

AMNESTY INTERNATIONAL PUBLIC STATEMENT

8 April 2019 MDE 12/ 0147/2019

EGYPT: PARLIAMENT SHOULD REJECT PROPOSED CONSTITUTIONAL AMENDMENTS

Amnesty International is calling on the Egyptian parliament to reject the proposed constitutional amendments that would undermine judicial independence and expand military trials for civilians. If adopted, the amendments would weaken the rule of law, further erode fair trial guarantees and enshrine impunity for members of the armed forces.

On 3 February 2019, 155 members of parliament submitted a request to amend 12 articles of the Egyptian constitution and to add nine new articles. The members come from different parties and are publicly supportive of President Abdelattah Al-Sisi. On 14 February, parliament voted to advance the proposed amendments with 485 members in favour and 16 against and referred the bill to the Constitutional and Legislative Affairs Committee to submit its comments within 60 days, before putting it to a final vote. If approved by parliament, the amendments will be put forward to a referendum within 30 days. They would come into force on the day of the result should they be accepted by the public.

These steps to amend the constitution are taking place during the [worst crackdown](#) on freedom of expression and a virtual absence of freedom of assembly given the security services' zero tolerance approach to any form of peaceful protest.

The proposed amendments include re-establishing an upper house and the post of vice president which was removed following the adoption of the 2012 constitution. The president would appoint one third of the upper house and would have the power to appoint one or more vice presidents and sack them at will.

The amendments also include some positive measures such as establishing a quota of 25% for women in the lower house and requiring the state to ensure "adequate representation" of youth, Christians, people with disabilities and Egyptians abroad. The article does not specify however in which bodies the state would ensure adequate representation and it is limited to Christians only, as opposed to all religious and ethnic minorities.

Despite these measures, Amnesty International calls upon the Egyptian parliament to reject the proposed amendments as in their totality they would undermine the rule of law with devastating consequences for human rights in the country. In particular, Amnesty International is concerned with article 204 on military trials for civilians, articles 185, 189 and 193 on judicial independence, as well as articles 200, 204 and 234 relating to the military's role. This statement provides an analysis of the organization's key concerns, which are outlined below.

ARTICLE 204 ON MILITARY TRIALS FOR CIVILIANS

The proposed amendment to Article 204 would expand the role of military courts in prosecuting civilians to include not only attacks against military installations, factories, equipment, zones, borders and personnel but also any building that is under the protection of the military. Such an amendment would give constitutional backing for Law 136/2014 on Protecting and Safeguarding Public and Vital Facilities,¹ which expanded the jurisdiction of the military justice system to include attacks against public universities among other public places.

Since 2011, the Egyptian authorities have prosecuted thousands of civilians in military courts for exercising their right to freedom of expression and assembly including through [protest and journalism](#). They have also sentenced hundreds of people to death, including [individuals](#) convicted on the basis of confessions extracted under torture and during their forcible disappearance.

Successive amendments to the Code of Military Justice have incrementally² empowered military courts to try civilians and shielded members of the armed forces from prosecutions by non-military courts. The 2012 constitution³ enshrined these

¹ President Abdelattah Al-Sisi passed the law in 2014. The law was in force for two years, until the president extended it for five more years in 2016.

² The Code of Military Justice has been amended several times since it was passed in 1966.

³ The 2012 constitution was adopted in December 2012, under former President Mohamed Morsi. It was suspended by the military in July 2013, following former President Morsi's ousting. For an analysis of the 2012 constitution, see: Amnesty International, *Egypt's new constitution limits fundamental freedoms and ignores the rights of women*, (Press release, 30 November, 2012): <https://www.amnesty.org/en/latest/news/2012/11/egypt-s-new-constitution-limits-fundamental-freedoms-and-ignores-rights-women/>

protections for members of the armed forces and military trials for civilians in the constitution for the first time. The 2014 constitution expanded the scope of crimes by civilians that fall under military jurisdiction.

In line with international law, Amnesty International opposes the trials of civilians by military courts on the basis that they are fundamentally unfair. In the case of Egypt, military trials breach a number of fair trial safeguards, including the right to a fair and public hearing before a competent, independent and impartial tribunal established by law; the right to have adequate time to prepare a defence; the right to be defended by a lawyer of one's choosing; and the right to appeal against conviction and sentence to a higher tribunal.

ARTICLES 185, 189 AND 193 ON JUDICIAL INDEPENDENCE

Proposed amendments to articles 185, 189 and 193 would enshrine an executive body headed by Egypt's president to oversee the judiciary and to allow the president to appoint the heads of key courts and the public prosecutor. Until 2017 Egypt's judicial councils had the power to appoint the heads of the different branches of the judiciary by submitting the names of selected candidates to the president who would issue a decree confirming the appointment as a formality. Effectively, the final decision still rested with judicial councils. Currently, the constitution specifies that the judicial councils also have an independent budget that is not subject to executive interference.

These proposed amendments would give constitutional backing to laws that have been heavily challenged by the judiciary in Egypt, including: Mubarak-era Law 192/2008,⁴ which established a body headed by the president to "oversee" judicial bodies; and [Law 13/2017](#), which granted the president powers to select the heads of judicial bodies, including the heads of the Court of Cassation, the State Council, the Administrative Prosecution Authority and the State Lawsuits Authority. In July 2017, President Al-Sisi used his new powers to appoint the heads of the State Council and the Court of Cassation, replacing judges who had ordered a halt to the implementation of the treaty handing over sovereignty of two islands to Saudi Arabia or those who had overturned death sentences that had relied solely on investigations by the NSA (see below). The law is currently being reviewed by the Supreme Constitutional Court.

Under the proposed amendments, the unnamed executive body, headed by the president, would be responsible for defining the rules for appointments and promotions for the judiciary. This body would also be consulted on any draft laws that would impact the judiciary. The proposed amendments also leave the door open for future legislation to define the composition and prerogatives of this executive body and would remove the judiciary's independent budget.

Crucially, by enshrining executive interference in managing judicial appointments, these amendments would undermine the independence of the highest courts in the country, including the Court of Cassation, the Supreme Administrative Court and the Supreme Constitutional Court.

The Supreme Constitutional Court and the Court of Cassation have both [played a role](#) in challenging the legality of some laws that restricted rights and freedoms in Egypt and ordered re-trials in a number of cases that involved the leadership of the Muslim Brotherhood as well as mass trials of dissidents. The Court of Cassation has at times [overturned](#) death penalty sentences on the grounds that courts of first instance failed to establish individual criminal responsibility and found their sole reliance on investigations conducted by the National Security Agency (NSA) to be insufficient evidence.

The Supreme Administrative Court, which is responsible, among other things, for reviewing actions and policies of the executive authority in cases relating to human rights violations, has made several independent decisions in defiance of the government. In January 2017, it overturned a government agreement that granted ownership of two islands in the Red Sea to Saudi Arabia. The Supreme Constitutional Court has struck down several articles that limited the right to assembly⁵ and the right to form associations.⁶

Since July 2013, the Egyptian authorities have taken a number of measures that have undermined the independence of the judiciary, in effect transforming courts into tools of repression against critics of the government. In 2014, the general assembly of the Cairo courts of appeal also established dedicated judicial chambers to try individuals involved in unauthorized protests or violence. These chambers have sentenced hundreds of individuals to death or life imprisonment through mass trials that failed to uphold the barest of fair trial standards. The authorities have also [relied](#) on special courts

⁴ Due to opposition from senior members of the judiciary to the body, none of the subsequent governments activated the body, until President Al-Sisi activated it in December 2018.

⁵ In December 2016, the Supreme Constitutional Court struck down article 10 of law 107/2013, which allowed the Minister of Interior to ban protests.

⁶ In February 2019, the Supreme Constitutional Court struck down article 42 of law 84/2002, which allowed the minister of social affairs to disband NGOs.

including the Emergency State Security Courts to prosecute people for "participating in unauthorized protests".

ARTICLE 190 RELATING TO JUDICIAL OVERSIGHT

The proposed amendment to Article 190 would undermine judicial oversight over draft legislation and government contracts by removing the existing requirement for the State Council⁷ to review them. The article would limit the role of the State Council in reviewing draft legislation to bills referred by the responsible legislative body. Any remaining guarantees for judicial oversight over government contracts would effectively be removed since Law 32/2014, currently being reviewed by the Supreme Constitutional Court, prevents any individual from challenging government contracts in front of courts, except for the parties to the contract and those directly impacted by the contract.

ARTICLE 140 RELATING TO THE PRESIDENTIAL TERM

The amendment to Article 140 proposes to increase the presidential term from four to six years. In addition, the amendment would add a transitional article that would allow President Al-Sisi to run for two more terms, which if passed would allow him to stay in power until 2034. Under Article 226 of the constitution, amending provisions related to the re-election of the president is prohibited unless such amendments provide more guarantees.

The four-year and two-term limits were set out in the 2012 constitution for the first time. They were one of the demands that followed the 2011 protests and removal of former President Hosni Mubarak who had remained in power for 30 years. President Abdelfattah Al-Sisi [stated](#) in 2017 that he was in favour of maintaining the limit of two four-year presidential terms.

ARTICLES 200, 204 AND 234 RELATING TO THE MILITARY'S ROLE

The proposed amendments to articles 200, 204 and 234 would expand the constitutional role of the military, by establishing it as a protector of "the constitution, democracy, the constituent component of the state, its civil nature, the people's gains and individual freedoms".

The amendments to Article 234 would enshrine the role of the Supreme Council of the Armed Forces in approving the Minister of Defence's appointment. This article was previously set to expire after two presidential terms from the adoption on the 2014 constitution.

The amendments do not address the absence of civilian oversight over human rights violations committed by members of the armed forces. Indeed, the proposed amendment to Article 204 states that only military courts have jurisdiction over members of the armed forces.

Amnesty International's concerns are compounded by a 2018 law that allows the president to shield individual military commanders from prosecution without the approval of the Supreme Military Council of the Armed Forces for any actions taken between 3 July 2013 and 10 January 2016, when the Constitution was suspended. Further, Law 21 of 2012 limits any investigation into corruption related to armed forces' businesses and industries to the military justice system. The proposed amendment to Article 204 would effectively prevent the prosecution of members of the military for any violation of human rights, including [extrajudicial executions of civilians](#) and the use of [cluster bombs](#) in Northern Sinai.

⁷ The State Council is a judicial body that adjudicates in administrative disputes, disciplinary cases and appeals, and disputes pertaining to its decisions.