

Viewpoints
No. 48

A Dream Constitution

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One year ago, Egypt was marred by a democratically-elected, autocratic, theocratic president and a deeply flawed constitution. Looking back at the past six months, the fact that Egypt was given a second lease on life and a chance to rewrite the constitution seems like a fairy tale. Is our new constitution a dream constitution? More importantly, could it be a dream that will not come true?

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One year ago, Egypt was marred by a democratically-elected, autocratic, theocratic president and a deeply flawed constitution. Looking back at the past six months, the fact that Egypt was given a second lease on life and a chance to rewrite the constitution seems to me like a fairy tale. Political activist and movie director Khaled Youssef, a member of the committee of 50 that wrote Egypt's 2013 draft constitution, proudly described the draft as a "dream constitution," illustrating the committee's achievement despite sharp differences among its members.

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Critics have complained that the process of rewriting the constitution was run behind closed doors. Others, including myself, saw it professionally run to encourage consensus over thorny issues. Amr Moussa, chair of the constitutional committee and a seasoned diplomat, managed to provide an environment that insulated it from the fireworks sparking across Egypt's silver screens, social media, and streets. Broader consensus became possible on contentious issues through quiet diplomacy, listening to various stakeholders, and, in some cases, one-on-one meetings. Core issues were omitted altogether when such consensus proved difficult to reach, as in the case of the electoral system that was deferred to legislation. Though women's representation on the committee was scant (sharing a 10 percent representation with youth), the contribution of some female members has been instrumental. The role played by the committee of 10 experts paved the road toward the completion of the draft constitution as it removed many hurdles, not to mention the infamous article 219 on the definition of *shari'a*, before turning the draft over to the bigger committee of 50.

Should women celebrate the 2013 constitution, or will it remain a dream that never came true? To this end, I will compare the texts of three Egyptian constitutions from 1971, 2012, and the 2013 draft constitution to see whether women are awarded their rights.

The Losses

Even though the preamble of the 2012 constitution seemed more gender sensitive, the operative document did not guarantee rights for women as a specific group. Compared to the 1971 constitution, the most significant loss is the quota of 64 seats in the lower house, which was deleted without a popular vote in March 2011. The 2013 document, predominantly drafted by self-proclaimed liberals, did not give women back their quota. The liberals objected to a "fair or just" representation, and they also could not go beyond an "appropriate" level of representation of women in elected councils. Not that there is ground for comparison between women who represent half the population and farmers and laborers, but women's only consolation is that the quota for farmers and laborers, introduced by Gamal Abdel Nasser, was scrapped as well. At the local level, the latter group was paradoxically given 50 percent, which is twice the quota given to women. There is no guarantee that such a provision could play out in women's favor at the polls.

The Gains

The 2013 draft constitution promises a step forward in many respects.

Article 11, allocated for women in the 1971 constitution, is restored and improved as follows.

- It commits the state to ensure equality between men and women in civil, political, economic, social, and cultural rights. Furthermore, the reference to equality to men precedes that to balancing family obligations with work requirements.
- In a leap forward, the committee removed the reference to provisions of *shari'a* as a caveat on such equality and replaces it with "the provisions of the constitution."
- A new provision was added to ensure women's right to hold public office, high-level management positions, and judiciary positions without discrimination.
- More significantly, it commits the state "to protect women against all forms of violence."

Other articles have been either amended or introduced to strengthen the protection of human rights. Such changes will contribute to improving the status of women.

Article 53 on equality is greatly improved as initially amended by the committee of 10 experts, which opened the prohibition of grounds of potential discrimination, adding "or any other ground." The committee of 50 further strengthened the article by criminalizing discrimination and the incitation of hate. This article further commits the state to take necessary measures to eliminate all forms of discrimination, leaving the law to regulate the establishment of an independent commission for that purpose. If such a commission materializes, it will consolidate the infrastructure of human rights protection in Egypt.

In an excellent move, the draft constitution commits the state to the international human rights conventions and agreements ratified by Egypt. Article 93 bestows the same force of those conventions to domestic legislation. This article alone should raise the ceiling of human rights enforcement to the international level, but it ends with the phrase "according to adopted rules." According to Egyptian jurisprudence, international conventions are justiciable automatically upon ratification. However, the problem with the implementation of these conventions lies in their rare usage by Egyptian judges and lack of public awareness of such conventions.

The right of women to pass their nationality to their children is clearly spelled out in Article 6, but again it will be "regulated by the law." State commitment to ensure the rights of the elderly is also recognized and should greatly benefit women.

Article 92 emerged stronger after the deletion of a serious limitation introduced by Article 81 of the 2012 constitution. Article 81 holds rights and freedoms hostage of "state foundations," which was especially limiting because these foundations were vague and full of rhetoric that could potentially threaten human rights.

Other articles amended to delete elements of a theocracy and strengthen the rule of law will greatly enhance the status of women. Islamists are known to have an issue with women's rights. Under the 2013 draft, clerics have no legislative role. The moderate Al Azhar is also stripped of such a role in Article 7. The infamous Article 219 that elevated clerics over elected legislators is deleted, as well as references to the role of society in upholding morals, which had raised concerns for legalizing a potentially self-appointed religious militia.

The 2013 draft criminalizes torture in Article 52 and human trafficking in Article 80. Non-discrimination is stipulated among the aims of education.

The role of national councils such as those for human rights, women, childhood, and motherhood is recognized by the constitution for the first time in Egyptian history in Article 214. Though their mandate is again deferred to legislation, the constitutional draft sets criteria that promise a stronger role for these national councils. Such a move should strengthen the national human rights infrastructure.

One must be mindful that for such gains to materialize, key measures need to fall into place. Most of the economic and social rights introduced in the constitution will benefit women, but they will cost money. The state must allocate adequate resources toward its progressive realization. For this to happen, the current economic stagnation must come to an end, or else the constitution will be a merely aspirational document.

Certain civil and cultural rights will not see the light of day unless Egyptians make an effort to dispel the reactionary culture that has been creeping into their society for the past four or five decades. This is especially crucial in order for women to attain equal rights. The state must wage a national educational campaign about the societal gains of ensuring human rights for every citizen without discrimination.

Provisions leading to a religious state have been modified, setting the stage for a state based on the rule of law. However, as stated in Article 2, *shari'a* remains the main source of legislation, and its interpretation is now given to the Supreme Constitutional Court. Yasser Burhamy, the founder of the Salafist Call movement, recently declared that articles on state identity, including those on *shari'a*, are much stronger and better in the 2013 draft than in the Islamist 2012 text.

Should these statements raise the alarm at least for women? Should women celebrate the new liberal constitution? It is too early to tell. Many rights are still subject to regulation by laws. An accurate evaluation of the constitution will have to wait until after the adoption of such laws. Will the so-called liberals prove to be more supportive of women's rights than their Islamist predecessors?

Those on the other side of the spectrum may see little difference between the Islamist constitution of 2012 and that of the liberals awaiting the referendum. One must interpret the constitutional document in light of political realities. The Egyptian public mood, which is currently anti-Islamist, has helped draft a more rights-based constitution. But will this mood last long enough and be strong enough to push for enacting more progressive laws that will make the constitution operational? Will Egyptian women find their voice and push to consolidate their rights? Will Egyptian women push to have rights that extend beyond the irreducible minimum that is commensurate with human rights conventions? Will Egyptian women be left with just a "dream constitution"? Or will they make it their new reality? If the events of the last six months have taught Egyptians anything, it is that where there's a will there's a way. Egyptian women will only have themselves to blame if the constitution does not go beyond a dream.



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