatory and gender-responsive budgeting and planning. This is a pillar of democracy. Decentralization and effective local governance shall empower women, broaden their experience and bolster their participation in the public sphere. Since the Local Governance Law is pending, this remains beyond reach.

Finally, this paper tackled certain women's issues in the context of the proposed amendments to the 2014 Constitution. It endeavored to answer questions on rights that women need for their empowerment and protection and concluded that women's rights must be regarded as inseparable from the overall advancement of society and the development of systems of government. They should not be reduced to mere numbers, as in raising quotas, which may not be conducive to the women's rights cause altogether. "Symbolic" rights for women cannot replace their active participation as important social actors playing a role in a true pluralist democracy, rooted in a firm belief in women's diversity and voices and the values of pluralism, equality and freedom for both women and men.