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Proposed Amendments to the Egyptian Constitution: Enshrining Autocracy

Policy Analysis Unit

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On 13 and 14 February 2019, The Egyptian parliament voted in favor — 485 against 16 with one abstention — of amending the constitution. The proposal was submitted by 155 members of the “Support Egypt” coalition earlier this month calling for the amendment of 12 articles in the 2014 constitution, and the abolition of two articles, as well as the “introduction” of two new articles. The proposed amendments that stand out allow the incumbent president to remain in power until 2034 by extending the president’s term from 4 to 6 years and then allowing the current president to run according to the new system. From here a series of actions, expected to take about two months, will begin during which the proposal will be transferred to the Constitutional and Legislative Committee in the House of Representatives to draw up the draft amended articles in order to discuss and then vote on them. If two thirds of the deputies approve the amendment, the proposal shall be presented to the public for a referendum within 30 days. The amendment shall be effective if the majority votes in favor.

The 2014 Constitution

The new amendments seek to further consolidate the autocratic regime in Egypt, which began by hijacking the January revolution in 2013. It is important to note the most important flaws in the 2014 constitution. A committee of loyalists appointed by the governing authorities unilaterally implemented the constitution due to severe social division, repression and the political exclusion of both Islamist currents and the majority of forces behind the January revolution. The most significant imbalances in the contents of the constitution is that the elected parliament does not have the definitive authority. The elected authority is instead, at best, parallel to the authority given to the Supreme Council of the Armed Forces (articles 200-205), the police (Article 207) and the judiciary (Article 185) The Constitution grants these parties a degree of independence in the conduct of their affairs without being subject to the authority of the elected Parliament. The 2014 constitution, without interpretation, erased articles from the 2012 constitution, including provisions to strengthen civil society, such as those designed to fight corruption, and preserve the independence of universities. It also did away with provisions stipulating the resignation of the President if he requested to dissolve the parliament by calling for referendum, which was then lost and the preservation of the Arabic language in the media. Additionally, it removed references to the neutrality and professionalism of the military in the preamble to the 2012 constitution.

Despite this, the 2014 constitution contained a chapter on liberties, and retained some of the gains made by the 2012 Constitution, such as restricting the presidency to two terms, and balancing the legislation and executive authorities. But the state quickly moved from trampling the legacy of 25 January to realizing the legacy of June 30, which left only the military coup, which is transforming into the autocratic rule of a dictator.

In practice, the government violated this constitution in several respects. Presidential elections were held in 2014 and a parliamentary vote in 2015, but it was boycotted by most voters because it did not



guarantee the right to compete. It took place under a state of emergency and the security services' intervention in the formation of party lists. These presidential and parliamentary elections were also held after a period of unrestricted preventative detention, which had been restricted in the 2012 constitution, and after a law issued in 2013 effectively prevented demonstrations and restricts other forms of peaceful assembly, including electoral and party campaigns. The Constitution was also violated when the Parliament ratified (without the discussion stipulated in article 156) more than 400 laws issued by the executive authority when the President exercised both executive and legislative powers before the election of the House of Representatives (from July 2013 until the parliamentary elections in October-December 2015). Through these decisions President el-Sisi maintained a firm grip on the country, shaping many important sectors of society, politics and economy. He oversaw political rights, presidential elections, criminal judgments, litigation, police, arms and ammunition, universities, the stock market, investment, money laundering, state employees, maximum wages, taxes, etc.

Article 151, which prohibits the renunciation of part of the territory of the State, was violated when the government relinquished the islands of Tiran and Sanafir to Saudi Arabia. Articles 145 and 166, obliging the President of the Republic and members of the Government to submit financial disclosure statements were flouted. The government interfered with judicial bodies in violation of articles 94 and 184. Other infringements of rights and liberties included travel bans (article 62), The arrest of unclothed citizens, the practice of torture during detention and the prevention of telephone and electronic communications (article 55-57), the closure of news sites (article 70-72), the construction of a new capital of the country (article 222), the prohibition of the use of torture in detention, the inviolability of telephone and electronic communications (article 55-57), and the independence of universities (article 21). New laws also set restrictions on rights recognized by the constitution, such as the right to form civil associations (Law 70 of 2017) and the right to peaceful assembly (Demonstration Law No. 107 of 2013).

The government did not allocate the funds from the GNP prescribed by the Constitution for education, scientific research and health services (articles 18, 19, 23 and 238). Nor did the government issue a Transitional Justice Act (art. 241) or another for local administration (art. 180) or establish an independent anti-discrimination commission (Article 53).

The Proposed Amendments

Despite the flaws of the Constitution and the government violations, and although the Parliament itself was established undemocratically, the government remained faithful to what became known as the legacy of the State of July (the post-1952 state was keen to codify and enshrine many authoritarian practices that restrict freedoms and establish an autocratic state). The proposed amendments may not eliminate all constitutional constraints to the consolidation of absolute autocracy, but they achieve three main objectives if the government succeeds in passing the changes:



- Removing the constitutional obstacle that stands as a barrier to Sisi's longevity in power;
- Tightening the grip on the judiciary as a body that could challenge the executive and legislative powers;
- The introduction of some texts serving to embellish the image of the regime externally and push voters to vote in favor of amendments.

The most significant amendments proposed lengthen “the term of the Presidency to six years instead of four, with the necessary transitional provisions.” This was justified by the inadequacy of the four-year period because of its “extreme shortness” and “lack of respect for the reality of the country's social, economic and regional conditions”. The proposed amendment contravenes the text of article 226, which states that “the provisions relating to the re-election of the President of the Republic or the principles of freedom and equality shall not be amended unless the amendment relates to further safeguards.” The aim of the amendment is to pave the way for the current President to remain in power until 2034, because the amendment of Article 140 allows the extension of the term of office to six years, while the transitional article allows him to re-run as amended after the end of his current mandate.

The amendments revisit the mechanisms introduced by President Gamal Abdel Nasser in the late 1960s regarding the judiciary, which was locked in a conflict with the Hosni Mubarak regime from the 1980s until the January 2011 revolution. The amendments include four main issues here: granting the President of the Republic the authority to select the heads of judicial bodies, including the President of the Supreme Constitutional Court and the Attorney General; revoking the authority of the State Council to review draft contracts for which the State or one of its bodies is a party to and restricting its authority to reviewing only bills referred to it; abolishing the independent budgets of the judicial bodies; and the establishment of a higher council of bodies and bodies headed by the President of the Republic to consider the appointment and promotion of judges.

These amendments will, if passed, eliminate the remaining principle of separating authorities and hand over control of judicial bodies. The Egyptian judiciary violated the constitution on human rights issues and became a tool to reverse the legacy of January 25 but did challenge some post-2013 government decisions. The judiciary, its public associations and judges' clubs refused to amend the Judicial Authority Act of April 2017. The administrative court also repealed the June 2016 maritime demarcation agreement between Egypt and Saudi Arabia. The State Council's Fatwa and Legislation division in 2015 rejected government amendments to the Criminal Procedure Code aimed at disregarding listening to a witness and reading their testimony recorded in the evidence collection or preliminary investigations and requiring witnesses to testify in court. In 2014, the State Council refused to exempt hotels and clubs belonging to the armed forces and military medical centers from real estate tax and refused to grant the Minister of Defense the right to exempt other units.

There are three issues proposed for amendment regarding the armed forces. The first is the expansion of the functions of the armed forces to include — for the first time in Egyptian constitutional history

— “the maintenance of the constitution and democracy and the preservation of the basic elements of the state and its civility, the gains of the people and the rights and freedoms of individuals.” This provision gives the Egyptian army roles played by the army in Turkey before the democratic transition. Secondly, the amendments propose that the Minister of Defense be appointed with the approval of the Supreme Council of the Armed Forces permanently rather than temporarily as the constitution currently instructs. Finally, the amendments propose the expansion of military court trials for civilians.

These amendments supplement the provisions started with the 2012 and 2014 Constitutions to expand the functions of the military establishment. They provide a constitutional legitimization for the dominance of the military after having consolidated the economic role of its subsidiaries in previous years, while the role of retired generals in the government administration and the parliament increases. These amendments may also aim to appease the military establishment in exchange for extending presidential mandate and consolidating autocratic rule. They may also provide legitimacy to any future military intervention in governance under the pretext of “safeguarding the constitution and democracy and preserving the basic elements of the state and its citizens.”

The amendments include other issues intended to cover up fundamental anti-democratic amendments and are intended to motivate certain constituencies to vote in favor of the proposals constitution and to soften the image of the regime abroad. Such amendments include a 25% quota for women in parliamentary councils; the division of constituencies; the continued representation of the youth, Copts, Egyptians abroad and persons with disabilities, workers and peasants in parliaments after a period of provisional representation; reinstatement of the Second Chamber of Parliament; and the appointment of one or more Vice-Presidents.

Opportunities to Pass the Amendments

There appear few obstacles to passing these radical changes in view of the regime’s previous displays of control. However, despite the fact that the opposition forces inside Egypt are still weak given the arrest of most of its symbolic figures and widespread abuse, opposition to these amendments is gradually increasing. Egypt has a long history of political conflicts over constitutions, stimulating a reaction. The constitutional amendments in 2005 and 2007 contributed strongly to the outbreak of a broad political movement that culminated in the January revolution, while the constitutional declaration in 2012 caused a conflict that ended with the downfall of the first elected civilian president.

The amendments were opposed by only a small number of representatives, but several judges and intellectuals have also declared their rejection of the proposal. The “Union for the Defense of the Constitution” has been created, composed of several parties, most notably El-Dostour, the Egyptian Social Democratic Party and El-Karama. The opposition formed a consensus abroad to reject amendments, but Western countries will not be likely object to the proposal effectively considering



their preference for strategic issues on the issues of democracy and human rights, especially with no unified Egyptian opposition capable of pressure at the international level as well.

Different parties and factions will protest the amendments. A campaign may be formed to boycott the referendum under the pretext of stripping the vote of its legitimacy. Another may be formed to participate in the referendum and vote against the amendments. But it is unlikely that the protests will prevent these amendments being passed without an organized Egyptian opposition with a well-defined political project for a democracy that was once within reach for Egypt and for the rights of citizens; a democratic opposition project that goes beyond nihilistic political divisions and narcissism.