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Egypt: constitutional amendments to extend the President's term and powers over the judiciary must be rejected

The ICJ today expressed its grave concern over amendments to Egypt's 2014 Constitution proposed by the House of Representatives yesterday, which could increase President el-Sisi's control over the judiciary, extend his rule for 15 more years, expand the jurisdiction of military courts' to prosecute civilians and broaden the military's powers.

The amendments were proposed by one-fifth of the House of Representatives on 4 February, and reported to Parliament by its General Committee yesterday.

"The proposed amendments are a flagrant assault on the independence of the judiciary, and would expand the powers of presidency and further facilitate el-Sisi's subordination of judicial and prosecutorial authorities," said Said Benarbia, ICJ's MENA Programme Director.

The amendments would grant the President authority to choose the Supreme Constitutional Court's (SCC) President and its new members, chairs of all other judicial authorities, and the Public Prosecutor.

The President would also have authority to select the Chair and members of the Commissioners Authority, a judicial board that provides advisory opinions to judges on legal issues in cases pending before the SCC.

The General Committee's report states the amendments are to "unify the mechanism of appointment" of these institutions.

The amendments would also establish a "High Council for Joint Judicial Affairs" chaired by the President to manage all common matters relating to the judiciary.

The amendment to Article 140 of the Constitution would extend presidential terms from four to six years.

Another "needed transitional article" would reportedly also permit President el-Sisi to run for re-election for another two terms, which, combined, could permit him to stay in office until 2034.

Article 140 of the Constitution currently imposes a two-term limit, and Article 226 prohibits amendments to "texts pertaining to the re-election of the president of the Republic...unless the amendment brings more guarantees."

"This is an attempt to undermine constitutional safeguards aimed at protecting the right of the Egyptian people to freely choose their government and to take part in the conduct of public affairs," said Benarbia.

"In accepting these amendments, the Parliament would abdicate its responsibility to uphold the Constitution and the rule of law," he added.

Further amendments include the “redrafting and deepening the role of the Armed Forces” by expanding its mandate to include broad terms such as “safeguarding the constitution and democracy” and “preserving the basic elements of the state and its civilian character.”

The jurisdiction of military tribunals over civilians for “direct assault[s]” against military facilities, objects and personnel would also be expanded by the removing the requirement that the assaults be “direct.”

The amendment would make permanent a temporary constitutional provision requiring the Supreme Council of the Armed Forces—a military body—to approve the appointment of the Minister of Defense.

“The amendments effectively place the military above the law and the Constitution,” said Said Benarbia.

“They pave the way for the further entrenchment of the military in civilian affairs, which has already led to significant violations of civilian rights to participate in political life and express opinions critical of the regime,” he added.

Under international law, the jurisdiction of military courts must be limited to holding military personnel accountable for alleged violations of military discipline. No civilian should be prosecuted before military courts.

The amendments, which are still subject to parliamentary discussion and drafting by parliamentary committee, must eventually be approved in a two-thirds vote, and then by a majority in a referendum.

The ICJ [expressed its concerns](#) about the process for adoption of the 2014 Constitution, and its capacity to serve as a basis for the establishment of the rule of law in Egypt.

The ICJ made recommendations aimed at facilitating public participation in the legislative process in accordance with international standards and at ensuring constitutional provisions were consistent with international human rights law.

These concerns remain valid today.

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Background:

The amendments follow [reports](#) in recent months about meetings between Egypt’s presidency, security and intelligence agencies, aiming to extend el-Sisi’s presidency beyond 2022.

According to the proposed amendments, the President of the Republic would appoint the SCC President from among its five most senior members. The Chair and members of the Commissioners Authority would be appointed by the President of the Republic upon receiving nominations from the President of the SCC . Currently, under Article 193 of the Constitution, the SCC President is selected by the SCC General Assembly from among the three most senior vice-presidents, while the Chair and members of the Commissioners Authority are chosen by the SCC General Assembly.

The appointment of the chairs of the judiciary by the President broadens and effectively gives constitutional status to Law 13 of the year 2017, which currently only applies to Egypt's State Council, its Court of Cassation, the State Litigation Authority and its Administrative Prosecution. Under the constitutional amendment, the President would appoint the chair from five of the seven most senior judges identified by the respective general assemblies. Prior to Law 13 of the year 2017, the most senior deputy became chair of the judicial authority.

Currently, the Public Prosecutor is chosen by the High Judicial Council.

Under international standards, judicial councils must not be placed under the authority or effective of control of the political branches of government.

Other concerning proposed amendments include the abolishment the State Council's (Administrative Court) competence to review draft laws and state contracts and reintroducing a Ministry of Information, which was abolished in 2012 and was historically used to control the media.