

Amnesty International

Public Statement

Egypt constitution draft – Improved text amid ongoing violations

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Egypt's draft constitution approved by the Constituent Assembly mends some shortcomings of the 2012 Constitution, but still falls short of Egypt's international human rights obligations. The draft allows for the military trial of civilians, discriminates against foreign nationals, and leaves the door open for undue restrictions on freedom of expression and assembly.

In a welcome step, the draft constitution would give Egypt's international obligations, including human rights treaties to which it is a state party, the force of law. However, it fails to provide for the supremacy of international law over national legislation.

The constitution draft not only prohibits torture similarly to the 2012 Constitution, but also makes it a crime with no statute of limitations.

In another potentially welcome move, the constitution draft stipulates the adoption of a transitional justice law to establish truth and accountability.

If carried out in line with international law and standards, a transitional justice mechanism could help address the entrenched legacy of impunity left by decades of human rights violations and ensure their non-repetition. However, the fact that the draft would give the military a great deal of autonomy raises concerns about whether this institution will be held accountable for violations. It also casts doubt over whether the government will be able to institute desperately needed reforms to ensure that the military, police and security agencies respect human rights and are subject to independent oversight.

In this regard, it is particularly worrying that activists' demands to end military trials of civilians have been ignored. Despite the abysmal human rights record of the military and the unfair trials of thousands of Egyptians before military courts under the rule of the Supreme Council of the Armed Forces, the constitution draft continues to allow for the unfair trials of civilians by military courts. It also gives the military jurisdiction over the conduct of members of the General Intelligence.

The finalization of the draft constitution was marred by the dispersal of a peaceful protest called by the No to Military Trials group and the arrests and beating of activists on the doorsteps of the Constituent Assembly on 26 November.

This incident comes against the backdrop of the authorities' crackdown on dissent, including the enactment of legislation restricting freedom of assembly, the imprisonment of protesters and activists solely for peacefully expressing views critical of the authorities, and the continued use of excessive and unwarranted lethal force by security forces.

The draft constitution's promise to enshrine the right to freedom of assembly rings hollow when the government passed a law on 24 November essentially allowing the security forces to ban and forcibly disperse peaceful protests at their whim. Guaranteeing rights while adding that their enjoyment is regulated by the law risks undermining their essence given the Egyptian authorities continued reliance on repressive legislation as a tool to repress or punish dissent.

Freedom of expression is also not fully protected by the constitution draft which allows for the continued criminalization and imprisonment for libel and excludes protection for "crimes

linked to incitement of violence, or discrimination between citizens” – provisions that are vague and open to abuse and manipulation by the authorities.

While setting out the process for declaring a state of emergency in Article 154, the draft constitution fails to specify which rights are non-derogable during a state of emergency. During Mubarak’s 30-year rule, the continuous state of emergency facilitated the commission of human rights violations with impunity.

Freedom of religion is limited to Islam, Christianity and Judaism, potentially excluding the right to worship to other religious minorities such as Baha’is.

The constitution draft largely ignores the rights of foreign nationals and several enshrined rights including the right to freedom of association (Article 75) and media freedoms (Article 70) are limited to Egyptian nationals, in breach of the cornerstone principle of non-discrimination.

Demands for dignity and social justice, which were at the heart of the “25 January Revolution”, are recognized in the draft constitution, and the rights to education and to work are guaranteed. However, while the constitution draft enshrines the right to adequate housing, it fails to provide protection against forced evictions.

In an improvement over the 2012 Constitution, the current draft enshrines equality between women and men, obliges the state to protect women from violence, and guarantees women’s right to hold senior positions in government and be part of the judiciary. The draft, however, continues to refer to women in relation to their family duties.

The draft constitution also makes some headway in protecting children’s rights, defining children – in accordance with international law – as any persons under the age of 18 and banning hazardous child labour.

A better constitutional text, and rights enshrined on paper, is a much needed first step. Unfortunately there is a glaring inconsistency between the aspirations in the draft, and the reality of ongoing human rights violations in Egypt. If the authorities are serious in their commitment to human rights, they need to stop arresting opposition activists, hold security forces accountable for killing, injuring and torturing protesters, and take real steps to combat sexual harassment of and assaults on women and girls.

The draft constitution, approved by the Constituent Assembly in a vote 1 December, was presented to interim President Adly Mansour on 2 December. It will be put up to a national referendum once approved by the President.

ADDITIONAL DETAILS

Children’s Rights

Amnesty International welcomes the draft constitution’s definition of a child as any person under 18 years of age - an improvement over the 2012 Constitution. In another welcome step, Article 80 prohibits child labour until the age of completion of basic education and any hazardous work for children. Article 80 also introduces special safeguards for children as defendants and witnesses, and obliges the state to ensure children’s protection against all forms of violence including sexual violence. But it fails to set a minimum age for marriage and does not establish an age for criminal responsibility.

Freedom of assembly and right to strike

Freedom of peaceful assembly is recognized in Article 73, on condition of “notification as regulated by the law”. In practice, Law 107 of 2013 adopted on 24 November 2013 severely limits the right to freedom of assembly, giving the Ministry of Interior wide powers to ban,

forcibly disperse peaceful protests and use firearms when not strictly necessary to protect lives or prevent serious injury.

The draft constitution recognizes the right to peacefully strike. However, subjecting its exercise to the law can severely restrict the right to strike particularly given that one of the grounds for denying authorization for protests is “hampering production” (Article 15 of Law 107 of 2013).

The inclusion of claw-back clauses in articles setting out the rights to peaceful assembly and the right to strike leaves the door open to undue and arbitrary restrictions on the rights guaranteed.

Freedom of Association

Article 75 guarantees the right of Egyptians to form associations simply through notification, and prohibits administrative interference in their affairs.

In practice, under the current law, the authorities have routinely blocked NGOs from registering on the vague grounds of “national security”, prevented them from obtaining foreign funding, and judicially harassed their staff. Proposals to enact new legislation to replace the current law have also fallen short of international law and standards, and would continue to give the authorities wide powers over the registration, activities and funding of NGOs.

Freedom of expression

Article 65 guarantees freedom of thought and expression (whether verbal, written, or audio-visual). While Articles 67 and 71 prohibit prison terms for public expression and publication, they exclude those “crimes linked to incitement of violence, or discrimination between citizens” – provisions that are vague and open to abuse and manipulation by the authorities. Further, insults on honour are excluded from protection, allowing for the continued criminalization of and prison sentences for libel and defamation.

Further, while the draft constitution states that the publication of newspapers is guaranteed and is simply subjected to notification, it leaves the establishment of other media outlets including television stations and internet sites to the regulation of the law– potentially paving the way for arbitrary denial of licenses and other restrictions on such media (Article 70).

Article 223 explicitly states that insulting the Egyptian flag is a crime punishable by the law. However, prosecuting someone for insulting the flag (or other national symbols) would violate the right to freedom of expression.

Freedom of religion

In an improvement over the 2012 Constitution, freedom of conscience is absolute. However, the right to worship continues to be limited to “heavenly religions” and is left to the regulation of the law (Article 64). In practice, this means that the right to worship is limited to adherents of Islam, Judaism and Christianity, and therefore leaves other religions and religious groups such as Baha’is without protection. Article 3 ties personal status laws to religious law; and, as regards religious minorities, provides only for Christians and Jews the right to regulate their religious affairs and spiritual leadership.

Gender

In an improvement over the 2012 Constitution, equality between women and men is explicitly guaranteed in all civil, political, social, economic, and cultural rights in accordance with the Constitution (Article 11). The article also refers to women’s rights to hold public positions and senior administrative state posts, and to be appointed to judicial bodies. The state is also obliged to protect women from all forms of violence.

The article stipulates that the government must take the necessary measures to ensure “adequate” representation of women in parliaments, but fails to indicate how that concept should be construed. (Similar provisions on the representation of Coptic Christians, youth and people with disabilities in legislative bodies are also stipulated in Article 244). Some women’s rights activists have called for a specific quota to ensure women’s representation in legislative bodies, after witnessing a significant drop following the abolition of the quota system in 2011 elections.

Article 11 refers to the State’s obligation to enable women to balance family duties and work obligations. No similar reference is made in relation to men. The Convention on the Elimination of all Forms of Discrimination against Women, to which Egypt is a state party, requires the recognition of the common responsibility of men and women in the upbringing and development of children.

Article 6 explicitly grants nationality to children of Egyptian mothers, stipulating that the law defines conditions to attain citizenship. In practice, despite amendments to the Nationality Law in 2004 and subsequent ministerial decrees, the authorities continue to deny citizenship to children of Egyptian mothers and Palestinian fathers.

Housing Rights

Amnesty International is concerned that Article 78 does not explicitly prohibit forced evictions which are prohibited under international law, while recognizing the right to adequate and safe housing and obliging the State to put in place a plan to address the “problem of informal settlements”.

An estimated 12.2 million people live in 870 informal settlements across Egypt. Many live in conditions unsuitable for human habitation. Amnesty International has also continued to document incidents of forced evictions in Egypt’s informal settlements.

International law

The Constitution made a reference to international law obligations, indicating that treaties ratified by Egypt have the “force of national laws upon publication in accordance to determined conditions” (Article 93). While a welcome inclusion absent from the 2012 Constitution, Amnesty International is concerned that “determined conditions” are likely to refer to reservations and declarations made by Egypt on certain human rights treaties it ratified, which in effect can contradict their object and purpose. Further, the draft constitution does not stipulate the supremacy of international law over Egyptian legislation.

Islamic Shari’a

Similarly to the 2012 Constitution, Article 2 stipulates that the principles of Islamic Shari’a are the main source of legislation. Nonetheless, the current draft removed provisions from 2012 Constitution which defined the principles of Shari’a law as being the “fundamental rules of jurisprudence”.

Limitations Clause

The draft constitution prohibits the adoption of legislation that would restrict rights in ways that infringe their essence (Article 92).

While a welcome addition, there remains a large gap between the spirit of this provision and existent Egyptian legislation as well as ongoing plans to pass further laws restricting freedom of association and expression.

Military Autonomy

In a change from the 2012 Constitution, the Supreme Council of the Armed Forces must approve the appointment of the Defence Minister for two presidential terms (Article 234).

The budget of the armed forces is to be discussed by the National Defence Council, a body composed of senior officials including the President, Prime Minister, the Ministers of Interior, Defence and Foreign Affairs and the head of General Intelligence (Article 203).

Jurisdiction over crimes linked to the armed forces continues to be in the purview of military courts. In practice, this translates into the absence of civilian oversight over human rights violations committed by members of the armed forces (Article 204).

Military Trials of Civilians

While Article 97 prohibits exceptional courts, Amnesty International is extremely concerned that the draft constitution allows for the unfair trial of civilians before military courts (Article 204). Specifically, the draft constitution grants military courts jurisdiction over attacks on military personnel and military installations, camps, zones and borders. It also leaves the door open for the “law” to determine other possible crimes falling under the jurisdiction of military courts.

Under the 17-month rule of the army from February 2011-June 2012, over 12,000 civilians were tried unfairly by military courts. Military trials of civilians including journalists have continued during the presidency of Mohamed Morsi as well as following his ouster, albeit on a smaller scale.

Amnesty International opposes the trials of civilians by military courts, which are fundamentally unfair and 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.

Rights of foreign nationals

Article 91 prohibits the forced return of “political refugees” defined as any foreign national persecuted because of his/her “defence of nations’ interests, or human rights or peace or justice”. Amnesty International is concerned that the definition in the draft constitution does not meet the definition in the UN Convention relating to the Status of Refugees, to which Egypt is a state party. Further, several rights guaranteed in the draft constitution including the right to freedom of association (Article 75) and media freedoms (Article 70) are limited to Egyptian nationals, contrary to Egypt’s obligations under the International Covenant on Civil and Political Rights. Furthermore, Article 53 states that citizens “are equal in public rights, freedoms and duties and they shall not be discriminated against on the basis of religion, belief, sex, origin, ethnicity, colour, language, disability, social standing, political or geographic affiliation”. This article only protects Egyptian citizens, and not others such as refugees, asylum-seekers and migrants in Egypt’s territory.

Transitional Justice

Article 241 stipulates that, once elected, parliament must adopt a transitional justice law aiming at establishing the truth, accountability, the compensation of victims and the creation of a framework for national reconciliation, in accordance to international standards.

Previous attempts to address violations committed during the “25 January Revolution” and under the rule of the Supreme Council of the Armed Forces have been inadequate and failed to deliver truth and justice. For instance, the report of the fact-finding committee established by deposed President Mohamed Morsi to investigate violations committed between January 2011 and June 2012 was never made public by the authorities.

Torture

Article 52 prohibits all “types and forms” of torture, making it a crime with no statute of limitations. Further safeguards against torture are spelt out in the draft constitution, including the prohibition of detention in unrecognized places of detention (Article 55), the right to be brought in front of a prosecutor within 24 hours of arrest with a presence of a lawyer (Article 54), the right to challenge the legality of one’s detention in front of a judicial body (Article 54), the right to communicate with lawyers and relatives immediately upon arrest (Article 54), and the judicial oversight of prisons (Article 56).

If the government goes ahead with plans to enact anti-terrorism legislation without fundamentally amending current draft proposals, safeguards against arbitrary arrest and torture enshrined in the constitution draft would be severely undermined.

While Article 60 guarantees bodily integrity and prohibits medical and scientific experiments and non-consensual operations, it does not explicitly outlaw forcible tests. Amnesty International documented cases where, in the context of detention, women were forced to undergo forced virginity tests and men were forced to undergo forced anal examinations, in breach of the prohibition of torture and other ill-treatment.