5 A Comparison of the 2012 and 2014 Constitutions
(Diana Serôdio)

The 2014 Constitution aimed at rectifying the controversies within the 2012 document; however, many non-Islamists argue that the 2013 Constituent Assembly did not fix all of its shortcomings. The structure of the 1971 and 2012 constitutions was maintained in the 2014 text. Even so, the character of the 2014 Constitution is very different from its predecessors. The 2014 Constitution ensures broader rights and freedoms to Egyptians, and grants more assurances to minority groups, including Christians, Nubians, and the Bedouins of the Sinai. In addition, changes were made to the system of governance, making it more comprehensive than before. Whether this is for better or worse is still being debated.

This chapter will analyse some of the most fundamental changes made in the 2014 Constitution, compare amendments to prior articles, and discuss their potential impacts on Egyptian society.

5.1 Fundamentals of the State

5.1.1 Basic Components of the Society – Family Articles

A primary concern in the Constituent Assembly was Article 10 (2012) – which enabled the state and society to “oversee the commitment to the genuine character of the Egyptian family, its cohesion and stability, and the consolidation and protection of its moral values.” The controversy surrounding this article centered on the question of whether or not it was tasking the state with the preservation of morals. Thus, some argued, Article 10 laid the foundation for the establishment of an unofficial “morality po-
lice.” The 2014 version of the same article still states that the family is “founded on religion, morality and patriotism”, but replaces the word “preserve,” so that the state (not society) shall “ensure” the cohesion, stability and the establishment of its values. Although the clause does tone down the Egyptian state’s potential constitutional powers, it remains descriptive and somewhat vague. Therefore, the clause may still allow for excessive state intrusion into the private sphere.

The state also continues to require religious education on the pre-university level (Article 24, 2014). Although, as Muna Dhu al-Fiqar clarifies, the teachers do not proselytize to students; instead classes consist of one 45-minute class a week where students read the Qur’an or Bible (for Muslims or Christians respectively). This, she believes, is important for students in order to acquire a general knowledge of their religious affiliation. However, Muslim and Christian students do not mix in such classes. Furthermore, other religions are ignored, and students are not introduced to the values of belief systems other than the one they ascribe to (i.e. Christians do not learn about Islam and vice versa).

A factor falling under the personal status clauses was the issue of marriage age. Article 70 (2012) purposely refrained from establishing a legal age for marriage as a means to allow minors to wed; a cause vocally supported by a number of Salafists. Such practices are common in Egypt’s rural areas, particularly in Upper Egypt. The clause’s equivalent in the 2014 Constitution, (Article 80) limited marriage to those 18-years and older. Thus, the clause adheres to the International Convention on the Rights of the Child.

5.1.2 Religious Rights, Freedoms & Duties

The Preamble of 2012 speaks of Egypt as “launching the monotheistic faith” and embracing “God’s prophets and heavenly messages.” Similar rhetoric was transferred to the 2014 Preamble, which defines Egypt as “the cradle of belief and the banner of glory of the revealed religions.” However, the 2014 Preamble also goes on to mention the important influence of the Prophet Moses, the Virgin Mary, Jesus Christ, and Prophet Muḥammad on the heri-

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196 Commenting in an interview on September 16, 2014, Dr. Shirin F. Ibrāhīm stated that “morals cannot be regulated by the state, but are acquired at home or in school.” Also see Khattab 2013.

197 Hulsman and Serodio 2014.

198 McGrath 2012.
tage of Egyptians. This addition emphasizes the religious inclusiveness of the country.

In the 2012 Constitution, freedom of belief was “inviolable.” This was strengthened in the 2014 document which grants “absolute” freedom of belief, and the freedom to practice religious rituals in public. Despite these guarantees, the clauses in both constitutions did not extend beyond the Abrahamic religions (Judaism, Islam and Christianity) (Article 64, 2012). Thus, adherents to non-recognized religious affiliations, including atheism and Bahá’í, are obliged to frame themselves within one of the recognized religions. Additionally, followers of other religions may only practice their rituals in the privacy of their homes.

This limitation has remained unchanged throughout Egypt’s constitutions and has been justified by the need to maintain public order. Indeed, Professor Ayman Salâma asserts that, “A constitution is written for its people and not for others [...] a constitution that does not maintain public order for society is not a constitution.” This exclusion is particularly evident in Article 3 (2012 and 2014) which grants only Jews, Christians and Muslims the right to regulate their own affairs based on the tenants of their religious doctrine concerning personal status and choice of religious leaders. Of particular note is the influence of such laws on the Bahá’í community, which before the time of President Jamál ‘Abd al-Nâşir, had houses of worship in Egypt.

Regardless, there was a palpable effort by the Committee of Fifty to provide additional protections to religious minorities, particularly Christians. Article 6 (2014), in particular, provides protection to all Egyptians by establishing that “anyone born to an Egyptian father or an Egyptian mother has the right to Egyptian nationality and legal recognition through official papers

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199 Furthermore, to introduce a clause protecting non-recognized religions may put unwanted pressure upon supporting politicians (Forster, R.A. ‘Consultation with Prof A. Salâma,’ Cairo, October 14, 2014).

200 However, the lack of legal acknowledgement of non-Abrahamic religions even if they represent only a tiny segment of the population is discriminatory in practice and a violation of Article 18 of the United National Universal Declaration of Human Rights (1948), which is ratified by Egypt (See United Nations, ‘The Universal Declaration of Human Rights’, 1948, http://www.un.org/en/documents/udhr/).

201 Forster, R.A. ‘Consultation with Prof. A. Salâma,’ Cairo, October 14, 2014.

proving his/her personal data, which is a right guaranteed and regulated by law.” As a consequence, denying official papers, access to social security, the right to vote, or other government services to an individual on grounds of their religious affiliation is prohibited. This is particularly important among Egyptians who refuse to have their religion specified on their official identity documents, or refuse to be labelled ‘Muslim’. These Egyptian citizens are de facto invisible to the state apparatus since they have been refused legal documents.203

The controversial Article 44 (2012) forbidding people to insult religious messengers or prophets was entirely removed from the constitutional text, removing constitutional restrictions on freedom of expression; a critical factor necessary for the flourishing of Egypt’s artistic community. Bishop Antonius was among those who applauded the removal since such actions (which loosely fall under blasphemy and/or contempt of religion statutes in Egypt’s penal code) should be investigated by the public prosecutor and not be subject to the home-spun interpretations of individuals.204

In addition to the removal of Article 219 (2012) (See chapter 4), the role of religion was curtailed by the modification of Article 6 (2014), which stated that “No political party may be based on discrimination of gender, or origin or religion.”205 Article 74 (2014) clarified these restrictions further stating that “no political parties may be formed on the basis of religion.” The definition of what constitutes a “religious party” remains ambiguous, but the clause may require some parties, such as the Salafist Nūr Party to reformulate their platforms.

Another aspect that may be deemed discriminatory, is that both constitutions state that people intending on accepting high-level posts in government, parliament, or the presidential office must “swear by God Almighty” to protect and defend the republican system, the constitution, the law, the people’s interests, and the integrity of the nation. Some argue that this perpetuates the notion that such public offices must be held by believers. However, such religious oaths remain common in other countries too, such as the United States.

Finally, Article 234 (2014) was added to address the difficulties of Christians in acquiring permits to build or restore their houses of worship. Placed un-

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204 Casper and Hulsman 2014.
205 Khattab 2013.
der the Transitional Articles, the clause commits the first House of Representa
tives to issue a law to regulate the construction and renovation of churches. Despite the usual good relations between Christians and Muslims in Egypt, says Rev. Şafwat al-Bayâdi, governors were required to get permission from state security before issuing church building permits. Apparently, this clause has come to facilitate an increase in building and restoring churches and monasteries.206

5.1.3 The Role of the Azhar

As previously mentioned, the inclusion of the Egyptian state defined as a “civil government” was one of the more revolutionary changes in the 2014 Constitution. This framing was a considerable victory for liberal-leaning and more secular members of the Assembly, who had argued for a clearer separation of religion and the state apparatus.207 In light of this, the role of the Azhar, a traditional independent centre of Sunni jurisprudence, was revised.

In the 2012 Constitution the Azhar attained newfound abilities. Article 4 (2012) stipulated that the Azhar’s Council of Senior Scholars was “to be consulted in matters relating to Islamic shari’a.” According to Sa’d al-Din al-Hilâlî, a professor of comparative jurisprudence at al-Azhar University, Article 2 (2012), which made shari’a the “principle source of legislation,” in conjunction with Article 4, elevated the Azhar shaykhs to a position of de facto lawmakers in Egypt.208 Indeed, these articles permitted the Azhar to challenge the Supreme Constitutional Court verdicts on matters of shari’a and thus greatly increased the institution’s political power.

The consultative role on shari’a was attained by the Azhar in 1971, but this role was greatly increased by the 2012 Constitution. This process was further evident in the changes regarding who had the right to appoint the Azhar’s Grand Shaykh. Article 4 (2012) stipulated that the Grand Shaykh would be elected by the Azhar’s Council of Senior Scholars and protected from any form of government dismissal. Before this, it had been the President’s right to select the Grand Shaykh. Incidentally, this process of selection has been maintained in the 2014 Constitution. However, the weighty consultative role of the Azhar has been toned down. It is no longer manda-

206 Casper 2013 (d).
207 Casper 2013 (d); Casper 2014 (f).
208 Casper 2014 (k).
tory for the Supreme Constitutional Court to attain the Azhar’s input on all legislative matters pertaining to Islamic law. Hence, the changes made to this article effectively broaden the gap between religious affairs and the rule of law.

Additionally, Article 6 (2012) pertaining to democratic principles, was ratified as Article 5 (2014). However, in the clause pertaining to the political system, the word “consultation” (shūrā) was removed. Despite the practical implication of its removal, the term ‘shūrā’ implies a traditional understanding of Islamic governance, so its removal was reassuring to the more liberal-leaning members in the Committee of Fifty.

5.1.4 Reflections on the Fundamentals of the State’s Articles

When reading the 2012 and 2014 Egyptian constitutions, there is a noticeable difference in the use of religious rhetoric and phrasing. While the 2012 document references Islam throughout the text, the latter does so only rarely. According to George Nājī Masīḥa, this is a direct result of the political and religious affiliations within the first Constituent Assembly.209 As noted in Chapter 4, many of the remaining religious clauses were the result of compromises made to avoid the withdrawal of representatives. On the other hand, secularism is not a popular ideology in Egypt, and is thought to incite social unrest.210 Thus, despite the preference of the majority of contributors to omit Article 2 (2014), the provision was kept to maintain consensus.

To counterbalance the religious references, liberals introduced a number of ‘pioneering’ terms to the Constitution. Among them, the Preamble establishes the People as “the sole source of authority” (rather than shariʿa); Egypt’s government is defined as “civil”; women are given equal status to men; and many forms of discrimination are prohibited, including (in theory) religious discrimination.

Despite these changes, Prof. Dr. Wolfram Reiss at the University of Vienna points out that although concessions are made, the 2014 Constitution fails to provide enough assurances to religious minorities.211 He argues that keeping Article 2 (making the principles of shariʿa the basis of legislation),

209 Casper 2013 (b).
210 Kingsley 2014.
211 Casper 2013 (a).
Article 3 (which limits personal status laws to the Abrahamic religions), and
Article 235 (wherein only churches are guaranteed a law to regulate their
construction and not mosques or synagogues), perpetuates religious dis­

tinctions among Egyptians. Such disinctions, Reiss argues are “not healthy”
for Egypt’s social fabric. Moreover, the issue of apostasy, in addition to the
legal exclusion of agnostics and atheists to marry or inherit, are not ad­

dressed.

Reiss continues by shedding doubt on the implementation practices of the
commission created to monitor the enforcement of Article 53 (2014). Article
53 provides constitutional protection for citizens from various forms of dis­

crimination. Lastly, he argues that the guarantee of Christian political rep­

resentation outlined in Article 244 is too vague, and furthermore, lays the
pathway for a reliance on presidential appointments to ensure Christian po­

litical participation. This was was practiced under previous regimes. As
such, Reiss is unconvinced that the provisions in the 2014 Constitution will
be able to restrict those strongly opposed to new religious or philosophical
currents. This, in Reiss’ view, makes the document decidedly less avant
garde, and more of a continuation of the status quo.

In regards to Reiss’ critique, Cornelis Hulsman, Drs. agrees in part, but em­

phasises that “Egypt’s Constitution cannot be written apart from the coun­
try’s social realities.” Thus, in Hulsman’s opinion “the vast majority of
Egyptians applaud the existence of more conservative religious provisions
in the Constitution.” Any text that goes against the dominant beliefs of
Egyptians (who incorporate religious beliefs into numerous aspects of their
daily lives) would be bound to create more tension. 212

On Article 244 (2014), Bishop Antonius concedes that the wording is vague,
but argues that the vagueness is there to ensure flexibility. He also argues
that assurances of “absolute” freedom of religion and the clauses in Article
6 (2014) are sufficient enough to shift the status quo, but nonetheless agrees
that, “there has to be a public will for the Constitution to be applied.” 213

The Fundamentals of State articles focus on the question of Egypt’s identity.
The end clauses in the 2014 Constitution were a product of concessions
made by the liberals in the Committee of Fifty, in addition to a few ‘lost bat­
tles’ by the more conservative Assembly members. Although several reli­
gious clauses deemed excessive by activists and liberal Assembly members

212 Ibid.
213 Ibid.
remained, the revised text undoubtedly leaves less space for religion in the mechanics of the state and guarantees more rights to all citizens regardless of belief, creed, origin and gender. The capacity of these articles to ensure freedoms and rights as outlined by international law will depend on their pursuit by Egyptian society from within.

5.2 Protection of Rights and Freedoms

The 2014 Constitution added substance and detail to the 2012 Constitution’s already record number of articles pertaining to rights and freedoms. In the Preamble of Egypt’s most recent Constitution, the state makes an important pledge to the Universal Declaration of Human Rights, vowing to be consistent with it. In Article 93 (2014), the constitution goes a step further by committing itself to international human rights agreements, covenants and conventions ratified by Egypt. The new constitution states that such agreements shall have the force of law. More interestingly, in accordance with Article 92 (2014), the new Constitution forbids the approval of any new laws that might suspend or restrict the rights and freedoms.

5.2.1 Women’s Rights and Gender Equality

According to Muna Dhū al-Fiqr, Vice President of the Assembly, women’s rights became one of the greatest achievements of the 2014 Constitution, especially when compared to the 2012 Constitution. In this regard, Shirin F. Ibrāhīm notes that Article 68 (2012) was troubling and particularly prejudicial; the Article stipulates that equality between the genders was to be defined “according to the verdicts of šari’a.”

The Preamble to the 2012 Constitution stated that there is “no dignity for a homeland in which the woman does not enjoy dignity; for women are the sisters of men and partners with respect to national achievements and responsibilities.” By defining women as ‘sisters’ the Preamble is establishing a reductive differentiation of women’s status and role in society. Article 10 (2012) obligates the state to “enable the reconciliation between the duties of a woman towards her family and her work”, which some believe, enforces negative gender stereotypes as to the role of women in the home. What is more, throughout the entire 2012 Constitution, there is no clause that specifically prohibits gender discrimination. The lack of such a provision, however, is not accidental: it was purposely omitted to please the more conser-

214 Hulsman, C. ‘Consultation with Dr. Shirin F. Ibrāhīm’, Cairo, September 10, 2014.
ervative Islamist factions who claim that shari'a states that women and men are not be treated equally.\textsuperscript{215}

In the 2014 Constitution, women were supposed to be reassured by several stipulations, of which Article 11 is perhaps the most significant. This clause poignantly establishes the “equality between men and women in all civil, political, economic, social and cultural rights.” Furthermore, its second paragraph goes on to obligate the Egyptian state to guarantee that women enjoy “appropriate” representation in the House of Representatives. Despite the vagueness of the term “appropriate,” it remains a clear step towards integrating the participation of women in the legislative process more effectively. It is also worth mentioning that this provision of positive-discrimination was purposely inserted in the body of the Constitution rather than the section on Transitional Provisions. Under this clause, the state is obliged to guarantee the right of women to hold public and senior offices within the state apparatus and the judiciary without discrimination.\textsuperscript{216}

Article 11 (2014) goes on to establish the state’s role in protecting women against all forms of violence; in their roles in motherhood and childhood; as the female head of the household; and extending protection to women who are elderly or in need. Despite such positive developments, Article 11 is similar to Article 10 (2012), and buys into the perception that a woman ought to take charge in family matters by declaring that the state shall enable women “to strike a balance between family duties and work requirements.” However, the article further underscores several privileges to women with respect to maternity leave, breast-feeding hours, and access to day care facilities.\textsuperscript{217}

Lastly, in regards to women’s rights, Article 214 (2014) outlines the responsibilities of the state towards Egypt’s independent national councils – the National Council for Human Rights, the National Council for Women and the National Council for Childhood and Motherhood. These councils are to be guaranteed independence and neutrality, and given the right and re-

\textsuperscript{216} Prof. Ayman Salâma does not see this occurring in the near future, especially in regards to the criminal courts (Forster, R.A. ‘Consultation with Prof. A. Salâma,’ Cairo, October 14, 2014).
\textsuperscript{217} Hulsman and Serôdio 2014.
sponsibility to report any violations to rights and freedoms pertaining to their fields of work.

5.2.2 Minority Rights

There are many important and ground-breaking clauses in the new Constitution aimed at protecting ethnic and religious minorities all across Egypt. These clauses further sought to ensure the participation of these minority groups in the decision-making process.

Although there were clauses in the 2012 Constitution that protected citizens against discriminatory practices (the fifth and seventh principles in the Preamble and Articles 9 and 33), Article 53 of the 2014 Constitution is clearer and more assertive in criminalizing discrimination. It states that, before the law, all citizens are equal in “rights, freedoms and general duties without discrimination based on religion, belief, sex, origin, ethnicity, colour, language, disability, social class, political or geographic affiliation or any other reason.” Finally, in the same article, the Constitution commits the state to take all necessary measures in eliminating discrimination in all forms. For this purpose, a new anti-discrimination independent commission will be set up.

In order to preserve Egypt’s cultural inheritance and diversity, the Committee of Fifty ensured the insertion of Chapter Three: Cultural Components. This section includes Articles 47, 48, 49, and 50, which are of particular importance to Egyptians belonging to ethnic and cultural minorities. These groups often reside in more isolated areas such as Sinai, Matrūh, Nubia and Upper Egypt. Among other things, the articles ensure the protection of their cultural identity, facilitate access to culture in all its forms, and protect heritage. Article 50 (2014) acknowledges the importance of Egypt’s historical and cultural heritage, particularly the era of Ancient Egypt, in addition to the Coptic and Islamic eras. Article 50 describes Egypt’s historical and cultural heritage as national and human wealth, committing the state to protect components of cultural pluralism throughout the country. The mention

218 The term ‘minority’ has stigma in Egypt and potential ‘minority’ groups deny their minority status. On the other hand, the government aims to represent Egypt as a united entity and thus does not officially recognize ‘minorities’ (‘Forster, R.A. ‘Consultation with Prof. A. Salama,’ Cairo, October 14, 2014). In this text ‘minorities’ refer to numerical minorities of distinctive groups recognized by different cultural, linguistic or ethnic considerations, including the Copts, Nubians, the Sinai Bedouins and the original inhabitants of Siwa Oasis.
of the Coptic era was of great importance to Bishop Antonius, who claimed it has often been omitted from the Egyptian History curriculum (skipping circa 600 years and focusing on the Islamic era). For these same minorities, Article 63 (2014), which prohibits all forms and types of “arbitrary forced displacement”, is also extremely important. Under the Transitional Provisions’ section, Article 236 (2014) sets a mandatory ten-year plan for the economic and urban development of underprivileged areas, which are to take into account “the cultural and environmental patterns of the local community.” Given the discrepancy in terms of access to basic goods and services in Egypt’s minority enclaves, this article aims at forcing the state to improve the quality of life for these groups within a set time period.

Article 81 (2014) obliges the state to improve the lives of persons with disabilities or dwarfism. People with disabilities are taken into consideration several times throughout the text. For example, in Article 54 (2014), when defining a citizens’ right to not be detained without a reasoned judicial order, the Article necessitates “assistance [to] be rendered to people with disability.” Under Article 214 (2014), people with disability are also granted a special independent commission that should report violations to their rights on their behalf.

5.2.3 Political Rights

In terms of political rights one of the most crucial clauses is Article 73 (2014), which grants citizens the right to peaceful private assembly without the attendance, monitoring or eavesdropping of security forces. This was already guaranteed by Article 50 of the 2012 Constitution. Article 50 (2012) also gave the right for citizens to organize public gatherings and engage in peaceful, unarmed demonstration, but only if notification was given “as stipulated by law.” Although there were hopes from the revolutionary youth that the requirement for notification would be dropped, Article 73 (2014) does not revise its predecessor on this point.

The requirement for prior notice regarding large public gatherings and demonstrations is not, in itself, restrictive of rights. France, England, and Portugal are all countries that require this to avoid traffic congestion and provide citizens with alternate routes. However, in countries with less staunch democracies, the need for notification is at times equivalent to ask-

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219 Casper and Hulsman 2014.
220 Casper 2014 (1).
ing for permission. In the words of Ahmad 'Abd Rabbuh, Assistant Professor of Political Science at Cairo University, the Egyptian experience under the latest version of the Protest Law (Nov. 2013) reveals the level of oppression in attempts to exercise this right. "Notification" in the Egyptian context, Ahmad 'Abd Rabbuh explains, translates to a requirement of prior permission; giving the Ministry of Interior the right to authorize or prohibit demonstrations at will.\textsuperscript{221} This has prompted the vocal outrage from many civil society organizations and political activists. Ayman Salama, a constitutional law expert and Professor at the Higher Nasser Military Academy, however, adds that the law does not address circumstances of spontaneous gatherings, which are guaranteed by the United National General Assembly Covenant on Political and Civil Rights.\textsuperscript{222}

In order to have balanced representation in local councils, which are responsible for implementing development and overseeing the executive authorities, the 2014 Constitution defines conditions for candidacy and the elections. Article 180 (2014) stipulates that youth under the age of 35 occupy at least 25\% of the seats, women another 25\%, workers and farmers 50\%, as well as appropriate representation for Christians and people with disabilities.\textsuperscript{223} Similarly in the Transitional Provisions, Articles 243 and 244 (2014) ensure "appropriate" representation for persons with disabilities, youth, Egyptians living abroad, Christians, workers, and farmers in the first House of Representatives (see Chapter 4).

### 5.2.4 General Personal Rights and Freedoms

Although freedom of belief, thought, and opinion are guaranteed under the 2012 Constitution, there were some widely criticized clauses in that text which contradicted those rights. For example, Article 31 (2012) included a provision stating that "no person must suffer insult or scorn." Additionally, Article 44 (2012) declared it to be "forbidden to insult any messengers of the prophets." The vague wording in these two Articles could allow for serious infringement on freedom of expression or excessive persecution of targeted

\textsuperscript{221} Hulsman, Deiab and Casper 2013.
\textsuperscript{222} Forster, R.A. ‘Consultation with Prof. A. Salama,’ Cairo, October 14, 2014.
\textsuperscript{223} H. Gelderblom argues that regulating ‘balanced representation’ for the local councils as stated in Article 180 (2014), and not regulating ‘balanced representation’ for other institutions (such as the House of Representatives) is somewhat inconsistent. (Gelderblom, H. ‘Email to C. Hulsman’, August 28, 2014).
individuals. Those two clauses were completely erased from the new Constitution (2014), although Article 51 (2012) on freedom of association remained unchanged. The 2014 version still reads, “Dignity is the right of every human being and may not be violated,” ensuring the state shall respect and protect it. Although this clause is not problematic, it still remains exceedingly vague. The definition of “dignity” remains unclear. Thus, it is ambiguous towards the specific actions that the state is allowed to take to protect this right. In an effort to ensure the rights of individuals, both Constitutions grant legal protections for those arrested or detained.

In this regard, the two Constitutions do not differ significantly in their guarantees. Under Article 35 (2012), the state is required to provide written notice within twelve hours listing a reason for arrest. Article 54 (2014) takes this a step further, requiring the state to immediately notify individuals why they are under arrest. The same article also grants the detainee the right to contact their lawyer and relatives straightaway. The 2014 text offers other very specific protections for individuals. Article 52 (2014) reaffirms that all forms of torture are considered criminal offenses. A protection made firmer than in the 2012 version, which referenced the illegality of torture but never specifically criminalized it. Additional rights have been expanded from Article 73 (2012) which prohibited compulsion in all its forms, including exploitation of human beings and the sex trade. This has been expanded on in Article 89 (2014) which criminalizes all forms of “slavery, oppression, forced exploitation of human beings, the sex trade, and other forms of human trafficking.” This is perhaps due to Egypt’s role as a transit country for human trafficking. Article 60 (2014) is also innovative, declaring the human body to be inviolable. The Article forbids any form of mutilation, deformation, organ trade and any medical or scientific experiments without certified consent.

5.2.5 Labour Rights

Clauses granting citizens’ labour rights and protections were already extensive in the 2012 Constitution. However, the wording of these clauses was altered to become more reassuring for citizens.

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225 Dr. Shirin F. Ibrahim, however, argues that Article 60 (2014) was misinterpreted by the Committee of Ten and its clarity was reduced when the individual rights were condensed together.

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Article 64 (2012) guaranteed workers to a fair income, vacation days, pensions, social security, health care, protection against occupational hazards, availability of safety provisions and the right to peaceful strikes. However, a controversial clause was included, stating that “forced labour is permissible only to the extent regulated by law.” The vagueness of this line was rectified in Article 12 (2014): “No citizen may be forced to work except as required by law and for the purpose of performing a public service for a fixed period in return for fair compensation and without prejudice to the basic rights of those obliged to carry out such work.” This new phrasing is an attempt to make a stronger statement against forced labour by providing specific circumstances, and laying the groundwork for the protection of child labourers.

Many deemed the provisions granted in Article 70 (2012) concerning child labour highly unsatisfactory. “Before children have reached the age at which the compulsory stage of education is completed, they must not be put to work in occupations that are not age appropriate.” Not only was it permissible for children under the age of 15 to do “age-appropriate” work (a very vague term in itself), it also allowed for non-“age appropriate” child labour once children had completed their basic education. Article 80 (2014) forbids the employment of children before the age of completing the basic compulsory education, defined in Article 19 (2014) as completing secondary education: six years of primary, three years of preparatory and three years of secondary education. However, it then adds further protection “in jobs which subject them to danger,” for those who complete basic education, or drop out for any reason before the age of 18.

Under both constitutions, the formation of non-governmental associations and foundations is conditional upon notifying the government and registration as a legal entity. In this case, Articles 75, 76 and 77 (2014) are roughly correspondent to Articles 51, 52 and 53 (2012). These articles give protection to such bodies for the freedom to practice their activities. In preventing the interference of authorities in these organizations, the 2014 Constitution describes more thoroughly the several components with which the state may not interfere, unless by court order. What is more, the new text expressly

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226 Health care is also guaranteed to citizens in Article 18 (2014). The final article according to Dr. Ibrahim “reads like a job description for the Ministry of Health.”

227 The stage of compulsory education is defined by the same constitution is basic education, at the end of which the child would normally be around 15 years-old.

228 Hulsman and Serôdio 2014.
prohibits “the establishment or continuation” of any such organizations which might have secretive status or activities, or which are of military or quasi-military nature. This provision effectively illegalizes the existence of organizations such as the Muslim Brotherhood.

Articles 52 (2012) and 76 (2014) establish roughly the same obligations and freedoms for syndicates and unions. Yet, the 2014 Constitution obligates the state to “guarantee the independence of all syndicates and federations,” a change likely to allow heads of syndicates to act in accordance with their ideological or political predispositions. However, the unpopular Article 53 (2012) was maintained as Article 76 (2014), which limits the number of syndicates to one per profession. This is based on the argument that in Egypt, there is no distinction between the professional syndicate and the institution that issues the professional license or permit.\textsuperscript{229}

5.2.6 Media Rights

Both constitutions, under Articles 48 (2012) and 71 (2014), outlined the media’s rights and freedoms. However, Article 48 (2012) was heavily criticized by members of the media syndicate. It states the media’s mission is “to serve society” and framed its work within the “essential elements of state and society.” The so-called “essential elements of state and society” referenced in the Article included several vague terms and some religious references. If used against media institutions, this terminology could have possibly restrained the content of their publications. Both articles create an exception to media independence “in times of war or public mobilization.” In the 2014 Constitution, though, the only legal causes for government interference is if a media channel or institution incites violence, discriminates against citizens, or impinges on any ‘individuals’ honour.’\textsuperscript{230}

\textsuperscript{229} Ibid.

\textsuperscript{230} Hulsman and Serôdio 2014. Speaking on the media clauses, Muna al-Šaghir, former Head of Egypt’s Central TV Administration, notes that “freedom of expression is not absolute, even in the most open democratic societies. [... all nations] have limitations on freedom of expression for the sake of national security and also in order to protect against libel and safeguard public interest.” (El-Šaghir, M. ‘Email to C. Hulsman’, July 1, 2015.) Although “impinging one’s ‘individual honour’” may seem vague, it is widely interpreted in Egyptian society as publicly sharing information on an individual’s personal or private life. This includes ‘family scandals’, sexual affairs, and the like, which can ruin an
Concerning independent media-related bodies, the 2012 Constitution defined the National Media Council as being responsible for the organization of radio, television, digital and print media. This organization was charged with preventing monopolization of the media, and protecting the interests of the public. Controversy arose after the National Media Council was also permitted to create standards of professionalism "and decency" to "observe the values and constructive traditions of the society." For media establishments owned by the state, jurisdiction falls on the National Body for the Press and Media to ensure their commitment to professionalism.

Article 72 (2014) declares that the state should ensure the independence of all state-owned press institutions and media outlets. They should be neutral and present all political and intellectual opinions, trends and social interests. This resulted in the creation of the ‘Supreme Council for the Regulations of the Media’ under Article 211 (2014). The Council is defined as an independent entity with legal personality and with technical, financial and administrative independence. Furthermore, it is responsible for regulating the affairs of all kinds of media, and must guarantee and protect their freedom, safeguard their independence, neutrality and plurality, and monitor their sources of funding. It shall also define criteria to ensure professionalism and ethical standards, abiding by national security requirements. This Council is to be consulted on all bills and regulations related to the scope of their work. Additionally, two separate and independent organizations were formed for state-owned media agencies: one for the press and the other for visual, audio, and digital media. These agencies are to be consulted on every regulation pertaining to their fields.

5.2.7 Social Security and Economic Rights

One of the aspects of the Constitution for which the members of the Committee of Fifty seem to have the most pride is the provisions made for Social Security. It is not that the Constitution of 2012 was lacking in this subject, however, important additions were made in the 2014 Constitution that significantly strengthened the state’s support of its citizens.

Article 17 (2014), like Article 66 (2012), ensures social insurance services to those incapable of providing for themselves and their families. This includes the incapacitated, the unemployed, and the elderly. Article 17 (2014), individual's reputation permanently, and are often solely based on vilifying rumours.
however, is innovative as it deems social insurance and pension funds as private property. In the past, the usage of these funds as public rather than private property led to little to no return to citizens. According to this new clause, the state is now obliged to protect them as public funds, invest them safely, and manage them through an independent entity. This provision is designed to ensure that returns go back to their respective beneficiaries.

Progressive, multi-bracket taxes have also been established under Article 38 (2014) based on financial capabilities. The purpose of taxes has also been defined: to develop state resources and achieve social justice, as well as economic development. The taxation system’s role is defined as being to “ensure promoting labour-intensive economic activities and motivating their role in the economic, social and cultural development.” Lastly, Article 38 (2014) compels the state to develop modern systems that will “guarantee efficiency, easiness and control in tax collection,” so as to tackle wide spread tax evasion.

With regard to the state’s budget, the Committee of Fifty added a very crucial line to Article 124 (2014), which forbids the budget law from containing any provision that puts new burdens on citizens. Furthermore, a minimum expenditure of 3% of GDP is allocated to health care services (Article 18, 2014); a minimum of 4% of GDP is allocated to compulsory education (Article 19, 2014); a minimum of 2% is allocated to university education (Article 21, 2014); and at least 1% of the GDP is allocated to scientific research, (Article 23, 2014). These provisions are to be applied gradually and achieved fully by the school year of 2016/2017, as mandated in the Transitional Provision number 238.

There is no doubt that all the provisions in this section are proof of the Committee of Fifty’s commitment to improving Egyptian citizens’ lives. Nonetheless, one may wonder if all these provisions may have taken this Constitution beyond its original purpose, as is the opinion of many of the judges and law experts consulted by the authors of this publication.231

5.2.8 Social, Cultural and Environmental Responsibility

Perhaps the most innovative aspect of the 2014 Constitution is that it gives the state a whole new array of social, cultural and environmental responsi-

231 Expert meeting at the Egyptian Council of Foreign Affairs discussing the draft text of this report, July 20, 2014.
bilities. Sometimes these take the form of small additions to pre-existing provisions, but often they are stipulated in entirely new clauses.

The 2014 Constitution ensures that teachers, staff members and their assistants can develop their competencies, cares for their financial and moral rights, and also recognises they are the main pillars of education and thus essential components of its quality (Article 22). Fishermen also have a clause of their own, which says that the state shall support them and empower them without jeopardizing ecosystems (Article 30).

There is a new clause which highlights the importance of the Suez Canal, which the state shall develop (Article 43). Although the state’s obligation to preserve and protect the Nile was already a provision under Article 19 (2012), the ways to ensure its conservation are now described in more detail. Article 44 (2014) tasks the government with ensuring that water is rationed and refrain from polluting the river. The article further states that necessary measures will be taken to protect groundwater as well as ensure water security.

Environmental concerns are not limited to water resources. Article 32 (2014) declares that national resources belong to the people and that they shall be responsibly used. This right was already guaranteed in Article 18 (2012), but now a limit of 30 years is set to any concessions on the rights of exploration for natural resources or public utilities. Quarries and small mines now have a maximum concession period of 15 years. What is more, the article obliges the state to make the best use of renewable energy sources, and to “motivate investment therein and encourage relevant scientific research.” The protection of seas, shores, lakes, waterways and natural protectorates was already mandatory in Article 20 (2012). Under Article 45 (2014), though, the new Constitution commits the state to develop “the green space in urban areas; preserve plant, animal and fish resources and protect those under the threat of extinction or danger.” Finally, it reads that the state shall also guarantee “humane treatment of animals,” something which is new in Egypt’s constitutional history.

Words like “sustainability” and “sustainable development” are also present in many of the clauses in the 2014 Constitution. One such clause is Article 41 (2014), which reads, “The State shall implement a population program aiming at striking a balance between population growth rates and available resources; and shall maximize investments in human resources and improve their characteristics in the framework of achieving sustainable development.” Although the ways of bringing such a balance about are unclear,
this clause is pioneering and addresses the logistical complications of the high population growth Egypt has witnessed in the past decades.232

The 2014 Constitution’s provisions pertaining to culture are also unprecedented in Egypt’s Constitutional history.233 These articles ensure the maintenance of Egypt’s cultural identity with its diversified branches of civilization (Article 47); define culture as a right of every citizen and oblige the state to make all types of cultural materials available to all strata of the people (Article 48); and to protect and preserve all monuments, prohibiting their traffic, offer or exchange (Article 48). Furthermore, Article 50 (2014) underscores the importance of Egypt’s civilization and cultural heritage as national and human wealth. This includes tangible and intangible culture, in all its pluralistic dimensions and its fundamental phases extending from Ancient Egypt, through the Coptic and Islamic eras, to contemporary architectural, literary and artistic heritage. The state is thus tasked with the protection of all memorials and with the preservation of all the components of such cultural pluralism.

Although the protection of artists, writers, creators and inventors was already ensured under Article 46 (2012), Article 67 (2014) prohibits filing cases for the interference, cessation or confiscation of any artistic, literary or intellectual work, or against the creators of such work, “except by the Public Prosecutor.” It also forbids sanctions against artists when publicizing their work, except in cases that may incite violence, discriminate or impinge on an individual’s honour234 (Article 71). Article 69 (2014) further establishes a specialized agency to uphold intellectual property rights and guarantee their legal protection.

Last but not least is Article 68 (2014), which expands on Article 47 (2012) stating that information, data, statistics, and official documents are the “property of the People,” and that their disclosure is to be granted in a “transparent manner.” It also provides citizens the possibility to file complaints should there be any resistance in attempts to access these documents. Additionally, the Article guarantees that official documents will be deposited in the National Library and Archives once they are no longer used, committing the state to protect documents against loss or damage. The

232 This was strongly opposed by the Muslim Brotherhood in 2012. (Hulsman, C. ‘Consultation with Dr. Shirin F. Ibrāhīm’, Cairo, July 11, 2014).

233 See section 5.2.2 on minority rights in this chapter.

234 See section 5.1.6. on media rights in this chapter.
Article further stipulates that it is the duty of the state to restore and digitalize all archived official documents using modern means and instruments.

5.2.9 Reflections on the Rights and Freedoms Articles

The 2014 Constitution provides considerably more rights to Egyptians in comparison to any prior Constitution. Yet most articles presented in this section include either vague words, such as “appropriate” or “dignified”, or refer to the law, which may or may not have already been drafted. This is a source of concern to many political analysts and law experts.235

No one can expect a Constitution to integrate all details regulating the state’s obligation to protect its citizens. In fact, there has been much criticism on the part of many jurists that the 2014 Constitution is too thorough and includes provisions that are too meticulous.236 A Constitution is supposed to be a guideline providing an ensemble of principles that legislators need to take into account when passing new laws.237 Thus, arguably vague terminology is used as a means of providing enough leeway in their interpretation by legislators, according to the matter and context of the laws yet to be drafted.

Dr. Sa’d al-Din Ibrahim, a leading Egyptian human rights and democracy activist, affirmed the need of law-makers to refer to a Constitution. Yet, based on his own experiences during the Mubarak regime, he believes there is a risk that efforts will be made to circumvent the rights outlined in the 2014 Constitution. This is particularly the case with laws relating to civil society organizations and NGOs, which often refer to the laws not yet written (which may attempt to limit them); or within an existing law, by referring to a bylaw that will basically neutralize such rights.238


236 Although some constitutions are must more meticulous, such as the 1996 South African Constitution (Forster, R.A. ‘Consultation with Prof. A. Salama’, Cairo, October 14, 2014).

237 Expert meeting at the Egyptian Council of Foreign Affairs discussing the draft text of this report, July 20, 2014.

238 Serôdio and Samir 2014 (a).
On the other hand, Muna Dhû al-Fiqâr states that rights and freedoms may be written in a Constitution, but it is ultimately the duty of the people to fight for them and pressure their representatives and state institutions to uphold them. Laws are easier to change compared to constitutional articles, people can always challenge a law deemed unconstitutional and make an appeal. As Muna Dhû al-Fiqâr said, “The fight must go on. Freedoms are not provided to be taken for granted. You have to fight for them all the time.”

5.3 System of Government - Checks and Balances

5.3.1 House of Representatives, President, Government and Autonomous Agencies

The System of Government section in the 2012 Constitution had a blurry formulation; some of the functions and duties of state institutions were unclear, particularly the tasks of the Shûrâ Council. Furthermore, there were overlapping and repetitive clauses, some of them excessively vague. These inconsistencies could be a result of the rush during the final stages of drafting, due to the possibility of a court ruling that would invalidate the second 2012 Constituent Assembly.

The 2014 Constitution not only improved these clauses, but also improved its structure. However the wording is just as vague, despite various references to the law in the fundamental articles. Thereby, the true impact and scope of those articles is left unknown. However, the second paragraph of Article 92 (2014) attempted to deal with this issue by stating that no law regulating the exercise of rights and freedoms may restrict them in any prejudicial manner.

Concerning content, the 2012 Constitution still granted the President significant powers, but it also seemed to offer more assurances to the Parliament. This at times, perhaps could lead to stalemates between the executive and the legislature. The Government, as an executive organ, was arguably more accountable to the two legislative chambers than to the President. As for the local Assemblies, the opportunity for central administration to interfere was still strong, and did not leave much room for local authorities to take charge of their own affairs. The lack of provisions to decentralize political power was severely criticized by many who had wanted the Consti-

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239 Hulsman and Serôdio 2014.
tution to distribute the power more evenly. Finally, both the judiciary and the Armed Forces were granted significant independence, some arguing that their independence was perhaps not so sensible for a democracy.\textsuperscript{240}

We shall now proceed to analyse the 2014 Constitution’s system of government, analysing both the effectiveness of its checks and balances and the extent of accountability to the people.

5.3.2 The Legislative Branch

One of the most obvious differences between the 2012 and the 2014 Constitutions is the removal of the second legislative chamber, the \textit{Shūrā} Council. The \textit{Shūrā} Council was the upper chamber of Egypt’s legislative branch. Its role was mostly consultative and it lacked the authority to play a significant role in the system of government. Indeed, many Egyptians criticized the existence of an organ they never deemed useful. In part, this explains the low voter turnout\textsuperscript{241} for \textit{Shūrā} Council elections in 2012.\textsuperscript{242} Thus, in the 2014 Constitution, there is a single legislative chamber – the House of Representatives.

Whereas the lower legislative chamber – the People’s Assembly – was made up of 350 members, the House of Representatives is comprised of 450 members. This change may allow for a more balanced, diversified and fair representation of Egypt’s socio-political and economic fabric. That, however, will ultimately depend on the electoral law, which is not defined in the 2014 Constitution.\textsuperscript{243} Under the 2012 Constitution, 10% of the \textit{Shūrā} Council was comprised of presidential nominations, and the People’s Assembly was entirely elected. The House of Representatives, on the other hand, contains 4.7% of presidential nominations.\textsuperscript{244}

Presidential appointees in parliament are not a foreign concept to Egypt. Since President Jamāl ʿAbd al-Nāṣir, it has been possible for a president to bring certain expertise into the parliament. Under the 1971 Constitution, the President was free to choose his appointees, but under the 2014 version this

\textsuperscript{240} El-Chazli 2014.

\textsuperscript{241} In the first phase voter turnout was at 15%. Only a 12.2% voter turnout was registered in the second phase.

\textsuperscript{242} Hulsman, Serôdio and Casper 2013.

\textsuperscript{243} Hulsman and Serôdio 2014.

\textsuperscript{244} 27 appointees among 567 representatives (420 independents and 120 party representatives) [El-Din2015 (b)].
freedom has been curtailed. According to Article 102 (2014) the President can only appoint members in accordance with stipulations to be defined by law. The idea, according to Muna Dhū al-Fiqār, is to allow for the President to nominate people to fill the existing gaps in the legislative chamber in terms of expertise or knowledge.\(^\text{245}\)

The Speaker of the House and their two deputies are to be elected in the first session of the House of Representatives, just as was defined in the 2012 Constitution. However, whereas before all internal regulations were left to the lower chamber to decide (Article 97, 2012), now the Constitutional text defines that dismissal of these three internally-elected figures is only possible upon the approval of two-thirds of the House (Article 117, 2014). The submission of new legislation can be triggered by the President, the Cabinet and every member of the legislative chamber. Yet, unlike the previous Constitution (Article 101, 2012) a minimum of 10% endorsement by House representatives is needed in order to propose a law (Article 122, 2012). These additional provisions in the new Constitution are thus indirectly encouraging strong coordination of House members, and constitutionally imposing some stability and cohesion in the legislative chamber.

In both Constitutions, the minimum attendance for a session to be considered valid is just over 50%. An absolute majority of votes in favour suffices to pass legislation with the exception of legislation requiring special majority. The 2014 Constitution, however, ensures that draft laws require support from more than 25% of the members (a valid possibility only if 50% of members are in attendance). Article 121 (2014) obligates the absolute majority to represent at least one-third of the total members of the House. Thus, even if there are only over 50% of the members in session, over 75% of those present (over 33% of the totality of House members) must approve the law for it to be passed. Furthermore, the law established that, for all laws considered complementary to the Constitution (related to presidential, parliamentary or municipal elections; political parties; the judiciary, judicial bodies and judicial organizations; and rights and freedoms stipulated in the Constitution), a two-thirds majority of the totality of House members is necessary. Once again, the 2014 Constitution is pushing for stronger coordination between members in the House of Representatives to get laws passed. Although such coordination is justifiable in the need for stability, it might also create unnecessary barriers in the legislative chamber.

\(^\text{245}\) Hulsman and Serôdio 2014.
Regarding the House’s checks on the executive office, as was admitted under Article 152 (2012), House members may accuse the President or a member of the Cabinet of treason. According to Article 159 (2014), however, an accusation against the President can also be made on the grounds of violating constitutional provisions or any other felony. To set such a motion against the President, an overall majority of House members is needed (instead of the typical one-third used in 2012). Once again, it becomes clear that the Committee of Fifty was seeking stability and cohesion in future legislative chambers and state institutions. If two-thirds of members issue the indictment, the accused President is only temporarily removed from his post until a verdict is passed. This is especially the case because the same article still demands that such indictments can only be approved by the House after the Prosecutor General conducts an investigation and recommends the indictment. The President is tried before a special court presided over by the President of the Supreme Judicial Council. The Supreme Judicial Council is comprised of the most senior Vice President of the Supreme Constitutional Court, the State Council, and the two seniormost presidents of the Courts of Appeal. The Prosecutor General acts as prosecutor in such a case, and the judgment that passes is final; after passing it cannot be subject to appeal. Only if the trial results in conviction is the President effectively removed from office, without prejudice to other sanctions under the law. The interference of the Prosecutor General is meant to stop the President from being dismissed in the face of an unfair accusation. Should the House of Representatives be unsatisfied with a minister, the same procedure is to be applied.

Article 159 (2012) is not the only means for the House of Representatives to dismiss the President. In Article 161 (2014), likely inspired by the mobilization of the June 30 protests, the House of Representatives is allowed to file a motion of “recall”, or, withdrawal of confidence, against the President. If successful, it will call for early presidential elections. The motion must be reasoned, signed by a majority of the House members, and approved by a minimum of two-thirds of the legislative chamber representatives. Afterwards, the matter is put to referendum. If the electorate approves, the President is removed from office and presidential elections shall be held within 60 days. If the people do not approve, the House is dissolved.
5.3.3 The President

The criteria for selecting the President are similar to the criteria defined in the 2012 Constitution. He must be at least 40-years old, Egyptian born, with Egyptian parents and neither parent nor spouse may have held any other nationality. There are, however, two new additions to the article, (1) he must have performed or have been exempted from military service and (2) “other requirements for candidacy shall be set by law.”

This second aspect has been contentious and some figures are sceptical of its future implications. When the activist Sa’d al-Dīn Ibrāhīm, for instance, attempted to run against President Mubārak in 2006, new legal criteria for the presidency were added, preventing him from running.246

In order to present their candidacy for office (Article 142, 2014), candidates are required to either get recommendations from a minimum of 20 elected members of the House of Representatives, or to gather the support of at least 25,000 Egyptians from at least 15 governorates (previously, under Article 135, 2012, only 20,000 signatures and 10 governorates were required). It also requires a minimum of 1,000 supporters in each governorate. Thus, aspiring presidents may either submit their candidacy with less support in the legislative chamber, or garner enough popular support.

The first article in the section dedicated to the definition of the President’s functions, powers and duties, Article 132 (2012), reads: the President “upholds the separation of powers.” This suggested that the President was above the checks and balances system and therefore not an integral part of the latter. Although such phrasing was removed in the 2014 text, the President is in some ways given more power than in the Constitution of 2012. In a metaphor used by ‘Amr Mūsā, the President under the 2014 Constitution is ensured the driver’s seat, but the car still needs the gas, breaks, wheels, etc., to be driven.247

In the 2012 Constitution, Article 150 allowed for the President to call for a referendum to decide upon “important questions of the highest national interest.” If approved, such referendums would be binding for all state powers and the public. The new Constitution maintained this clause, but changed the wording to so that it now reads: “supreme interests of the state.” However, this wording remains equally vague. As described in Arab

246 Serôdio and Samir 2014 (a).
247 Serôdio 2014.
West Report’s publication on the 2012 Constitution: the article effectively allows a popular president to side-line the legislature, and pass laws without their input.²⁴⁸

Moreover, as stated in the 2012 Constitution, the President is allowed to propose legislation (Article 101, 2012; Article 122, 2014). Though the President must of course abide by the criteria to be set by law, he retains the power of nominating members of the legislative chamber (5% of the House of Representatives) as stipulated under Article 102, 2014.

Also, as indicated in the 2012 Constitution, the President may launch a referendum to dissolve the legislative chamber if his reasons are properly justified. However, whereas Article 127 (2012) forces the President to resign if the people did not support his motion, Article 137 (2014) does not stipulate any consequences in case the people decide to maintain the House of Representatives. The changes made to this particular clause give the President greater power over the House of Representatives. Should there be a disagreement between the head of the executive power and the legislative authority, the President can be confident that he will not suffer any repercussions.

Finally, when it comes to the nomination of the Prime Minister,²⁴⁹ the President retains leverage over the House. Article 141 (2012) gives the President the power to choose the Prime Minister. If the legislative chamber does not approve of his first choice, the President has to choose a candidate from among the party or majority parties in the People’s Assembly. In the event that the President’s second choice was also dismissed, the People’s Assembly would have been able to select a Prime Minister, and could only be dissolved if the President rejected their choice. Article 146 (2014) shortens the process into two steps. Firstly, the President gets to choose a Prime Minister. If the House of Representatives do not approve the President’s selection, it may then choose someone from among the main party or coalition of the legislative chamber. If the President rejects the House’s choice, the House is immediately dissolved. While Article 141 (2012) made the process very lengthy and contentious, it is also undeniable that the powers of the executive leader were strengthened at the expense of the legislative chamber in the revised article.

²⁴⁸ Hulsman, Serôdio and Casper 2013.
²⁴⁹ Also see 4.4.1 ‘Defining Legislative and Executive Powers’ in ‘Shaping the Constitution’.
Conversely, if the President is to declare war or send troops abroad, he must first consult with the National Defense Council and obtain the approval of not just the majority of Council members (Article 146, 2012), but also two-thirds of the House of Representatives (Article 152, 2014).

Both Constitutions require the approval of the legislative chamber(s) before the President may conclude or ratify any foreign relations treaty. Although the 2014 Constitution requires the consent of a majority of members for ratification. If those treaties are related to peace-making, alliances, or rights of sovereignty, the President needs the approval of two-thirds of both the People’s Assembly and the Shūrā Council (Article 145, 2012). Now it must be approved by a referendum (Article 151, 2014). The power of the House of Representatives is thus ‘restricted’ as the power is transferred to a referendum rather than another state institution.

The opposite is the case regarding instituting a state of emergency. The President may declare a state of emergency after consultation with the Cabinet, which he must then present to the House of Representatives within seven days (Article 154, 2014). The maximum length of the emergency law is defined as three months (in Article 148, 2012, the limit was six months), but may only be with a majority House approval. For a State of Emergency to be renewed, the President has to obtain approval from two-thirds of the chamber rather than a referendum, as required in the 2012 Constitution.

The House of Representative’s consent was considered more reasonable than a referendum by some jurists. The basis for this claim was that it might be logistically difficult to cast a vote if there is a reason for a state of emergency in the first place. In any case, both Constitutions deny authorities the ability for a third reinstatement of a state of emergency.

5.3.4 The Cabinet

The government’s powers and duties remain mostly static from the 2012 to 2014 Constitutions. There are, however, some significant alterations. The first concerns the nomination of the Cabinet. As we have seen, Article 146 (2012) stipulates that the President nominates the Prime Minister. Jurist Muṣṭafā Darwish, former practitioner at the State Council.

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250 Jurist Muṣṭafā Darwish, former practitioner at the State Council.
251 See section 5.3.3 ‘The President’.
The second change relating to the government is in Article 147 (2012). According to that clause, the President is allowed to “relieve the government from carrying out its duties” as long as he obtains the approval of the majority of the representatives. Alternatively, the President may also conduct a Cabinet reshuffle after consulting the Prime Minister and obtaining the approval of an absolute majority of present members of the House of Representatives (not the total of House members). It is, however, defined that such a majority should not be composed of less than one-third of the total number of members of the legislative chamber. Such executive abilities in the Cabinet are unprecedented.

Under Article 148 (2012), the President may also delegate some of his powers to the Prime Minister, his deputies, ministers or governors. This is not new, but while Article 142 (2012) forbade the President from delegating powers related to defence, national security and foreign policy (and other powers stipulated in Articles 139, 145, 146, 147, 148 and 149 of the 2012 text), that provision has been removed in the 2014 Constitution.

Finally, the Minister of Defence must be appointed from among the Armed Forces (Article 201, 2014). This article did not meet any contestation in Egypt, due to the desire to maintain the cohesiveness of the Armed Forces.252 The fact that the Minister of Defence is a military officer, however, somewhat clashes with the stipulation of a ‘civil government’ as stated in the preamble of the 2014 Constitution. Yet, according to ‘Amr Mūsā, no one in the Constituent Assembly saw anything wrong with having a military representative as a member of a civil government.253

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252 Security is always taken into account on such decisions. Egypt has the largest standing army in the region and has been involved in several external and internal conflicts since 1948. A focus on the importance of the military has thus granted it tremendous economic and organizational power not matched by other government agencies (Forster, R.A. ‘Consultation with Prof. A. Salāma,’ Cairo, October 14, 2014).

253 Serôdio 2014.
5.3.5 Local Administration

When it concerns the jurisdiction of local councils and administrative units, the 2014 Constitution ensures clearer and stronger provisions for the decentralization of power.

Although Article 183 (2012) speaks of “the desire to empower administrative units”, Article 176 (2014) is more assertive and ensures “administrative, financial and economic decentralization.” Article 176 (2014) further stipulates that a timeline ought to be defined “for transferring powers and budgets to the local administration units”. Under the 2012 Constitution, there were no clear tasks attributed to local units. This is rectified in Article 180 (2014), where the responsibilities of those units are better defined. They are tasked with following up on the implementation of the development plan, monitoring different activities, and, more importantly, exercising oversight over the executive authorities via proposals, questioning, briefing motions, etc. What is more, Article 188 (2012) mandates the presence of representatives of the executive branch in the local assemblies (even if they are not granted voting rights), whereas in the 2014 Constitution, local councils do not have such obligations.

In both Constitutions, interference by the executive authority is forbidden. However, exceptions are made to prevent councils from exceeding their jurisdiction, harming public interest, or intervening in conflict of interest cases with other local councils (Article 190, 2012 and Article 181, 2014). In cases where the competency of local councils surface, the 2012 Constitution immediately directs all disagreements to the Board for Legislation and Advisory Opinions of the State Council. However, the 2014 Constitution specifies that the State Council is only to be responsible for settling quarrels among governorate-level local councils. Disputes involving the local councils of villages, centres, or towns are to be settled by the governorate-level local council. The clause clearly contributes to the empowerment of governorate-level local councils and reduces the role of the central government.

Another novelty in the 2014 Constitution is that it forces the state to take economic and social conditions of populations into account when establishing, abolishing, or redefining the boundaries of the local units (Article 175). It also obligates local councils to have a variety of representations in their makeup: 25% representation of youth under the age of twenty-five, 25% representation of women, and the remaining 50% to be made up of workers.
and farmers. They are additionally required to ensure “appropriate” representation for Christians and people with disabilities (Article 180).254 It is noteworthy however, that neither of the Constitutional texts provides any guidelines for the selection of governors, either via elections or by appointment.

5.3.6 Autonomous Organizations and Control Agencies

Both the 2012 and 2014 Constitutions establish Autonomous Organizations and Control or Supervisory Agencies. Under that section, these organizations and agencies are guaranteed technical, financial and administrative independence (Article 200, 2012 and Article 215, 2014) as well as the safety of their membership. This is so these organizations and agencies can remain truly independent when carrying out their duties (Article 203, 2012 and Article 216, 2014). The heads of these organizations and agencies are to be appointed by the President, on the condition that the majority of the House of Representative members (in 2012 it was the Shūrā Council) provide approval. Their term of service is limited to four years, only renewable once (Article 202, 2012 and Article 216, 2014).

All agencies are forced to submit annual reports of their activities to the President, the House of Representatives and the Prime Minister, which are to be examined within four months upon their issuance (the 2012 Constitution states six months). If they detect any violations or crimes within their domain of supervision, they are obliged to notify competent investigation authorities (Article 201, 2012 and Article 217, 2014).

The 2014 Constitution no longer includes the National Commission to Combat Corruption established in Article 204 (2012). Article 218 (2014) requires all control agencies and organizations to coordinate their activities in combating corruption, promoting values of transparency, and to develop a follow up strategy for those purposes. Preventing corruption also falls upon the Central Bank (Article 206, 2012 and Article 220, 2014), which is tasked with monitoring the performance of banks and the Egyptian Financial Supervisory Authority (non-existent in the 2012 Constitution). The Central Bank is also tasked with supervising non-banking markets and other financial and insurance instruments (Article 221, 2014).

The responsibilities of the Central Auditing organization, also called the ‘Central Accounting Office’, were loosely defined in Article 205 (2012). Article 219 (2014) provides a more detailed definition, making it responsible for monitoring the state’s funds, the funds of public and independent legal entities, and other authorities. It also monitors the implementation of the state budget and independent budget, and reviews their final accounts. Thus, it plays an important role in the checks and balances system and in fighting corruption.

5.3.7 Reflections on the System of Government and its Checks and Balances

When drafting the system of government and power, Muna Dhū al-Fiqār acknowledged that the members of the Committee of Fifty had their eyes fixed on the first President and the first House of Representatives. Tired of the instability Egypt had experienced for over three years, now they wanted to ensure that the new checks and balances system promoted enough stability to prevent the country from falling into political turmoil.

As a result, the House of Representatives can play an important role in restricting the powers of the President and other governmental branches, although this requires representatives to coordinate closely. A two-thirds majority is necessary to pass laws complementary to the Constitution. Similarly, a two-thirds vote is required to file a motion of non-confidence against the President, or for the President to declare war.

Constituent Assembly members such as Muna Dhū al-Fiqār,255 Jamīl Ḥabīb (reserve),256 and ‘Amr Mūsā257 pointed out that the legislative chamber was attributed two very important means of leverage over the President and the Ministers. First, Article 159 (2014) provides the possibility to impeach the President or the ministers based not only on charges of treason, but also for disrespect of the Constitution. Second, this is expressed through the possibility of dismissing the Head of State on the grounds of non-confidence. However, neither article comes without risks to the House of Representatives, which can be dissolved by the President if an impasse occurs258 (Arti-

255 Hulsman and Serôdio 2014.
256 Serôdio and Ali 2014.
257 Serôdio 2014.
258 Stakes are further raised due to the costly process of running for a seat in the House of Representatives.
The House of Representatives must tread carefully in rejecting the President’s choice of Prime Minister, as there is only one opportunity to present an alternative candidate. If they are rejected, the house will be dissolved. If the parliament’s choice is selected, the President would be empowered to choose the four key ministers – Defense, Foreign Affairs, Interior and Justice – instead. According to ‘Amr Musa, this was to allow the President to maintain order and stability between the state powers. Further, this will grant the President enough leverage over the Prime Minister’s choice of Ministers.²⁵⁹ Sa’d al-Din Ibrahim, however, sees the ability to select the ministers that control the Armed Forces, foreign policy, the judiciary and the intelligence apparatus, as a manifestation of the Deep State.²⁶⁰ Indeed, the President holds the power to nominate these four ministers if his choice of Prime Minister is rejected to ensure control over the cabinet.

However, although much power was centralized with the President, local councils also gained more leverage in their local affairs.²⁶¹

The National Commission to Combat Corruption, which was established in the 2012 Constitution, was removed. For Sa’d al-Din Ibrahim, this raised some concerns.²⁶² Nonetheless, the equally important Control and Supervisory Agencies were maintained. However, it remains to be seen how much leverage the agencies will be granted to carry out their duties effectively. Nevertheless, the fact the Constitution’s articles define their duties and responsibilities are reassuring.

All in all, the 2014 Constitution seems to provide the checks and balances necessary for an effective system of governance. The President is given more leverage, but the House of Representatives retains important powers that may come to use if its members manage to coordinate well enough to

²⁵⁹ Serôdio 2014.
²⁶⁰ The Deep State refers to the entrenchment of long-time political and business elites in politics that operate a ‘state within a state’ and monopolize access to political and financial benefits. In December 15, 2013, then-Prime Minister Hazim al-Biblawi said on al-’Ula TV channel that Egypt is in fact run by the ‘Deep State.’ He resigned from his post ten weeks later (Andersen 2014 (a)).
²⁶¹ Hulsman and Serôdio 2014.
²⁶² Serôdio and Samir 2014 (a).
gather the minimum quotas. As an intermediate power between the President and the legislature, the cabinet retains roughly the same authorities that were granted to it under the 2012 Constitution. Often times, these authorities overlap with those of the President.

In this format, the 2014 Constitution effectively promotes stability, and prevents political factionalization by forcing members of the House of Representatives to cooperate with each other. Given the fragmentation of Egypt’s political scene, this will be an endeavour for the first and perhaps even the second House of Representatives after the elections.263

5.4 The Judiciary

In the sections referring to the judiciary, both Constitutions attribute significant independence to Egypt’s different Courts, and to judges in general. Most provisions are extremely similar in both Constitutional texts, thus, they shall only be briefly mentioned in this study. Emphasis will be given to articles or provisions new to the 2014 Constitution that give greater liberties to the judicial organs (compared to the 2012 text).

5.4.1 General Provisions

In both Constitutions, each judicial body or organization is entitled to manage its own affairs and an independent budget (Article 169, 2012 and Article 185, 2014). However, the 2014 Constitution further asserts that the components of the budgets are to be fully examined by the House of Representatives, stipulating that the approved budget will only be included in the state budget under a single line. Its insertion under one budget line implies that its management is left to the judiciary, and that resources allocated to certain activities may be transferred to others without external intervention by the Ministry of Finance.264

The 2012 Constitution defined that a judge was only to be nominated with full mandate, “both with respect to his jurisdiction and with respect to the powers that the law has granted him.” The wording of this provision was altered in the 2014 document, which now reads that judges “may not be fully or partially seconded except to the agencies determined by the law and to perform the tasks set forth therein.” Thus, the 2014 Constitution al-

Serôdio 2014.

Hulsman and Serôdio 2014.
allows judges to perform duties in other agencies, which are left up to the law to define (Article 170, 2012 and Article 186, 2014).

Key stipulations (or lack thereof), however, remain similar in both Constitutions. First, the conditions and procedures for the appointment and retirement of judges, and guarantees of disciplinary accountability, are left for the law to define. This is, of course, provided that the judiciary and the judges’ independence and impartiality are maintained (Article 170, 2012 and Article 186, 2014). Second, rights, duties and guarantees granted to judges are to be stipulated by law. Finally, each of the bodies or organizations of the judiciary is bound to be consulted in regards to any bills concerning their affairs. Furthermore, in accordance with Article 121 (2014), laws regulating “the judiciary, judicial bodies and judicial organizations” are considered complementary to the Constitution; these laws can only be passed by a two-thirds majority in the House of Representatives.

Article 239 (2014) under the Transitional Provisions obliges the House of Representatives to establish a law “organizing the rules for assigning judges and members of the judiciary.” Furthermore, the legislative chamber shall ensure by law that assignments (full or partial) of judicial jurisdiction and management (or supervision of justice affairs and elections) to non-judicial bodies or committees are all cancelled. This is to be arranged within a period not exceeding five years.

5.4.2 The Prosecutor General

The public prosecution, an integral part of the judiciary, is empowered by both Constitutions to decide on all disputes and crimes with the exception of those falling under the jurisdiction of other judicial bodies. Dispute settling between the judiciary’s members is also included, as are other jurisdictions and competencies. In both Constitutional texts they have been left for the law to establish (Article 173, 2012 and Article 189, 2014). The Constitution of 2014 adds, however, that “the affairs of the judiciary shall be managed by a Supreme Council” whose structure and jurisdiction is also to be regulated by law (Article 172, 2012 and Article 188, 2014).

Both texts make it mandatory that the Prosecutor General, who is in charge of public prosecutions, be appointed by the President from the Court of Cassation and assistant public prosecutors. While the 2012 Constitution rules that the President must appoint a judge upon ‘recommendation’ from the High Council of Judges, the 2014 Constitution goes further, stating that s/he will be ‘chosen’ by the Supreme Council of the Judiciary (whose struc-
ture and jurisdiction, as we have seen, is to be regulated by law – Article 188, 2014). This is the case even if appointed by virtue of a Presidential Decree. The length of the Prosecutor General’s mandate is the same in both Constitutions – only one four-year period or until the judge reaches retirement age.

5.4.3 The Supreme Constitutional Court

Concerning the judiciary, perhaps the most striking difference between the Constitution of 2012 and 2014 is the increased authority of the Supreme Constitutional Court. The 2012 Constitution makes no mention of special budget allocation to the Supreme Constitutional Court, making no differentiations between that judicial body and others. These budget provisions, overall responsibilities, and guarantees are stipulated in Article 169 (2012). In the 2014 Constitution, however, this particular court has been guaranteed an independent budget to be fully examined by the House of Representatives, but which must be included in the state budget under one budget line. This allows it to transfer resources from different activities without obtaining permission from the Ministry of Finance. Furthermore, the same article (Article 191, 2014) stipulates that the court’s General Assembly is responsible for managing the court’s affairs and is to be consulted on all bills relevant to its dealings.

Regarding the jurisdiction of the Supreme Constitutional Court, Article 175 (2012) states that, “it alone decides on the constitutionality of laws and regulations.” Conversely, under Article 192 (2014), the description is much more detailed. In addition it is the only organ that can adjudicate on referred cases questioning the constitutionality of statutes, legislative provisions and presidential decrees. Competencies and procedures to be followed by the Court are to be defined by the law.

Article 193 (2014) changes the prescription of its equivalent article in the 2012 Constitution (Article 176), which states that the court shall be composed of its president and ten additional members. The limitation of the Court’s members to ten was seen as a blunt interference by the judiciary. According to the 2014 Constitution, the Court shall instead be composed of a President and “a sufficient number of deputies.” The 2014 Constitution goes on to mention that the Commissioners of the Supreme Constitutional Court (not referred to in the previous Constitution) shall also have a President and a “sufficient number of presidents, advisors and assistant advi-
Membership policy for the Supreme Constitutional Court is thus more flexible under the 2014 Constitution than it was in the previous one.

Concerning the appointment of members, the 2012 Constitution leaves it to the law to define both the procedure of appointment and the conditions that members must meet to qualify. Furthermore, it stipulates that the President must appoint the justices who will participate in the Court (Article 176, 2012). Article 193 (2014) makes significant changes. The Article states that it is the responsibility of the General Assembly of the Court to elect the President from among the Court’s three most senior vice-presidents, and to choose the Commissioners. All such appointments have to be made official by means of a Presidential Decree.

Although Article 186 (2014) under the judiciary’s ‘General Provisions’ section stipulates that judges are to be independent and immune to dismissal, this is reaffirmed by Article 193 (2014), which makes the Court responsible for its own disciplinary accountability “as stated by law.”

All articles and provisions in the 2012 Constitution that were considered strategic placements were completely erased in the 2014 Constitution. One such provision was the clause restricting the number of members of the Supreme Constitutional Court to ten (Article 176, 2012). This clause was further specified in Article 233 (2012) in the Transitional Provisions section, which states that those ten members should be the most senior members.

This formulation was highly criticized by members of the judiciary who claimed that the intention behind these provisions was to effectively remove seven judges, particularly Judge Tahâni al-Jibali (the eleventh member of the Supreme Constitutional Court who publicly condemned Islamists on several occasions), from the Court.

Another article completely omitted from the 2014 Constitution was Article 177 (2012), which entitled the Supreme Constitutional Court to review the electoral draft laws for the presidential, legislative and local elections. The Article also required the Supreme constitutional court to review bills pertaining to political rights before they were issued by the President or the House of Representatives. That article stipulated a limit of 45-days upon receiving such draft laws for the Court to subject a ruling. After this period,

265 Albrecht 2013.
267 Hulsman, C. ‘Consultation with Dr. Shirin F. Ibrâhim’, Cairo, July 11, 2014.
any bill would become law, and any ruling against them issued by the Court would be deemed invalid. This article would thus prevent any unexpected rulings issued by the Supreme Constitutional Court that could potentially dissolve state institutions or bodies (as it had done with the Islamist-dominated People’s Assembly of 2012).

5.4.4 Administrative Prosecution

Similar to the state’s Lawsuits Authority, the functions of the Administrative Prosecution are more concisely defined in the 2014 Constitution (Article 180, 2012 and Article 197, 2014). Its functions include the investigation of financial and administrative violations, but the body also has the authority to impose disciplinary penalties on those found guilty. Additionally, it includes a provision which states that only the State Council’s disciplinary court can challenge the decisions of the prosecution. The Administrative Prosecution’s disciplinary accountability is also to be regulated by the law.

5.4.5 National Elections Committee

The National Elections Committee is responsible for administering referenda and elections for the President, the House of Representatives, and local councils. It is also responsible for maintaining a voter database, defining electoral districts, and imposing limits on campaign funding. This is in addition to supervising all of such controls (Article 208, 2012 and also Article 208, 2014).

Both Constitutions define the National Elections Committee under Article 209. It is to be formed by ten members including the highest ranked judges in the Court of Cassation, Courts of Appeal, State Council, the State Lawsuits Organization, and the Administrative Prosecution. The special councils of these bodies and the High Council of Judges are to elect the ten members, who shall then be appointed by virtue of a presidential decree. The members of the Committee, chaired by the most senior judge of the Court of Cassation, are required to work for a total of six months, not subjected to renewal. Furthermore every three years, half of them must be replaced. The 2014 Constitution, however, adds one more provision under

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268 H. Gelderblom, a former member of the Council of Europe, states that in her opinion not only “high ranking judges,” but other professionals (engineers, doctors or pharmacists) can perform this function just as well (Gelderblom, H. ‘Email to C. Hulsman,’ August 28, 2014).
Article 209, establishing a permanent executive body for the Commission. The composition and constitution of the Commission is to be determined by law.

Furthermore, the members of the Commission administer voting and vote counting under the supervision of the Commission’s board. Yet both Constitutions stipulate an exception to be made in the ten years following the institution of the 2014 Constitution. This is so that all voting and vote counting are completely overseen by members of the judicial organs alone (Article 210 of both 2012 and 2014).

When challenges to the results of elections or referenda are filed, both Constitutions entitle the High Administrative Court to adjudicate on the matter. The exceptions to this rule are local council elections, in which the judicial responsibility is transferred to the respective Administrative Court. The difference between the 2012 and the 2014 Constitutions lies solely in the specifications of the challenging procedure: the 2012 Constitution requires the law to ensure that the appeal procedure does not disrupt the electoral process (including the announcement of the final results, which can no longer be challenged once announced). The deadline for the announcement of final results is stipulated as eight days (Article 211, 2012). Article 210 (2014) removes many such obligations and leaves it to the law to define the appropriate procedures. Filed challenges have to be decided upon within ten days.

5.4.6 Reflections on the Judiciary’s Clauses

Although the 2012 Constitution included several articles that ensured the judiciary’s independence, it also incorporated some provisions that were revealing of certain resentment, from President Mursi’s supporters in the Assembly, towards the judicial system. The 2014 Constitution not only removed such articles, but added provisions which ensured the Judiciary additional independence.

According to Jamil Habib, a lawyer and reserve member of the Committee of Fifty, the extra protections given to the judiciary were meant to ensure the absolute impartiality of the judicial system; something he finds to be fundamental to ensure courts are not politicized.269

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269 Serôdio and Ali 2014.
Karim al-Shadhli, a PhD. student in Law at the Sorbonne in Paris, on the other hand, extensively criticized the 2014 Constitution for giving excessive independence to Courts. Al-Shadhli argues that the 2014 Constitution gave disproportionate protections to the judiciary making it practically “a sect” within the Egyptian state.\(^{270}\) Judges at the Supreme Constitutional Court, for instance, have more than simply the task of applying the rule of law, since they can also make political decisions.\(^{271}\) This can be leveraged by the fact that constitutional texts are vague in nature and so can have multiple interpretations. The responsibility of choosing such an interpretation provides them with significant political leverage. This is the reason why members of Constitutional Courts in democratic states are often chosen directly via democratic means or by democratically elected representatives. According to al-Shadhli, the ability stipulated in Article 193 (2014) allowing the Supreme Constitutional Court absolute power to select its own members, makes it the first court with such powers in the world.\(^{272}\)

However, Jamil Ḥabib reiterates that unbiased performance by the judiciary hinges on its independence. This independence, however, does not place judges above monitoring or accountability. Such monitoring and accountability, Ḥabib argues, is most effectively accomplished by the Egyptian people. Should a judge abuse their authority, any complaint will be transferred to a disciplinary court. Furthermore, victims of any miscarriage of justice can submit an appeal if the verdict is the product of a judge. This would then be examined by three senior judges who must reach a unanimous decision (i.e., any complaint follows the hierarchy of the judicial organ, which guarantees that rule of law will prevail). Concerning any law considered unjust, an appeal can be made to the Supreme Constitutional Court.\(^{273}\)

All in all, the Egyptian judiciary system is self-regulatory, with different courts controlling and monitoring each other through a system of internal checks and balances. As Jamil Ḥabib states, any kind of interference with the judiciary is not appropriate: “There cannot be a system of ‘checks and balances’ with the judiciary in the same way [that] there is between the legislative and the executive authorities. Balance here would mean interference

\(^{270}\) El-Chazli 2014.
\(^{271}\) Ibid.
\(^{272}\) Ibid.
\(^{273}\) Serôdio and Ali 2014.
with the affairs of the judiciary in its application of the Rule of Law, which
is not acceptable.”\textsuperscript{274} Nonetheless, al-Shadhli argues that this is not suf­
cient by itself, as the Courts’ effectiveness will be denigrated if it is not bal­
anced by a solid system of accountability.\textsuperscript{275}

The lack of provisions establishing the system of judges’ appointments is
likely to lead to further nepotism in the institution. Also, in al-Shadhli’s
view, the 2014 Constitution should have stipulated that the contest should
have been overseen by a committee composed of both judges and non-
judges. What is more, the 2014 Constitution fails to stipulate any require­
ments for judicial organs to report to the House of Representatives. Having
blind trust in the judiciary, the Egyptian people, authorities and institutions
suppose dangers can only come from outside, overlooking the fact that the
Egyptian judiciary has become a separate ‘sect’ with defensive, in-group
logic.\textsuperscript{276}

Jamil Ḥabīb disagrees that there should be any interference from non-
judges in the selection of judicial posts. Since the Prosecutor General is se­
lected from the top figures of the judiciary, they remain professional in na­
ture; input from elected officials, as al-Shadhli suggests, would likely politi­
cise the decision-making process. Furthermore, Ḥabīb deems al-Shadhli’s
suggestions of adding further regulations to the constitution to ensure the
accountability of the judiciary unnecessary; the constitution is a guideline
and the details are found in the Judicial Authority Law.\textsuperscript{277}

5.5 The Military and the Police

When comparing the preambles of both Constitutions, it is immediately no­
ticeable how differently they refer to the Armed Forces. The 2012 Constitu­
tion acknowledges that the ‘Revolution of January 25’ was initiated by the
youth, then supported by the people, and backed by the Armed Forces. The
Preamble of the 2014 Constitution also mentions “the prominent role of
youth” and the masses of people who joined them, proceeding to enhance
the army’s role in defending the people’s will. The only other occasion the
Preamble of the 2012 text mentions the military, however, is in the eighth

\begin{itemize}
\item \textsuperscript{274} Ibid.
\item \textsuperscript{275} El-Chazli 2014.
\item \textsuperscript{276} Ibid.
\item \textsuperscript{277} Serôdio and Ali 2014.
\end{itemize}

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principle, which reads “our Armed Forces are a neutral, professional, national institution that does not interfere in the political process. They are referred to as the country’s “defensive shield”; a principle omitted from the 2014 Constitution.

The 2014 Preamble praises the army in many other occasions throughout the preamble:

Muhammad Ali founded the modern Egyptian State with a national army as its pillar;” “We, Egyptians (...) made sacrifices in several uprisings and revolutions until our patriotic army stood up for the overwhelming will of the people in the January 25 – June 30 Revolution;” “This revolution is an extension of the revolutionary march of Egyptian patriotism, and enhances the strong bond between the Egyptian people and their national army that assumed the duty and shoulder the responsibility of protecting the homeland, by virtue of which we achieved victory in our greatest battles (...).

The difference in the preamble’s wording is not the only thing that changes between the two Constitutions when it comes to the Army, as we shall see below.

5.5.1 The Armed Forces

In the constitutions of 2012 and 2014, the President of the Republic is the Supreme Commander of the Armed Forces (Article 146, 2012 and Article 152, 2014). He is also entitled to appoint and dismiss civil and military employees (Article 147, 2012 and Article 154, 2014).

Yet, the two Constitutions give substantial freedom for the Armed Forces in its own affairs. It is, for example, the right and responsibility of the President to appoint and dismiss civil and military employees. Yet, when it comes to the Minister of Defence, the President is forced to appoint him from among its officers (Article 195, 2012 and Article 201, 2014). Although a civil President may succeed President al-Sisi, a new addition in the Transitional Provisions section of the 2014 Constitution gives the Armed Forces even more power in deciding on the Minister of Defence. This is justified on the grounds that the country is going through a very difficult, unstable period with frequent bursts of violence and attempts to breach security. As such, the Committee of Fifty agreed that the President requires SCAF ap-
proval of his choice for Minister of Defence during the first two presidential terms (Article 234, 2014).279

The functions, rights, and duties of the Armed Forces are described in a very similar way between the two Constitutions. The first article of the section, Article 200 (2014) (equivalent to Article 194, 2012), stipulates that the Armed Forces belong to the Egyptian people. In the 2014 Constitution, the duties of the Armed Forces are defined as protecting the country, preserving national security, and maintaining the integrity of its territories. Furthermore, Article 200 (2014) prohibits any other individual or group besides the state from creating any military or quasi-military organizations.280 Yet, Article 202 (2014) [also Article 196, 2012] leaves it up to the law to regulate military mass mobilization, as well as conditions for recruitment, service, promotion, and retirement in the Armed Forces. Additionally, this article states that the sole competent entity to adjudicate on all administrative disputes related to decisions affecting the Armed Forces are the judicial committees for officers and personnel of the Armed Forces. The rules and procedures for challenging the decisions made by these committees are also regulated by law.

5.5.2 The National Defence Council

Both constitutions stated that the membership of the National Defense Council should include the following:

- the President (also the President of the National Defense Council)
- the Speaker of the House of Representatives
- the Prime Minister
- the Minister of Interior
- the Minister of Finance
- the Minister of Foreign Affairs
- the Minister of Defense

279 See discussion in Chapter 4.
280 This is in accordance with international law. Under normative international law, a sovereign state is the only entity authorized to use violent force and must grant citizens permission to carry arms, as the primary right of the state is survival (Hulsman, C. and R. A. Forster, ‘Consultation with Prof A. Salama’, Maadi, Cairo, July 6, 2015).
• the Chief of the General Intelligence Service
• the Chief of Staff of the Armed Forces
• the Commander of the Navy
• the Commander of the Air Forces
• the Commander of the Air Defense
• the Chief of Operations of the Armed Forces
• and the Head of Military Intelligence

The only difference is that, because the Shūrā Council no longer exists, the Council has an even number of officers and civilians; prior to the dissolution of the Shūrā Council there were seven civilians and six military men (assuming the Minister of Interior and Head of General Intelligence are civilians).

Both constitutions entitle the Council to discuss matters pertaining to the preservation of the country's security and integrity, as well as discuss the budget of the Armed Forces. According to the 2014 Constitution, however, when the time comes for the Council to discuss the military budget, the Head of Financial Department of the Armed Forces, the heads of the Planning and Budgeting Committee, and the National Security Committee at the House of Representatives shall join in. What is more, Article 203 (2014) defines the budget of the Armed Forces as being included in the state budget under one single line, thus giving the military more flexibility to freely transfer funds from department to department without supervision.

5.5.3 Military Courts

Military Courts follow the same laws as civil courts. However, they are 'special courts' since civil courts are not always qualified to prosecute military crimes. In the 2012 Constitution, Article 198 (2012) prohibited the trial of civilians by military courts unless the defendants were accused of "crimes that hurt the armed forces." Arguably this clause was still excessively vague,; the definition of such crimes, in addition to the other possible

There are no international conventions against the prosecution of civilians by military courts, so long as two criteria are upheld (1) military codes should be established via legislation (and not by the executive), and (2) such legislation should guarantee international criteria regarding fair trials. (Hulsman, C. and R. A. Forster, 'Consultation with Prof A. Salama', Maadi, Cairo, July 6, 2015).
responsibilities delegated to the military judiciary, were regulated by appropriate legislation.

Despite the condemnation of many Egyptians, the 2013 Constituent Assembly insisted on the inclusion of a clause permitting trial of civilians in military court. The Committee of Fifty also did not restrict the court’s jurisdiction simply to the trial of military officers (Article 204, 2014). Instead it attempted to be more specific when describing the cases in which civilians could be tried by this particular court. These include crimes that constitute a direct assault against “military facilities or camps of the Armed Forces or their equivalent.” Broadly, this clause is referring to military zones, border zones determined as military zones, the Armed Forces’ equipment, and military factories. Crimes committed against military officers and on duty personnel also give justification for civilians to face trial before a military court. The Personnel of General Intelligence, which does not only include military officers, are also subject to be tried by this court while, and by reason of, performing their duties. Admittedly, Prof. Ayman Salama, claims that the prescribed jurisdiction of military courts is one of the most ambiguous areas of Egyptian law and many Egyptian lawyers also do not have a complete grasp of the relevant technicalities.

5.5.4 National Security Council

The National Security Council (mentioned in Article 205, 2014) consists of the President (who also presides over it), the Speaker of the House of Representatives, the Prime Minister, the Ministers of Defense, Foreign Affairs, Justice, Finance, Health, Education and Communication, the Chief of the General Intelligence Service, and the Head of the Committee of Defense and National Security in House of Representatives. The 2012 Constitution required similar membership, except that it included the Speaker of the Shūrā Council and its Head of the Committee of Defense and National Security. Furthermore the Ministers of Education and Communication were excluded from membership (Article 193, 2012).


283 Including vehicles, weapons, ammunition, documents, military secrets and public funds.

Its functions, which have not been altered from the 2012 Constitution, include the responsibility of adopting strategies to ensure the security of the country in the face of various kinds of disasters and crises, taking the necessary steps to contain them. Furthermore, this council is charged with identifying possible internal and external threats to Egypt’s national security, and addressing them on the state and societal levels. Its other responsibilities will be further defined by appropriate legislation.

5.5.5 The Police

With respect to the police force, the Committee of Fifty made some amendments to the provisions in the Constitution of 2012. Article 199 of the 2012 Constitution determined the President of the Republic as the chief of the police force. Its equivalent, Article 206 (2014), makes no reference to the President, nor does it define another leader.

Additionally, Article 207 (2014) established a Supreme Police Council to be formed by the most senior officers of the police force as well as the Head of Legal Opinion Department at the State Council. Such a Council is entitled to assist the Minister of the Interior in the organization of the police force, and management of the affairs of its staff. Furthermore, the council shall be consulted on any law concerning the police, and its other competencies are to be defined by the law. The police are thus given significantly more independence and leverage in managing their own affairs in the 2014 Constitution.

5.5.6 Reflections on Military Clauses

Although Egypt’s Armed Forces have always maintained significant leverage over their own affairs, the 2014 Constitution granted them significantly more independence from government. Given Egypt’s record of military Presidents since 1952, the Military apparatus is closely tied to the Head of State. The 2014 Constitution imposes a “civil government” that intends to widen the gap between the state’s governing organs, on one hand, and the Armed Forces and religious institutions (including the Azhar and the churches) on the other. Yet, the context under which the 2014 Constitution was drafted motivated the members of the Constituent Assembly to add extra provisions they believed would give the Armed Forces the necessary independence needed in order to deal with pressing internal and external security threats.
Muna Dhū al-Fiqār recognizes that in more mature democracies, the Minister of Defense post is occupied by civilians, but “this is the nature of our Army and I do not think we are able to change that at this stage [...] maybe in the future, but, at this time you will find that the majority of the Egyptian people, even in the Committee of Fifty, will not want to change it.” The fact that the appointment of the Minister of Defense requires the approval of the SCAF, Muna Dhū al-Fiqār argues, reflects the general agreement that the Armed Forces needs to remain united as the country goes through another transitional phase. Yet nothing in the 2014 Constitution prohibits the President or the House of Representatives from firing the Minister of Defense. The replacement Minister will also need the SCAF’s approval during the designated eight-year transitional phase. For ‘Amr Mūsā, the insertion of this clause in the General and Transitional Provisions’ section proves the need for unorthodox security measures given the “circumstances, the necessities and the requirements of an exceptional era.”

Indeed, Muna Dhū al-Fiqār and ‘Amr Mūsā mentioned the ‘current circumstances’ as an important reason why the military was given so much leeway in this Constitution. They both acknowledge that the budget of the military is not fully open, but they argue that any more transparent procedures would put the country at serious risk. They emphasized that elected representatives will always be present in the discussions at the National Defense Council, and Muna Dhū al-Fiqār assured that there would also be a National Security Committee in the House of Representatives. This National Security Committee would discuss and approve the budget before it is presented to the rest of the House members.

The possibility for military courts to try civilians was less popular in the Committee of Fifty. Knowing that they would face vocal outrage from liberal- and left-leaning factions, the Committee tried to limit the conditions under which civilians would be facing such courts. Such conditions were only vaguely stipulated in the 2012 Constitution as “crimes that harm the armed forces.”

285 Hulsman and Serôdio 2014.
286 Ibid.
287 Serôdio 2014.
288 Ibid.
289 Hulsman and Serôdio 2014.
However, for Ahmad Abd Rabbuh, Article 204 (2014) not only fails to limit the provisions of Article 173 (2012), but also adds three additional points, thereby extending new powers to the military’s judicial branch.\textsuperscript{290} He argues that civilians who commit a crime against the military’s many non-military economic establishments may be referred to a military court. This is firmly refuted by Muna Dhū al-Fiqār who claims that the article clearly states that only crimes against military establishments used for military purposes of a non-economic nature could allow for referral to a military court.

Ahmad Abd Rabbuh further argues that Article 204 (2014) also allows military trials of General Intelligence personnel “while, and by reason of, performing their duties.” General Intelligence employs a great deal of non-military personnel. Ahmad Abd Rabbuh also notes that the clarification of a direct assault against the military actually represents an unprecedented expansion of the opportunities for civilians to be referred to military courts compared to Egypt’s prior constitutions.\textsuperscript{291} However, Muna Dhū al-Fiqār and other members of the Assembly firmly believe that Article 204 (2014) actually restricts the jurisdiction of military courts concerning the trial of civilians.\textsuperscript{292} She explains that in a context of instability and security threats, the current article was the best compromise that she and other liberals could strike, while maintaining hope that the practice will be reformed in the future.\textsuperscript{293} The article was accepted with 41 votes in favour, six votes against and one abstention.\textsuperscript{294}

\textsuperscript{290} Abd Rabou 2014.
\textsuperscript{291} Ibid.
\textsuperscript{292} Casper and Hulsman 2014.
\textsuperscript{293} Hulsman and Serôdio 2014.
\textsuperscript{294} Taha 2013.