In January 2014, a new permanent constitution came into force in Egypt. It was the second such document since January 2011, and the fourth considering the two temporary constitutions adopted by constitutional declaration in March 2011 and July 2013, without counting the other eight constitutional declarations that slightly or significantly amended previous texts (in February, September, and November 2011, June, August, November and December 2012, and July 2013).

The process that led to the 2014 Constitution was originally presented as an operation to simply amend the 2012 Constitution. A committee of ten jurists (the C-10) was appointed by the interim President to draft amendments to be discussed by a Committee of fifty figures representing wider sections of Egyptian society (the C-50). The C-10 drafted a number of suggested amendments, but the C-50 decided to reassess the entire text. The text as voted on by the C-50 in late 2013 was approved by referendum in January 2014.

### Length and Structure

The structure of the 2014 Constitution displays elements of continuity with previous texts, all the way back to the 1971 Constitution. This should come as no surprise, as the previous text was always used as a working document or a blueprint for discussion, and when committees were drafting a new text their work was organised in sub-committees along the sub-sections of the previous text.

The 2014 Constitution qualifies as a long constitution, carrying 247 articles. It is preceded by a preamble and is divided into six sections. The two larger sections are on fundamental rights (section three: 43 articles), and institutional design (section five: 121 articles). Both sections are quite wordy, but generally allow ordinary legislation to intervene in many of the more controversial provisions (often with the possibility of voiding the entire provision).

### Rigidity

The procedure to amend the 2014 Constitution is quite onerous. Arguments in favour of more flexible constitutions in a transitional phase seem to have been discarded by the drafters, and the result is a rather rigid 2014 text. Flexibility has been valued by some scholars for its ability in transitional contexts to allow the text to adjust to changing political conditions, without crumbling. This feature could have proven useful also in Egypt, where the political landscape is largely unknown mainly because of the taboo of political mobilisation that reigned until January 2011.

An amendment can be proposed either by the President or by a fifth of the MPs. Within thirty days, the Assembly can approve the proposal by an absolute majority. If the proposal passes, the amendments can start being discussed after sixty days. The amendments need to be approved by a super-majority of two thirds and later confirmed in a popular referendum. There is no minimum turnout requirement for the referendum to be valid (art. 226).

Provisions on the number of presidential terms in office cannot be amended, as is the case for provisions on the principles of freedom and equality (unless drafted in order to expand their guarantees) (art. 226).
State/Islam Relations

Art. 2 has been maintained in its 1980 formulation, carrying an establishment clause (Islam is the religion of the State) and a sharia provision (the principles of Islamic law are the chief source of legislation). In the 2012 Constitution, an explanatory note was added with the purpose of better defining the 'principles of Islamic law' (art. 219), but the provision was left out of the 2014 text. Instead, the preamble carries a reference to the Supreme Constitutional Court’s case law on art. 2 as the binding reference on how to construe it. Oddly enough, the brief preamble sentence is footnoted with an undefined set of SCC rulings to be found in the minutes of the C-50.

Art. 3 carries a mirror sharia provision for Egyptian non-Muslims. It reads that the principles of confessional laws of Christians and Jews are the chief source of legislation regulating their personal status, their religious affairs, and how to choose their religious authorities. The idea of a mirror sharia provision was introduced during the transition, and somehow opposed by secular Copts and all those in favour of non-confessional laws regulating personal status. Notably, the combined reading of the two provisions now weakens the confining construction of art. 2 offered by the SCC, since the latter provision does not include any of the limitations listed in art. 3. In fact, both art. 2 and art. 3 declare confessional laws to be the chief sources of legislation, but while the latter limits the operation of the provision to personal status, religious affairs and the choice of religious authorities, the former does not carry any such limitation. One could then argue that the principles of Islamic law need not only be the chief source of legislation within those narrow boundaries, but actually extend to the entire scope of state legislation. In the past, the reading offered by the SCC, however, was heading quite in the opposite direction, limiting the operation of art. 2 to personal status matters.

The controversial provision requiring an advisory opinion by the highest religious institution in Egypt (al-Azhar) on all sharia matters was removed from the 2012 text. The article now celebrates al-Azhar’s independence, affirms that the State is to provide it with the necessary means to pursue its goals, and that the law regulates how the head of al-Azhar (the Sheikh al-Azhar) is to be chosen within the Body of Senior Scholars (art. 7).

Fundamental Constituents of Society

The 2014 Constitution comes across as a constitution with strong neo-liberal inclinations. Some of its socialist language from the 1971 text has been maintained, but closer scrutiny reveals a firm departure from that spirit. Cooperative ownership, for instance, is mentioned as one of the three forms of ownership which deserve state protection (art. 33 and 37). However, in art. 1 the text declares that the underpinnings of Egypt’s republican, democratic system are citizenship (muwatanah) and the rule of law (siyadat al-qanun). The 2014 Constitution, therefore, signals the intention to follow the pre-2011 move towards neo-liberalism that characterised the 2007 amendments to the 1971 text, when the reference to the alliance of the working forces was substituted with citizenship.

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A clear example of the neo-liberal approach is also the preference for formal over substantial equality. In art. 11, the 2014 Constitution affirms the State’s duty to pursue gender equality. The provision delegates to ordinary legislation the regulation of guarantees of an appropriate representation of women in elective bodies, and affirms women’s right to assume public office, and higher administrative positions, and to serve in the judiciary, "with no discrimination against her" (art. 11(1)). The closing line rules out the possibility of engaging with affirmative action policies which could address structural gender inequalities, and signals the drafters’ preference for a formal notion of equality as sheer equality of opportunities.
A number of provisions enumerating rights are included in the sub-sections on the fundamental constituents of society. Drafters in the C-50 feared that these provisions could be simply emptied by non-compliance, thus a system of benchmarks was introduced. For example, the 2014 text sets a minimum 4% GDP expense for primary and secondary education (art. 19), and 2% for higher education (art. 21). The same applies to the right to healthcare, where government needs to invest a minimum 3% of Egypt's GDP every year (art. 18).

Fundamental Rights

The verbose section on fundamental rights falls into the old trap of leaving to ordinary legislation the regulation of rights, or just leaving the door open to it. This can be easily observed in the provisions on pre-trial detention (art. 54(4)), privacy of correspondence (art. 57), home searches (art. 58), limitations to freedom of movement (art. 62), religion (art. 64), assembly (art. 73) and association (art. 75 ff.), etc. These rights are thus not properly entrenched, as ordinary majorities in parliament can easily curtail them.

The assembly is free to determine what electoral system to adopt, and how to draw electoral districts, provided the outcome is a fair representation of residents and governorates - a somewhat ambiguous expression in itself. Drafters in the C-50 also wanted to discontinue the practice of repeated dissolutions of parliament by the SCC on grounds of unfair electoral systems, so they expressly inserted in the text a provision that states that the legislature is free to opt for a single-winner or multiple-winner method, or a combination of the two (art. 102(3)).

The assembly has legislative powers, but the President can return legislation to the house for reconsideration. The assembly can overrule the presidential decision by a two-thirds majority (art. 123(3)). The assembly can pass a no-confidence vote against any member of government or its head by a plurality of votes, and the motion can be put to a vote only after formal interrogation of the minister or Prime Minister. The government has the right to transform an individual no-confidence motion into a collective no-confidence motion by declaring its solidarity with the minister or Prime Minister against whom the motion was originally directed (art. 131).

The President has the right to dissolve the assembly, but the decision always needs to be confirmed by referendum before taking effect. The assembly is suspended until the referendum is held (art. 137).

The President

The President is directly elected and can only serve for two terms (art. 140). The stringent citizenship requirements first introduced in March 2011 have been maintained in the 2014 text; a candidate cannot have ever held any foreign citizenship, nor can her parents or spouse. The candidate also needs to enjoy civil and political rights, have fulfilled his military obligations (or having legally been exonerated from them), and be at least forty years old on the day of the opening of the registration of candidates. The legislature can add further requirements beyond what the constitutional text prescribes (art. 141).
but requires an initial vote of confidence regulated in quite rigid terms. The President is free to appoint as Prime Minister whomever she pleases, but that candidate needs to obtain an absolute majority of votes in parliament to take up the office. If this fails, the President is then constrained to appoint as Prime Minister the candidate put forward by the party or coalition with the largest number of seats in parliament. If this second candidate fails to obtain the same absolute majority of votes in parliament, the assembly is automatically dissolved (art. 146(1)). In case of a candidate put forward by the party or coalition with the largest number of seats in parliament, the President retains the appointment of the ministers of Defence, Interior, Foreign Affairs, and Justice (art. 146(4)). The rigidity of the procedure established in art. 146 seems to offer the President the possibility of coercing the assembly into accepting her candidate since the procedure includes a self-destruction mechanism that comparative studies show as particularly effective.

The President also retains the power to declare the state of emergency, but the decision will have to be ratified within seven days by an absolute majority in the assembly. The state of emergency can be declared for up to three months and renewed only once; in this case, the renewal requires a two-third majority in the assembly.

The President is declared to be the Commander in Chief of the Armed Forces, but can deploy troops on external fighting missions only after having obtained an advisory opinion of the National Council for Defence (an institution where the army is largely represented), and the approval of the assembly with a two-third majority (art. 152). If the assembly is not in session, the President needs to obtain an advisory opinion from the Supreme Council of the Armed Forces (an institution representing the army), and the approval of the Council of Ministers and the National Council for Defence.

The President can be impeached by parliament with a two-third majority for any breach of the constitution (!), high treason or any other crime (!), and will be judged by a special panel formed by members of the judiciary (art. 159).

Drafters in the Committee of fifty were heavily criticised for giving in on all fronts to the army’s requests, especially on military trials for civilians

The Judiciary

The judiciary emerges as one of the main winners, along with the army. Just like the army, its higher councils need to be consulted when drafting any legislation affecting them, and their budgets are included in the state budget as a single figure: there is no further parliamentary oversight over their budgetary items (art. 185). Public prosecution is presented as a fully judicial body, but the Constitution delegates ordinary legislation to regulate most of its affairs, including the appointment of the Chief Public Prosecutor (art. 189). Regulation of the Supreme Constitutional Court is left to ordinary legislation as well, and the Constitution even refrains from fixing the number of judges, thus allowing possible court-packing schemes in the future (art. 193(1)).

The Army

The Army obtained all it desired from the new Constitution: (1) the preservation of a Supreme Council of the Armed Forces (SCAF, art. 200); (2) the requirement of the Minister of Defence to be an army officer (art. 201); (3) the creation of a body, the National Council for Defence, with a majority of army members (a) to decide on all matters relating to national security and internal unity, (b) to approve the army’s budget, and (c) offer an advisory opinion on all legislation affecting the army (art. 203); (4) limited parliamentary oversight over the army’s internal budget (art. 203); and (5) the preservation of military jurisdiction over civilians (art. 204). Drafters in the C-50 were heavily criticised for giving in on all fronts to the army’s requests, especially on military trials for civilians. The provision is particularly instructive, because it offers an extensive list of cases in which military courts have jurisdiction over civilians, and beyond that it still allows ordinary legislation to add further areas of jurisdiction to the military courts (art. 204(3)).