4 Shaping Egypt’s 2014 Constitution: Controversy and Negotiations (Diana Serôdio)

The Committees of the 2013 Constituent Assembly were tasked with decisions touching upon sensitive subjects, often at the heart of the people of Egypt. This was perhaps no more evident than in the ‘Fundamentals of the State’ subcommittee where the most thorny and complex discussions took place. Difficult negotiations also took place in the ‘Rights and Freedoms’ subcommittee and in the subcommittee ‘System of Governance and Power’. Negotiations in these subcommittees touched on the sensitive aspects of defining a post-June 30 Egypt. This included the formulation of checks and balances among the state institutions, the guarantee of personal and collective rights, and—what some claim was most important—subjects that would have the ability to shape Egypt’s national character and the identity of the state following the Mubarak and Mursi eras.

The controversies that arose in the 2012 Constituent Assembly and the following political turmoil which deepened the polarization of Egypt’s social and political fabric were fresh in the memory of the members of the 2014 Assembly. Negotiations, presided over by the General Secretary of the Constituent Assembly, ʿAmr Mūsā. Mūsā took special care to avoid walk-outs that could potentially delegitimize the document among segments of the population.

Unsurprisingly, arguments in these particular subcommittees were specifically related to the content and wording of the articles. Many of the discussions touched on a subject close to the heart of most Egyptians—namely religion. Broadly, these discussions focused on the extent that religion would aid in shaping the identity of the Egyptian state (Preamble, 2014) and the role of religion in defining law (Article, 219, 2012; Article 2, 3 and 64, 2014). Other difficult negotiations included inter-subcommittee politics, such as occasions of unilateral decision-making by the Drafting Committee.
4.1 Opening Salvo: Egypt’s Identity and the Preamble of the 2014 Constitution

As the introductory section to the 2014 Constitution, the Preamble was highly debated in the Assembly. Its main author was the well-known Egyptian poet, Sayyid Hijâb, a representative of the Supreme Council of Culture and the winner of the 2013 State Appreciation Award in Literature. In it he tried to carry the vision of the Egyptian Revolution and capture Egypt’s identity, as he perceived it, with additional input and modifications by members from the Committee of Fifty. The text includes a description of Egypt’s geographic location and its greatest historical eras, including those of the Pharaohs, Prophets, Copts, and Muslims. It also makes reference to milestones of the “Modern Era” such as Muḥammad ʿAlī’s reforms, the revolution against the British, the founding of the al-Wafd party, and the presidencies of Jamāl ʿAbd al-Nāṣir and Anwar al-Sādāt. Significantly, any mention of Mubārak is left out of the text. The Preamble also affirms that the uprising on June 30 was a continuation of the January 25 uprising. Up until this point, Hijâb’s text received little criticism. However, when it came to religious references some Assembly members asked for adjustments.

The importance of faith and religious figures in Egypt is clearly stated in the 2014 Preamble. Although, the 2012 Constitution’s mention of Egypt as “launching the monotheistic faith” and embracing “God’s prophets and heavenly messages” were left out, the 2014 Preamble still defines Egypt as “the cradle of belief and the banner of glory of the revealed religions.” The document then goes on to mention the importance that the Prophet Moses, the Virgin Mary, Jesus Christ and Prophet Muḥammad had in shaping the heritage of Egyptians.

Opposition to some of Sayyid Hijâb’s remarks came from among some of the conservative Assembly representatives. Among them, a reference that monotheism was discovered “by the Pharaohs” was dismissed. In addition, the definition of the “Modern Era” as a time of “enlightenment” during which “humanity became more mature” was challenged, as a conservative member argued that maturity came with the message of prophets. In the

109 The content of the Preamble was heavily influenced by the three-month time constraint and contained a few errors. Ayman Salâma gives the examples of Egypt as “the head of Africa”, which he argues does not make sense. Also the use of the word “uprising” Salâma argues is imprecise. (Forster, R. A. ‘Consultation with Prof. A. Salâma,’ Cairo, September 23, 2014).
end, Hijāb was able to convince the Grand Mufti, Shawqī Ibrāhīm ʿAbd al-Karim ʿAllām, that “enlightenment” was common terminology in the social sciences, and thus the wording remained. Hijāb was also asked to remove a reference to the Christians as “martyrs” from his first draft. Opposition to this was directed at Hijāb by some of the conservative Muslims, but they eventually relented after seeing that the reference in question was mentioned in the Qurʾān. Regardless, the phrase was dropped after a challenge from the non-Orthodox Christians who questioned the initial description of Christian martyrs defending the “true doctrine” of the churches. Therefore, in the quest of seeking consensus, the phrase was pulled.

Due to the importance of religion and its role in the state, an informal Islamic bloc emerged in the Assembly. According to liberal Muḥammad ʿAbla, this bloc consisted of Muḥammad Ibrāhīm, the representative of Salafist Nūr party, the Azhar representatives – Shawqī Ibrāhīm ʿAbd al-Karim ʿAllām, ʿAbd Allāh Mabrūk Muḥammad al-Najjār, Muḥammad Mahmūd ʿAbd al-Salām ʿAbd al-Laṭīf. Additional members of the Islamic bloc included Kamāl al-Ḥilbāwī, an Islamist with a Muslim Brotherhood background, and Muḥammad Khayrī ʿAbd al-Dāyīm from the Doctor’s Syndicate.110 In their objections and suggestions, they were often in agreement with the Coptic Orthodox Church representative, Bishop Būlā, thereby forming a conservative religious bloc which tended to advocate for the status quo.

4.1.1 Defining a Civil State

Later in the preamble of 2014, we find a clause stating that the Constitution “seeks the completion of building a modern democratic state having a civil government” (emphasis added), a statement unprecedented in Egyptian Constitutional history. This was the result of intense discussion in the Constituent Assembly. Originally the more liberal-leaning members attempted to have a definition of Egypt as a “civil state” inserted into Article 1 (2014), but this suggestion was countered by the Salafist member, the Azhar representatives, and Coptic Orthodox representative, Bishop Būlā.111

The question of national identity was further explored when Muḥammad Ibrāhīm suggested that Egypt should be defined as part of the Muslim nation. This notion was rejected by liberal-leaning members who counter-

110 Casper 2014 (a).
111 Casper 2014 (d).
argued that it made no sense to consider Egypt as part of the same nation as, for instance, Malaysia, an Islamic country with which it had little in common.\textsuperscript{112} In addition, Nādia Muṣṭafā, an independent Islamist we interviewed, was appalled when some assembly members asked what the term “Islamic nation” even meant. When no one (including the Salafist and Aẓhār representatives), was able to explain its value, she considered it an unforgivable and blatant attack on the Islamic identity of Egypt.\textsuperscript{113}

Negotiations regarding Article 1 (2014) finally agreed to place Egypt within the “Islamic World.” The term ‘civil’ was, as we have seen, relegated to the Preamble. However, here too, a highly controversial 11\textsuperscript{th} hour change occurred. There was reluctance by the conservative bloc to accept “civil government.” After some wrangling with the Grand Muftī, Shawqī Ӏbrāhīm ‘Abd al-Karīm ‘Ālām requested the words be changed to “civil governance.” “Civil governance” was eventually accepted by the majority of Committee members, and was approved in the final voting session. However, when the General-Secretary, ‘Amr Mūsā, read through the entire document after the last voting session, he read “civil government.” Mūnā Dhū al-Fiqār and other members interrupted him saying, “It is governance, Mr. President”; but ‘Amr Mūsā repeated “civil government.”” Hoping it had been a momentary lapse, constituents showed up at a dinner function with the Armed Forces hoping to find the wording restored. Yet when they were passed a copy of the Constitution, they were surprised to find that the official document read “civil government.”\textsuperscript{114}

Many considered the term ‘civil governance’ to carry the same weight as ‘civil government’.\textsuperscript{115} However, for Mīrḥāf al-Tallāwī and Bishop Antōnius, the change in wording mattered greatly. Al-Tallāwī insisted that ‘governance,’ has a broader reach than ‘government,’ and expressed concern that this change would make it even harder to change the mentality of the Egyptian people towards accepting a civil state and society rather than a partially religious or military one.\textsuperscript{116} On the other hand, the Bishop was vexed that the wording had been changed without consultation or explanation

\textsuperscript{112} Casper 2014 (a).
\textsuperscript{113} Casper 2014 (e).
\textsuperscript{114} Casper 2013 (c).
\textsuperscript{115} Among them: Rev. Șafwat al-Bayādī, Muḥammad ‘Abla, and Shirīn F. Ӏbrāhīm. Casper 2013 (c); Casper 2014 (f).
\textsuperscript{116} Casper 2014 (f).
from 'Amr Mūsā. Thus, he believes the wording should have been restored to the original phrasing.\footnote{Casper and Hulsman 2014.} On the other hand, although Muḥammad ‘Abla did not see that great of a change due to the rephrasing, he pointed out that the change did make the document slightly inconsistent with Article 1 (2014) which stated that the Minister of Defence must be an Army officer. “This is what happens when you play with wording,” he said.\footnote{Casper 2014 (a).}

Regardless of the exact wording of the paragraph, the integration of the word ‘civil’ was a major victory for liberals and more secular members, who have long attempted to attain a clearer separation of religion and the state apparatus. This was a predominant issue for the Salafist member, Muḥammad Ibrāhīm, who also objected to the statement that the Egyptian people were the “sole source of authority.”\footnote{Casper 2014 (m). On this topic, Prof. Ayman Salāmā believes that the drafters of the constitution, should they have wished to confirm the new regime’s adopted democratic and civic values, ‘civil state’ and not ‘civil government’ would have been the correct application (Forster, R. A. ‘Consultation with Prof. A. Salāmā,’ Cairo, September 23, 2014).}

4.1.2 *Sharīʿa* in Egypt’s 2014 Constitution

Despite the stipulation of Egypt’s government as “civil,” the contest over the role of religion in the Egyptian State continued. Only a few lines below, in the Preamble of the 2014 Constitution, the principles of Islamic *sharīʿa* are yet again affirmed to be the principal source of legislation. Another example of a liberal victory was the re-wording of the 2014 Constitutional phrase “*sharīʿa* of all Human Rights documents,” to read, that the document was “consistent with the United Nations Declaration of Rights.”\footnote{In turn, Salāmā, states that this, in itself, was a limiting action, as it would have been better to simply mention all international conventions on human rights (Ibid.).}

The 2014 Preamble also makes reference to all the previous rulings of the Supreme Constitutional Court. This aspect of the Preamble satisfied and ensured the support of Salafists in particular, since the mention reassured them that the Supreme Constitutional Court would continue to be obliged...
to consult the principles of *shari‘a* when ruling on constitutional matters.\textsuperscript{121} Despite mentioning former rulings in the Preamble, Article 227 (2014) states, “The Constitution and its preamble and all its provisions constitute an integral text and an indivisible whole, and its provisions constitute one coherent unit.” Thus, they maintained that the mention would have as much weight as any of the Constitution’s articles. Most members of the Committee of Fifty were against the introduction of this reference to the rulings of the Supreme Constitutional Court. Yet, since it was a reversion back to the wording of the 1971 Constitution, it did not necessarily give much ground to the application of religious law.

However, the Sinai representative, Mus‘ad Abū al-Fajr, thought this was too large a concession made to the Salafists. Contrary to the beliefs of the majority of the Committee of Fifty, he was convinced it actually gave more religious power to the Egyptian State than before, even during the 2012 Constitution.\textsuperscript{122}

As we shall see, the role of religion and particularly *shari‘a* in the functions of statehood became a major point of discussion throughout many sections of the 2014 Constitution. Furthermore, despite their numerical minority, the conservative leaning religious representatives, including the unofficial conservative bloc consisting of the Islamic/ist and the Coptic Orthodox representatives, achieved considerable gains. These results were motivated by several factors; among them, the desire to avoid walk-outs. During this process, Muḥammad ‘Abla confessed that he felt the more conservative religious figures were somewhat protected, although he did not expand on this feeling. However, ‘Abla also understood the importance of incorporating conservative viewpoints to ensure the constitution would remain representative and be considered legitimate by the various segments of Egyptian society.\textsuperscript{123} The conservative religious figures, regardless of creed, were quite flexible in their views – Muḥammad Ibrāhim, perhaps more so than any other

\textsuperscript{121} Casper 2014 (i); See C. Hulsman (ed.) The Sharia as the Main Source of Legislation? The Egyptian Debate on Article II of the Egyptian Constitution (Tectum Verlag, Marburg, 2012).

\textsuperscript{122} Casper 2014 (1).

\textsuperscript{123} Casper 2014 (a).
4.2 The Clauses on the Fundamentals of the State

4.2.1 *Sharī'ā* and the State: Defining the Role of Religion and Religious Institutions in the 2014 Constitution

In the 2014 Constitution, the word *shari‘ā* is only mentioned three times, but nonetheless, its use was surrounded by controversy. The debate in the Committee of Fifty began with the debate regarding the removal of Article 219 (2012). Article 219 – “the principles of Islamic *sharī‘ā* include general evidence, foundational rules, rules of jurisprudence and credible sources accepted in *Sunni* doctrines and by the larger community” – was one of the most contested articles of the 2012 Constitution. It was primarily championed by Salafists and other Islamists in the 2012 Constituent Assembly on the grounds that the Supreme Constitutional Court interpreted the *shari‘ā* as per Article 2 (1980) rather loosely.\(^{124}\) Article 219 defined the principles of Islamic *sharī‘ā* specifically as the foundational principles of Islamic jurisprudence, as well as the reliable sources from the *Sunni* schools. Furthermore, the article effectively forced the Supreme Constitutional Court to be consistent with traditional *Sunni* jurisprudence and argumentation methods, thus excluding *Shī‘a* interpretations in Egyptian law. Critics of Articles 2 and 219 (2012) claimed, perhaps in a rather alarmist tone, that they established the foundation for Egypt to become a theocratic state.\(^{125}\)

The main proponent of keeping Article 219 (2012) in the 2014 Constitution was Bassām al-Sayyid Husayn Mutawalli (Bassām al-Zarqa), the Salafist representative. He suggested integrating the controversially worded clause into Article 2 (2014). However, he was met with resistance from a considerable majority of the Fundamentals of State Subcommittee. Al-Zarqa left due to health reasons and voiced his discontent to other members claiming that they were “insulting his beliefs” and made him “want to throw up.”\(^{126}\)

Al-Zarqa’s replacement, Muḥammad Ibrāhim `Abd al-Ḥamīd Maṣūr, was said to be more diplomatic and “a friendly man, who lived up to his princi-

\(^{124}\) Article 2 (1980) “Islam is the religion of the State and Arabic is its official language. The principles of Islamic *sharī‘ā* are the main source of legislation.” Before the 1980 amendment the text read “the principles of *shari‘ā* are a main source of legislation.” (See Prentice 2007).

\(^{125}\) See Tadros 2013; Hulsman, Seródio and Casper 2013, 55-63.

\(^{126}\) Casper 2014 (d).
However, much like his predecessor, he fought hard to keep some of the wording of Article 219, likely to prove to his supporters that he had defended shari'a in the constitutional drafting process. When this proved too difficult due to resistance within the subcommittee and the Committee of Fifty, he suggested that the word ‘principles’ be removed from Article 2 (2014) to read, “The Islamic shari'a forms the main source of legislation.” This too was rejected.

Article 219 (2012) was one of the first clauses to be removed by the Committee of Ten when it prepared the draft amendments of the 2012 Constitution. This decision was not revoked by the Committee of Fifty. A stand-off formed as Muḥammad Ibrāhīm threatened to withdraw if none of his suggestions were taken into consideration. In opposition, Church representatives threatened to do the same if the Salafist got his way. To ensure that walkouts did not occur in the Constituent Assembly, the Assembly’s Secretary-General, ʿAmr Mūsā, decided to extract conflicting parties and achieve an accord outside of the subcommittee structure. During the discussion relating to Article 219 (2012), the meeting included Muḥammad Ibrāhīm from al-Nūr Party, Shawqī Ibrāhīm ʿAbd al-Karīm Allām, ʿAbd Allāh Mabrūk Muḥammad al-Najjār, Muḥammad Maḥmūd ʿAbd al-Salām ʿAbd al-Latīf, representing the Azhar, and Saʿd al-Dīn Muṣʿad Ahmad Hasan al-Hilālī, a professor of comparative jurisprudence at Al-Azhar University. Lengthy and intricate discussions were eventually settled when Saʿd al-Dīn al-Hilālī convinced Muhammad Ibrāhīm that a Christian could not serve as a judge should Article 219 be included, thus violating articles prohibiting discrimination. This process took two months.

Nevertheless, Muḥammad Ibrāhīm’s defence of the principles of shari'a were taken partly into account when only a few days before the final vote, all parties agreed that the Preamble would include provisions reaffirming the principles of shari'a as the principal source of legislation in Egypt and that the body of the Supreme Constitutional Court’s rulings (to be deposited in the minutes) would be the reference for any subsequent interpretation. Thus, despite being a minority, Islamists had a considerable influ-

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127 Casper 2013 (d).
128 Casper 2014 (d).
129 Removing the phrase ‘principals’ would have resulted in a literal/fundamentalist interpretation of the shari'a.
130 Casper 2014 (c).
ence on the outcome of the 2014 Constitution. Somewhat ironically, despite the efforts in ensuring the legacy of Article 219 (2012), some Islamists not represented in the Assembly did not see the clauses as a necessary addition to Article 2 (2014) in enforcing the role of *shari`a* in the state.\textsuperscript{131}

As for Article 2 (2012) it remained in the 2014 Constitution unchanged, despite a suggestion by Mirfat al-Tallawi to change the wording from *shari`a* as “being the main source of legislation” to *shari`a* being “a source of legislation” – thereby lifting some of the state’s commitment to these principles. A majority of members accepted this proposed change. Some liberals even, such as Muḥammad `Abla argued that it was “illogical” that a state should be given a religion.\textsuperscript{132} However, the conservative representatives from the Coptic Orthodox Church and al-Azhar argued that a second popular uproar would be ignited if the wording was changed, as people would perceive the change as “against religion”. Thus, the wording of Article 2 remained unchanged.\textsuperscript{133}

The role of *shari`a* and the state was also touched upon in the revision of Article 4 (2012) which required the Azhar Institution to provide an opinion on all constitutional matters related to the Islamic *shari`a*. This move effectively curbed the opinions issued by the Supreme Constitution Court. The 2014 Constitution eventually reverted back to the 1971 *status quo*, and relegated the Azhar back to an organ that the Supreme Constitution Court could consult, but without obligation (Article 7, 2014).\textsuperscript{134} A struggle nonetheless ensued with Salafist and Azhar representatives, especially Muḥammad Mahmūd `Abd al-Salām `Abd al-Latíf, who suggested that new laws should in the least be revised by senior religious scholars for compliance with *shari`a*.

In contrast to the debates on Articles 2 and 219 (2012), Article 44 (2012), prohibiting the insulting of religious prophets, was not placed under much scrutiny in spite of objections from Muḥammad Ibrāhim (likely because blasphemy laws are enacted in Egypt’s penal code). In contrast, Ibrāhim (though a member of the Salafist *al-Nūr* Party) did not oppose the introduction of Article 74 (2014) which banned the formation of political parties based on religious affiliations. Ibrāhim even suggested banning party plat-

\textsuperscript{131} Hulsman, Serôdio and Casper 2013, 55-63.
\textsuperscript{132} Casper 2014 (a).
\textsuperscript{133} Casper 2014 (d).
\textsuperscript{134} Casper and Hulsman 2014.
form formulations based on race. Bishop Antonius suggests that Ibrāhim’s support for this amendment to the 2012 Constitution most likely emerged from the awareness that any religion-based political party could possibly jeopardize the stability of the country.135

4.2.2 The Role of the Drafting Committee

The role of religion was also key to the aspect of Egypt’s Personal Status Laws governing marriage, divorce and inheritance. This issue was tackled in Article 3 (2012) which states: “The principles of Christian and Jewish shari’a [for] Egyptian Christians and Jews are the main source of legislations that regulate their respective personal status, religious affairs, and selection of spiritual leaders.”136 In the Fundamentals of State Subcommittee, a ten-to-four vote agreed to expand this right to all non-Muslims. However, once the article was received by the Drafting Committee, the Grand Shaykh of al-Azhar, Ahmad al-Tayyib, supported by other more conservative leaning members of the committee (including Bishop Bülә) led the charge against this change. The result was that the article was reverted back to its 2012 formulation. This development was overruled by the Drafting Committee, a factor that angered some members such as Rev. Şafwat al-Bayadı, who were against the idea that the Drafting Committee could unilaterally make such drastic changes to the work of other Subcommittees. In the end however, much like with Article 2 (2014), the 2012 version was maintained allegedly to appease religiously-minded Egyptians and ensure they would vote in favour of the new Constitution.137

Furthermore, Article 64 (2014) pertaining to freedom of belief, the practice of religion and the building of places of worship, in its original draft, intended to give citizens the freedom of practicing their religious rituals regardless of having a place of worship. This too was subsequently changed after being submitted to the Drafting Committee, when the head of the Fundamentals of the State Subcommittee was talked into agreeing to make the practice of religion dependent on the existence of a place of worship.

135 Ibid.
136 The Jewish community in Egypt is recognized despite its very small size: 9 members only in August 2014. This is in line with traditional Muslim teaching that sees Christians and Jews as “People of the Book.” This number was reduced to 7 members on July 6, 2015 (Hulsman, C. ‘Consultation with Dr. Maḥmūd Khayyāl’, Heliopolis, October 12, 2014).
137 Casper 2013 (d).
Once again, Rev. Şafwat al-Bayâdî, tried to convince the Drafting Committee to reconsider. However, he was unable to get the support of Bishop Bûlû, because, according to Rev. al-Bayâdî, the Coptic Orthodox Church does not face the same difficulties (due to their larger number) compared to other Christian denominations with regard to church building.138

Muna Dhû al-Fiqâr contributed actively to their debate, and she went further than Rev. al-Bayâdî in advocating a state guarantee of freedom of religious practice, extending the right to build houses of worship beyond the Abrahamic religions. Her opponents, however, responded by saying, for example, that allowing a Buddhist temple to be built in Cairo would only instigate more violence in an already unstable period, concluding that, “they can pray in their homes.”139

Interference by the Drafting Committee also occurred in regard to a proposed article by Bishop Antonius 'Azîz Minâ, who suggested the establishment of an independent council of churches. However, it was dismissed on the grounds that Christians had received extensive attention in the 2014 Constitution. Furthermore, the Drafting Committee played a primary role on a number of occasions, according to Hajjâj ’Udûl, in removing references to Sinai and Nubia.140

4.2.3 On ‘Appropriate Representation’: Women, Christians, Youth, Children and Other Vulnerable Groups in the 2014 Constitution

The 2014 Constitution made considerable progress in the field of Women’s rights in comparison to the 2012 Constitution, primarily due to the advocating of Muna Dhû al-Fiqâr and Mirfat al-Tallâwî. Several points were raised by the two women to underscore their advocacy. Of the two, al-Tallâwî, as head of the National Council for Women, told the Committee Members that the State Council was resolved to insert the necessary stipulations into the 2014 Constitution in order to change systematic discrimination against women in Egypt.141 Among the examples she mentioned was that a female judge had not been appointed in Egypt since 1953, and more recently, that

138 Ibid.
139 Hulsman and Serôdio 2014.
140 Casper 2014 (g).
141 Dr. Shirin F. Ibrahim stated during an interview on September 10, 2014, that women made up 50 per cent of participants during the demonstrations in 2011 and 2013.
ex-President Muḥammad Mursi removed a number of women with over 25 years of experience from their posts with the justification that such positions were not suitable for women.\textsuperscript{142}

Initial opposition to al-Tallāwī and Muna Dhū al-Fiqār came from the conservative representatives from the Coptic Orthodox Church, the Azhar as well as the Salafists. Women, al-Tallāwī and Muna Dhū al-Fiqār explained, should not be granted positive discrimination in the same way afforded to Christians, the disabled, and other minorities, because women make up at least half of the population. Accordingly they pushed for a new article dedicated to women only where it was stipulated that women and men had to be equal in all civic, political, economic, social and cultural rights and ensured “just and balanced” representation of women (Article 11, 2014).

The use of the phrase “just and balanced” however did strike a chord with some of the Assembly members, but it was not from the religious conservative bloc. The Azhar representatives spoke neither against nor in favour of positive discrimination towards women. Unexpected hostility, however, came from Ḫiyā Rashwān (from the Journalist Syndicate), Sāmīḥ ʿAshūr (from the Lawyers Syndicate), Muḥammad Khayrī ʿAbd al-Dāyim (from the Medical Doctors Syndicate) and one of the University heads.\textsuperscript{143} The term “Just and balanced” proved to be a controversial one and even al-Sayyid al-Badawī from the liberal-leaning New al-Wāfīd Party opposed it on the grounds that it would grant women 50 per cent of government posts. The following discussion on alternative phrasing was drawn out to about three hours and resulted in four proposed replacements - “just”, “suitable”, “balanced” and “appropriate”. Kamāl al- Ḥilbāwī, an Islamist thinker, suggested that all four should be inserted.\textsuperscript{144} The Assembly, however, finally agreed on the term “appropriate.”

Another discussion that surfaced in regard to Article 11 (2014) was whether the clause should be part of the permanent body of the 2014 Constitution or placed under the Transitional Provisions. Several Assembly members argued that it should be part of the latter, since the justification of the article rested on whether mentalities would change. However, Muna Dhū al-Fiqār along with Dr. Shirīn F. Ibrāḥīm opposed this and argued that women al-

\begin{footnotesize}
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\item \textsuperscript{142} ‘Hulsman, C. ‘Consultation with Dr. Shirin F. Ibrahim’, Cairo, September 1, 2014; Casper 2014 (f).
\item \textsuperscript{143} Ibid.
\item \textsuperscript{144} Casper 2014 (i).
\end{itemize}
\end{footnotesize}
ways make up roughly 50% of the population, and as such, their equal representation in government institutions should not waver. Her argumentation eventually won out.\textsuperscript{145}

The conservative bloc was once again resistant to the guarantee of “appropriate” representation for Christians, youth and expatriate Egyptians, in the first House of Representatives after ratification of the 2014 Constitution (Article 224, 2014). Quotas were suggested, but Muḥammad Ibrāhim was opposed to the idea.\textsuperscript{146} In addition, there was resistance since the preceding article (Article 223) guaranteed “appropriate” representation to “workers and farmers.” The conservative bloc argued that too many groups were being given appropriate representation.\textsuperscript{147}

Expecting resistance, liberal-leaning members pre-emptively voted against Article 223 (2014) (33 in favour, 13 against) to force the hand of their opponents on ensuring Article 224 (27 in favour, 15 against). As such, both articles failed to reach the 75% threshold, and ʿAmr Mūsā called a private meeting. Representatives positively inclined to Article 224, stating that they would not vote for Article 223 if its successor was not approved. Furthermore, Article 224 was expanded to include “persons with disabilities” due to the lobbying of Ḥusām al-Massāḥ, a lawyer and member of the National Council for Persons with Disabilities. Al-Massāḥ was also the only disabled member of the Committee of Fifty. A compromise was reached and Articles 223 and 224 were accepted, the former with 46 affirmative votes, the latter with 44.\textsuperscript{148}

The introduction of Article 80 (2014) was also a departure from the 2012 Constitution, which did not define the age of consent or adulthood. Allegedly, this was due to a Salafist wish for vagueness as a means to continue the practice of childhood marriages concerning children as a young as nine – a practice common in some of the rural areas of Egypt.\textsuperscript{149} The eventual Article 80 (2014), which set the age of legal adulthood (18), was voted in with 42 votes in favour, six against and two abstentions. Those against included

\begin{itemize}
  \item \textsuperscript{145} Hulsman and Serôdio 2014.
  \item \textsuperscript{146} Casper 2013 (d).
  \item \textsuperscript{147} Casper 2014 (b).
  \item \textsuperscript{148} Ibid.
  \item \textsuperscript{149} McGrath 2012.
\end{itemize}
the Azhar representatives and Muḥammad Ibrāhīm, as well as two other conservative members.\textsuperscript{150}

4.3 Rights and Freedoms Clauses

Within the 2014 Constitution, the articles pertaining to Rights and Freedoms are a source of pride.\textsuperscript{151} All Assembly members were engaged in the process and human rights activists, in particular, were vigorous in fighting for the rights of the Egyptian people. Nonetheless, passing many of the provisions was not always easy and, much like in the articles on the Fundamentals of the State, disagreements arose between human rights' advocates and the most conservative members of the Assembly. According to Ḥaḍīj ‘Udūl, a key factor to the resolution of such debates was the presence of younger members, such as ‘Amr Ṣalāḥ al-Dīn ‘Alā’ al-Dīn Muḥammad, Aḥmad ‘Id, Maḥmūd Badr and Muḥammad Aḥmad ‘Abd al-‘Azīz, who facilitated dialogue and aided in reaching consensus.\textsuperscript{152}

4.3.1 Clauses Pertaining to Bedouin and Nubian Minority Rights

Although touched on by the issue of ‘appropriate representation’, the Rights and Freedom Subcommittee was the primary forum for discussions on minority rights. At the forefront of discussion was Mus‘ad Abū al-Fajr, the Bedouin representative from Sinai, and Ḥaḍīj ‘Udūl, the Nubian representative. Both men were pleasantly surprised to find support for their causes among those in the subcommittee, and three other members were especially committed.\textsuperscript{153} Both al-Fajr and ‘Udūl believed that those from the Sinai and the Nubians should be granted important assurances, in particular a guarantee of non-discrimination on the grounds of origin or geographic affiliation. Some members in the Committee opposed the criteria of ‘origin’ and ‘colour’ and wanted to remove the terms. However, the general Assembly preferred to keep the terms. 44 voted in favour, two against and two abstained (Article 53, 2014).

Another important addition to the 2014 Constitution for al-Fajr and ‘Udūl was Article 236 (2014), wherein the Egyptian State guarantees the imple-
mentation of economic and urban development areas including Upper Egypt, the Sinai, Nubia and Matruh. 'Udul said he would have preferred for the state to be “obliged” or “to secure” the implementation of such plans. However, “guarantee” was the Committee’s choice of phrasing. Nonetheless, he was satisfied with his achievements, as, under the same article (Art 236), he was able to achieve his main goal: to have the Egyptian State focus on repatriating Nubians back to their original territories from which they were relocated after the construction of the Aswan High Dam in the 1960s.

Another section of concern to al-Fajr and ‘Udul were the articles on cultural rights, including Articles 47, 48, 49 and 50 (2014). This section was especially dear to Muḥammad Abla, who campaigned heavily for the insertion of articles that oblige the State to foster cultural development and to protect cultural heritage. It was an innovative group of articles, which were approved without much contestation (with the exception of Muḥammad Ibrāhim).

In regards to the Sinai, Mus’ad Abū al-Fajr is convinced that the 2014 Constitution could have granted Bedouins more rights and guarantees. The Sinai was supposed to have been mentioned in the preamble, in the various cultural diversity articles, and to be singled out in the article pertaining to geographic discrimination. Additionally, al-Fajr believes that his act of voting against military trials for civilians, made the Assembly’s military representative rather adverse to his requests on behalf of the residents of the Sinai.

4.3.2 Negotiations on Economic and Social Rights

Concerning economic and social rights, the prominent Egyptian urologist and political activist, Muḥammad Ahmad Ghunaym, wanted to insert a provision to better scrutinize the collection of taxes. He proposed establishing a progressive multi-bracket tax system applied in accordance to the financial capabilities of individuals and which, at the same time, would promote labour-intensive economic activities. The final result in Article 38 (2014) states that a “progressive multi-bracket tax system” will be estab-

154 Casper 2014 (g).
155 Fernea 2005.
156 Casper 2014 (a).
157 Casper 2014 (l).
lished, however, the article does not adopt Ghunaym’s full proposal, which was initially dropped due to a fear of destabilizing foreign direct investment.\textsuperscript{158} Despite this, his proposal was not dismissed entirely as Ghunaym continued his criticism of selling private financial institutions such as banks for sales that net millions without paying taxes unabatedly. Among those in opposition to the suggestion was Ḥusām al-Massāḥ, who rejected the inclusion of tax schemes on the grounds that it belonged to the state legislature, not a constitutional document.

For Mus'ad Abū al-Fajr the provision ensuring "prior notification" before protests was the only aspect with which he was displeased. The clause on terrorism (Article 237, 2014) was deemed necessary by the Subcommittee members, although almost all members, --except for Muna Dhū al-Fiqār, who felt it was an emotional response to contemporary events--agreed that this Constitution needed to be written with a future Egypt in mind. Although Muna Dhū al-Fiqār attempted to get the article dropped, she only accomplished moving Article 237 (2014) to the Provisional Transitions section, and vaguely restricted it to "a specific period of time."\textsuperscript{159}

4.4 System of Governance and Power clauses

From our interviews with Ḍārūr Mūsā, Muna Dhū al-Fiqār and reserve member, Ḥāmil Ḥābi, it appeared that the System of Governance and Power Subcommittee had fewer incidents of discord among its members. Muna Dhū al-Fiqār also notes how the principles within the subcommittee were a product of public pressure via the process arranged by the Subcommittee for Social Dialogue and the Review of Proposals. This claim, however, has been dismissed by some and Dr. Shirīn F. ʿIbrāhīm sees the pressure as a product internal to the subcommittee members themselves, who centralized the decision-making process.\textsuperscript{160}

4.4.1 Defining Legislative and Executive Power

Stability and order were key aspects desired by the Subcommittee members. In order to support these goals, the subcommittee focused on simplifying existing arrangements and streamlining the decision-making processes in Egypt’s government, especially those that formed barriers between the

\textsuperscript{158} Casper 2014 (b).
\textsuperscript{159} Hulsman and Serôdio 2014.
\textsuperscript{160} Hulsman, C. ‘Consultation with Dr. Shirin F. ʿIbrāhīm’, Cairo, July 11, 2014.
different state institutions\textsuperscript{161} and those that could "instigate conflict."\textsuperscript{162} In addition, the executive office – the President – was granted more leverage in comparison to stipulations outlined in the 2012 Constitution.\textsuperscript{163} As stated by Muna Dhû al-Fiqâr, "We did not want to take the risk of having no President [...]. We did not want to take a risk at this time. It was not so much with the intention of giving more power to the President, but rather to promote stability. We had our eyes fixed on the first president and the first parliament."\textsuperscript{164}

Among the changes was the removal of the \textit{Shūrā} Council, which functioned as the Upper House. This eased the decision-making process, since legislature only needed to pass through one legislative chamber. To compensate for the absence of the \textit{Shūrā} Council, the seats in the House of Representatives were increased to a minimum of 450 seats (from 350) (Article 102, 2014).

The ways of selecting Egypt’s Prime Minister (outlined in the 2012 Constitution) were also simplified. According to the 2014 Constitution, the President is allowed the first selection. However, should his nominee be rejected by the House of Representatives, the House is allowed to suggest an alternative person from the main party or coalition. If the House’s suggestion is not approved by the President, the House is automatically dissolved. In the 2012 Constitution, dissolution was avoided by recommending yet another nominee from the main party or coalition (Article 146, 2012). This alteration cuts down the process from 90 days to 60.\textsuperscript{165} However, some also believe that it could be a destabilizing factor in the establishment of Egypt’s representational government.\textsuperscript{166}

The House of Representatives was also ‘forced’ to be more cohesive through a number of measures such as instituting a minimum of 10% support for the proposal of new laws (Article 122, 2014), whereas the 2012 Constitution had no lower limit (Article 101, 2012). Moreover, a minimum of 33% of total constituent members are required to be present in session if any new legislation is to be passed, regardless of the number of members

\begin{thebibliography}{9}
\bibitem{161} Hulsman and Serôdio 2014.
\bibitem{162} Hulsman, Serôdio and Casper 2013, 64-73.
\bibitem{163} Serôdio 2014.
\bibitem{164} Hulsman and Serôdio 2014.
\bibitem{165} Ibid.
\bibitem{166} Hulsman, C. ‘Consultation with Dr. Shirin F. Ibrâhim’, Cairo, September 1, 2014.
\end{thebibliography}
present. However, if the law is considered complementary to the Constitution (i.e. laws regulating elections, political parties, the judiciary, judicial bodies, and organizations regulating rights and freedoms stipulated in the Constitution) 66% of all members need to vote in agreement (Article 121, 2014). In the 2012 Constitution, only a 50% majority approval was required (Article 103, 2012).167

These changes, according to the Chairman of the Committee of Fifty, 'Amr Musâ, force the House of Representatives to be more cautious as disagreements may lead to the dissolution of the House. Selecting a Prime Minister, as previously mentioned, is one such example. Another is the instigation of a new-found Constitutional power, prompting a motion of no-confidence against the President, which requires a 33% vote to set in motion, and a 66% approval to be put to a referendum. However, if this power is used prematurely and the vote of no-confidence does not attain its 66% majority to be sent to referendum, the House will be immediately dissolved (Article 161, 2014).168

Similarly, if the President is to be impeached by the House of Representatives, it requires the approval of the Chief Prosecutor. If the Chief Prosecutor deems it invalid, the President may put the dissolution of the House of Representatives to referendum for the electorate to decide. However, unlike the 2012 Constitution, the electorate’s affirmative vote on the dissolution of the House cannot lead to the dismissal of the President (Article 159, 2014; Article 153, 2012).

As previously mentioned, a few extra powers have been afforded to the President in the 2014 Constitution. For instance, the possibility to instigate a referendum to dissolve the House of Representatives without any repercussions should the electorate vote to keep the House (Article 137, 2014). In addition, the President has the ability to select the Ministers of Defense, Interior, Foreign Affairs and Justice, if the President’s first choice for Prime Minister is not approved by the House (Article 146, 2014). According to 'Amr Musâ, this clause was seen as a necessity for ensuring a certain level of coordination between the government and the President.169

The President is also given the ability to reshuffle government ministers, but only after consultation with the Prime Minister, and a 50% approval in

167 Serôdio 2014.
168 Ibid.
169 Ibid.
the House of Representatives present in the deciding session. Moreover, the President can relieve the government of carrying out its duties if it is deemed “unprofessional” (but only with an absolute majority approval from the House) (Article 147, 2014).170

4.4.2 The Legislature, the Judiciary and the Armed Forces

In regards to the judiciary and the Armed Forces, the intention of the Subcommittee members was to provide them with additional independence from other branches of government. Therefore, despite opposition, the Assembly’s Chairman, ‘Amr Mūsā, stated that the provisions giving less oversight to both the judiciary and the Armed Forces were justified by “the circumstances, the necessities, and the requirements of an exceptional era.”171

Granting the judiciary more flexibility in the performance of their functions was justified by a desire to protect them from political interference. In the opinion of attorney Jamil Ḥabīb, this was not sufficiently granted under the 2012 Constitution which, for political reasons, purposely limited the number of Supreme Constitutional Court judges appointed by the President to 10. (Article 176, 2012).172 Another main change to the judiciary was the inclusion of the judiciary’s budget into the state budget after approval of the House of Representatives (Article 185, 2014). Jamil Ḥabīb was one of the members in the Subcommittee arguing for such a provision, which he believes to be essential for the preservation of the judiciary’s independence.

The Committee of Ten, according to ‘Amr Mūsā, was not present during discussions on the judiciary subsection, though it was consulted on by members from all the branches within the judiciary.173 Its members, as consulting experts, were only responsible for the technical articulation of the articles, said Bishop Antonius.174 This implies that content was outlined by the subcommittee’s members. Indeed, Jamil Ḥabīb underscored that their

170 Serôdio and Ali 2014.
171 Serôdio 2014.
172 Serôdio and Ali 2014.
173 Serôdio 2014.
174 Casper and Hulsman 2014.
advice had only the weight of suggestion.\textsuperscript{175} Indeed the request for ‘special status’ by some judges was denied by the subcommittee.\textsuperscript{176}

Similarly, the constituents of the System of Governance and Power Subcommittee intended to provide the Armed Forces with enough space to deal with pressing security threats facing the country.\textsuperscript{177} As such, the budget of the Armed Forces is discussed within the National Defense Council which contains some representational members as previously stipulated (Article 197, 2012). However, the budget is only presented to the House of Representatives under ‘one line’, so as not to jeopardize its secret nature (Article 203, 2014).\textsuperscript{178} Objections were raised among the Committee of Fifty, but from a minority. Louder objections were raised within the Constituent Assembly against the clauses stipulating the nomination of the Minister of Defense (Article 234, 2014) and the use of military courts for the trial of civilians (Article 204, 2014).

The younger members of the Assembly were particularly against the designated approval of the Armed Forces needed for the President’s nomination to the office of the Defense Minister’s to be validated.\textsuperscript{179} According to Professor Ayman Salâma this was in part enacted as a reaction to ex-President Mursi’s decision-making practices, which allegedly often occurred without any consultation with members of the Armed Forces.\textsuperscript{180} Despite this underlying logic, there was a belief among some Constituent Assembly members (such as Muḥammad ‘Abla) of an unspoken agreement between elements of the Armed Forces and some of the more influential Assembly members. In regards to this, ‘Abla admits, that he was unable to pinpoint where this nexus could have existed. Nonetheless, this intangible factor, whether real or imagined, motivated some Assembly members to protest Article 234 (2014), which as a result, was shifted to the transitional provisions, pushing back the article’s eventual approval for a period of two presidential terms (eight years). The timeframe made it much easier for the Assembly to accept it.

\textsuperscript{175} Serôdio and Ali 2014.
\textsuperscript{176} Hulsman and Serôdio 2014.
\textsuperscript{177} Serôdio 2014; Hulsman and Serôdio 2014.
\textsuperscript{178} Hulsman and Serôdio 2014.
\textsuperscript{179} Casper 2013 (d).
\textsuperscript{180} Forster, R.A. ‘Consultation with Prof. A. Salâma, Cairo, October 14, 2014.
In the beginning, Mirfat al-Tallawi, for example, was against having the executive’s choice of a Minister of Defense require the approval of SCAF. She rejected the Armed Forces’ argument that claimed there was no difference between the Armed Forces and the judiciary – a governmental branch that had also been given the independence to nominate their own minister and prosecutor-general. However, al-Tallawi understood that there are certain sensitivities towards the Armed Forces in Egypt that ought to be taken into account. Therefore, once the eight-year limit was settled, she ultimately did not oppose the opinion that it might be dangerous to have the President choose the Minister of Defense unilaterally under Egypt’s present circumstances.\(^\text{181}\) Rev. Şafwat al-Bayâdi, on the other hand, was much more supportive of the transitional clause and in his words, those who feared it “did not get the whole picture.” In reference to the ever ongoing attacks on Egypt’s soldiers, al-Bayâdi said that, if not united and strong, they “might be forced to retreat from the borders and become unable to protect the people... The threats are real.”\(^\text{182}\)

Younger members of the Assembly were also outspoken about Article 204 (2014) regarding the use of military trials for civilians. Many revolutionaries, especially the youth, had expected the 2014 Constitution to effectively restrict the jurisdiction of the state’s military courts to only encompass the military.\(^\text{183}\) That however, did not happen. Article 204 outlines the regulations and, according to Muna Dhû al-Fiqâr, restricts the conditions under which these courts may try civilians.\(^\text{184}\)

Only seven of the Assembly members voted against the article on civilian trials in military courts.\(^\text{185}\) Among those who opposed it was Muḥammad ʿAbla, who, much like in his actions regarding Article 234 (on the Armed Force’s role in the selection of a Minister of Defense), attempted to shift Article 204 to the Transitional Provisional articles. Thus, Article 204 would be limited to a 10-year period. This, according to ʿAbla, would be sufficient to overcome the ongoing security issues. In addition, Musʿad Abû al-Fajr, a well-known Sinai activist, also opposed Article 204, considering it to be selling out the rights of the Egyptian people and compromising the right to a

\(^{181}\) Casper 2014 (f).
\(^{182}\) Casper 2013 (d).
\(^{183}\) Casper 2014 (a).
\(^{184}\) Hulsman and Serôdio 2014.
\(^{185}\) Casper 2014 (a).
fair trial. Despite alleged military pressure, al-Fajr remains proud to have voted against the article.\textsuperscript{186} The Nubian representative Hajjaj ‘Udūl, was firmly against it too, mostly in consideration for the revolutionary youth, whom he wanted to reassure could count on his support.\textsuperscript{187} Contrary to ‘Abla, however, both al-Fajr and ‘Udūl supported Article 234.

Fair representation in the electoral laws was another key responsibility for the members of the System of Governance and Power Subcommittee, a factor which put pressure on them from many within the Constituent Assembly. This task included defining fair representation for women, Christians, workers, farmers (both male and female) and people with disabilities, stretched over a specified time period in the House of Representatives. The term ‘fair’, however, meant different things to different members, and efforts to create a comprehensive electoral law, with majority support, was extremely difficult. The compromise became the designation of 66\% of the seats for these individuals, although this does not limit them for independent candidates (since political parties can still run for them). Still, according to Muna Dhū al-Fiqrā, it was impossible to reach the 75\% majority necessary for the article to pass.

The Subcommittee agreed to incorporate two clauses establishing that the state should push for ‘appropriate’ representation of special groups in the House of Representatives to be elected after the approval of the 2014 Constitution (see Articles 243 and 244). However, discussion erupted surrounding the term ‘appropriate’. The quota for farmers and workers (a legacy from the days of President Nasser who arguably used it as a means to control the parliament\textsuperscript{188}) stipulated in the two former Constitutions of 1971 (Article 89) and 2012 (Article 229), were removed by the Committee of Fifty. The latter specified that these two groups should be ‘appropriately’ represented in the House, and was thus outlined as such (Article 243, 2014). The

\textsuperscript{186} Casper 2014 (l).

\textsuperscript{187} Casper 2014 (g).

\textsuperscript{188} Dr. Shirin F. Ibrāhīm says there was an attempt to remove Article 229 (2012) during the 2012 Constitutional drafting process, but this was refused by the Islamist majority. This may have been because many of the Islamist constituents could be classified as workers or farmers. In addition, there is confusion surrounding the definitions of ‘workers and farmers’ which has historically been problematic when large owners would be categorized as ‘farmers’, most likely in contradiction to President Nasser’s original Arab socialist intent. (Hulsman, C. ‘Consultation with Dr. Shirin F. Ibrāhīm’, Cairo, September 10, 2014).
other use of ‘appropriate’ was used when outlining representation of the youth, Christians, persons with disabilities, and also Egyptians living abroad (Article 244, 2014). Despite opposition from the unofficial conservative bloc in the Assembly, Amr Mūsā ensured that both articles passed. Only two members voted against (Article 244, 2014). 189

Despite generally positive support in the Committee of Fifty for a representational quota for Christians, particularly from Rev. Ṣafwat al-Bayāḍī, it did not pass – something which he believes occurred due to a lack of support from Bishop Bula, representative of the Coptic Orthodox Church. 190

After much debate, the subcommittee members agreed that the executive branch is best-suited to write the electoral law. This was in part because the members could not decide on the type of electoral system regarding individuals and/or party lists, the percentages allocated to each, the definition of quotas for positive discrimination, etc. 191 Within the Committee of Fifty, not all parties were represented and more importantly, there were no qualified experts on electoral law. Thus, after heated discussions, members finally decided to leave the electoral law for the experts on the matter to draft later in the process. 192

A final contentious matter to be referred to in this section was the establishment of an independent Commission for Transitional Justice. Muna Dhū al-Fiqār suggested the formation of the Commission, and her first version included a detailed description of all components needed for transitional justice. The original version was voted out three times by the System of Governance and Power Subcommittee, and as a result Muna Dhū al-Fiqār decided to shorten the draft article. After much insistence, it eventually got through the Subcommittee, but in the end it was dismissed by the Committee of Fifty.

In response to questions from Assembly members on whether or not she wanted reconciliation with the Muslim Brotherhood, Muna Dhū al-Fiqār said, “No, we want the truth, we want reparations, we want healing, we want institutional reform.” However, in a political environment influenced by media reports of Islamist attacks occurring on a weekly basis, repara-

189 Casper 2013 (d).
190 Ibid.
191 Casper and Hulsman 2014.
192 Casper 2014 (f).
tions were not a key goal for some Assembly members. Furthermore, those resistant to the idea of reconciliation argued that it was not an issue to be tackled by the Constitution. Independent commissions on equal opportunity and non-discrimination were agreed upon and accepted, but only by a small margin. Additional efforts to further social justice in the short-term via the Constitution were not overtly desired by some Assembly members. However, sure of her convictions, Muna Dhu al-Fiqār, re-wrote the draft article, making it more concise and slightly less assertive in its aims. Thereby, Article 241 (2014) passed, the lynchpin for its approval allegedly being the phrase “in accordance to international law.”

Despite the establishment of a transitional justice body, Egypt has not yet undertaken any of the modalities of transitional justice. An example of such can be seen in the developments of the case against ex-President Husni Mubarak, who after facing charges for the four years after he was deposed in 2011, was subsequently charged with complicity in the murder of protestors. However, the judge threw the case out due to procedural mistakes, which according to Prof. Ayman Salāma is a “ridiculous scandal.” Hulsman, C. and R. A. Forster, ‘Consultation with Prof. A. Salama, Maadi, Cairo, July 6, 2015; United Nations 2010. Accessed July 9, 2014.

Hulsman and Serôdio 2014.