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Women and Equal Citizenship: Analysis of the New Constitution of Egypt

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Executive Summary

This study attempts to reassess the final draft of the Egyptian constitution with regards to the status of gender from an equal citizenship perspective. The study bases its assessment on a framework of criteria drawn from several sources. The first part of the study looks at:

- 1- Criteria drawn from three past Egyptian constitutions (1923, 1954, and 1971) and how women fared in formulating the constitutions and in the articles regarding their status. The 1971 Constitution was the best of the three.
- 2- Criteria drawn from International agreements and conventions ratified by Egypt, most significantly the Universal Declaration of Human Rights and the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW) which require establishing the principle of full equality. To assert its international commitments, the government thus must refer to these conventions when drafting the constitution in a way that guarantees gender equality and guards subsequent legislation against derailing from these principles.
- 3- Criteria drawn from experiences such as Brazil, South Africa, and Turkey that have ideal gender-sensitive constitutions and that have undergone a process of democratic transition similar to what Egypt is going through.
- 4- Proposals submitted to the Constituent Assembly, especially one titled “Equality in Rights and Freedoms” and submitted by The Egyptian Feminist Union and the Coalition of Egyptian Feminist Organizations. This proposal detailed rights and freedoms of women that should have been stipulated in the new constitution.

The second part of the study analyzes the work of the Constituent Assembly at three levels: Participation, Formulation, and Rights. This part also examines the circumstances in which the Constituent Assembly was formed and in which the final draft was ratified, as well as examines the text of the final draft constitution (that was put to a referendum on December 15, 2012).

The study shows that the representation and participation of women in the Constituent Assembly was poor (from 8% originally to 6% after the withdrawal of some members) and that the majority of the women at the Assembly belonged to the same political affiliation.

The study also shows that the formulation of the Egyptian Constitution does not satisfy the minimum standards of a gender-sensitive formulation. With the exception of the Preamble, and general assertion of equality and non-discrimination among citizens, the Constitution does not

contain any specific reference to discrimination against women and does not use International Conventions as a reference.

Although the final Constitution draft does not undermine social, political, and cultural rights on the basis of gender, it does not attempt to affirm and enforce full equality and does not contain positive discrimination articles for women.

The new Egyptian constitution, despite being written after January 25 revolution and 40 years from the emergence of modern constitutions, remains traditional in its form and content. From the perspective of equal citizenship, the Constitution does not reach a satisfactory level in any of the dimensions examined and fails to reflect the spirit of the revolution in which women and men participated on equal footing.

I. Introduction¹

Egyptian women participated and played a central role in the January 25th revolution from the beginning and continue to do so today. Many women became personally involved in the uprising because they saw an opportunity to expand their participation and contributions to public life and advance the principles of freedom, dignity, and social justice. However, instead of enhancing their status since the fall of Mubarak, women have witnessed attacks to their rights from more than one side.

It is therefore a priority to defend women's rights in Egypt; combat discrimination; empower them with access to all social, economic, cultural, political, civil rights, including work, social security, and political life; and develop family laws and protect them from all forms of violence.

Defending women is defending the family and also realizing the best interest for the child; it ensures progress of a just society that provides equality to all. The struggle of women to defend their rights is an essential part of the struggle of all the revolution forces to achieve the demands of freedom, dignity, and social justice.² Women's participation in writing a new constitution for Egypt based on the principle of equal citizenship would guarantee the equal rights and duties of women and men.

Since the beginning of the formulation of the Constituent Assembly and until this process was completed, numerous initiatives and organizations submitted proposals regarding:

- the participation of women in drafting the constitution,
- taking gender into account in drafting the constitution, and
- the rights of women that should be stipulated in the constitution.

Through content analysis and evaluation, this study attempts to reassess the constitution with regards to women's status through the perspective of equal citizenship. This will involve assessing women-related articles in the final draft of the constitution, based on criteria developed from previous Egyptian experiences, international treaties and agreements ratified by Egypt, relevant international experiences, and initiatives presented to the Assembly.

The study is divided into two main parts. The first part is related to developing a number of criteria through which the relevant initiatives and drafts of the constitution could be studied and evaluated. The second evaluates the content of the final draft of the constitution issued by the Constituent Assembly regarding the subject of the study and includes an assessment of the formulation of the Assembly based on the criteria developed. The conclusion presents a clear and concrete set of recommendations.

¹ This study was made possible with the support of UN Women.

² Dr. Fatema Khafagy and Safa Murad, "The Woman and the Constitution," Arab Forum for Alternatives, April 2012, p.3.

II. Part One: Gender and Criteria for Assessment of the Constitution

The previous regime used the principle of divide and rule in a number of ways in order to control the Egyptian population. It set the different religious, ethnic, and geographical communities against each other, going as far as accusing Egyptians of treason, whether based on their religion (claiming for example that Copts had a foreign agenda due to the large community living in the diaspora) or ethnicity or region (Sinai Bedouins and Nubians). Discrimination was rife in government appointments, as well as at the level of health and education services within state institutions.³ It exploited the notion “citizenship” in one of the annual conferences of its ruling party.

However, it is the inequality between men and women that is perhaps the most significant problem, including inequality of wages in the private sector and avoiding promotions of women to higher positions regardless of efficiency. These are problems and challenges related to social upbringing and to gender-based discrimination, in effect, within different social institutions as well as the continuation of authoritative patriarchal relations in many social strata, especially the least privileged in the countryside and slums, where deficient social services suppress women even further.

When it comes to the political institutions, despite the low percentage of participation of women in the various parliamentary and local councils, members of these councils (even though few in number) are considered effective and some of them assumed leading positions and were at times more distinguished than men. However, at the level of political party organization, it is observed through studies and follow ups that women are reluctant to take part in general and in union work in particular.

All statistical indicators also point to weak participation of women in non-governmental organizations. In regards to economic participation of women in Egypt, despite the fact that women achieved many gains, there are still some challenges, including on government policies and government spending as well as other issues related to economic reform and privatization and its reflection on women’s economic participation. In regard to the educational context of Egyptian woman, despite the observed progress in this field, there remain many problems and challenges that affect the system. Among the most significant problems facing women's educational participation are the existences of gender gaps in literacy, comprehension, and continuation of education. This is in addition to the phenomenon of dropping out and a lack of coordination between the result of the education process, labor market requirements and fostering female participation, especially in poor rural areas. Moreover, teaching methods, educational books, and curricula are still male-biased, enforcing the traditional perceptions of

³ Mohamed al-Agati, “Ant-Discrimination Law: The Path to Citizenship,” Arab Forum for Alternatives, June 2011, p. 3.

females. This is in addition to deficient education in regards to addressing women's issues and their legal and legislative situations.

As for the Egyptian media's portrayal of Egyptian women, the media plays an active role in spreading and promoting a perceived image of women. According to studies addressing this issue, the media's portrayal often de-emphasizes women as political participants, preferring instead to focus on issues purportedly associated with women such as poverty, illiteracy, and unemployment. These portrayals can have a more detrimental impact on women in light of prevalent social conditions. This coverage also reveals the high rate of female bread-winners in some rural, low-skill, and slum communities.⁴

This chapter attempts to develop some criteria through which constitution initiatives and drafts could be studied and evaluated. This will be done through several levels:

- 1- Minimum criteria: derived from a citizenship-based conception of gender seen through a historical lens. This is done through the three most significant Egyptian constitutions: 1923, 1954, and 1971.
- 2- Binding criteria: through international treaties and agreements, as indisputable criteria with which there shall be no disagreement: most significant are the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and the Convention Eliminating All Forms of Discrimination Against Women (CEDAW).
- 3- Ideal criteria: through the most progressive international experiences, most important of which are Brazil, South Africa, and Turkey (three states that achieved democratic progress in the last two decades). Their democracies were launched from similar conditions to those of the Egyptian case. This is in addition to the ability of the Constituent Assembly to respond to the demands of society, represented in initiatives presented to it, as the criteria hoped to be realized.

1. The concept of gender from a citizenship perspective

Citizenship is a rights-based concept that assumes rights and duties for the citizen in the general political frame to which she or he belongs. The social fabric in all developing states was, and still is to an extent, a traditional one characterized by factional clan, tribe, religion, locale, language, or ethnicity. This was then reflected in a weakness of a sense of national belonging and loyalty, fragility of common national institutions, and discrimination between the people of the same country both at the level of legislation and in terms of practices.⁵ The formation of the

⁴ In a Cairo conference in 1994, health and population as with all development sectors in Egypt were concerned with this concept, which was Arabized from the population conference document by gender to study the mutual relations between man and woman in society.

⁵ Fadia Kiwan, "Civil Society in Lebanon and Building the Democratic State," in *Lebanese Studies Dedicated to Joseph Moghaizel*, al-Nahar publishing house and Joseph Moghaizel Foundation, Beirut 1996, p. 109.

developing modern state was also characterized by a weakness in individual consciousness at the expense of a calcification in collective, factional, and traditional consciousness. This slowed down the pace of establishing and consolidating the modern state, and came in the way of ensuring the integrity of legislation and practices from all forms of discrimination against the country's entire population.⁶ This also allowed for discrimination to be practiced based on inherited traditional connections, most of which are based on kinship, geographical neighborhood, and other ascribed connections made within a national frame.⁷

Unequal rights between men and women are considered one of the most significant problems Egyptian women face, including unequal pay in the private sector or promotions that are not based on merit. Furthermore, there are problems and challenges related to social upbringing, and gender-based discrimination still exists in the different social institutions. There is also a persistence of authoritative patriarchal relations in many social strata, especially among the least privileged in the countryside and slums where poor social services make it difficult for women to balance between their traditional and modern roles.

On the political front, despite the low percentage of participation of women in the various parliamentary and local councils, women in these councils have played an effective role, some of them assuming leading positions or outperforming their male counterparts. In contrast, however, at the level of political party organization, studies have shown that women are reluctant to take part in partisan or union work. All statistics point to weak participation of women in non-governmental organizations. On the economic front, women in Egypt have achieved great gains through businesswomen who managed to start large successful economic projects. There are still some challenges facing Egyptian women in economic activities, including issues related to government policies, government spending as well as other issues related to economic reform and privatization and its affect on women's economic participation. As for the educational status of Egyptian woman, there are, despite observed progress in women's education, many problems and challenges that affect women's education. One of the key problems is the existence of a gender gap in literacy, comprehension, and continuation of education. This is in addition to the phenomena of dropouts and a lack of coordination among the result of the education process, labor market requirements, and fostering female education, especially in poor rural areas. Moreover, teaching methods, educational books, and curricula are still biased toward males; they

⁶ Mohammad Abel-Baqi al-Hermasi, "Civil Society and State in Practicing Western Politics (From 19th Century to the Present: Comparative Study)," in *Civil Society in the Arab Nation and its Role in Acheiving Democracy*, Center for Arab Unity Studies, Beirut 1992, p. 102.

⁷ Wajih Kawtharani, "Civil Society and the State in Arab History," in *Civil Society in the Arab Nation and its Role in Acheiving Democracy*, Center for Arab Unity Studies, Beirut 1992, p.119.

bring back the traditional images of females. This is in addition to educational deficiencies in addressing women's issues and their legal and legislative conditions.⁸

On the eve of the revolution of January 25th, there was a controversy surrounding a sectoral approach to the concept of rights, including "women's rights," and its effect on the realization of the concept of citizenship as a main democratic pillar. A significant problem in this relation lies in the main question in this field, which often is **"is working on rights a motive for democracy or an obstacle for it?"** However, the correct question here is: **"is working on rights a factor in democratic transformation, or a result of it?"**

Civil society proposals often argue that in light of the conditions of tyrannical rule, the creation of a lively third sector—composed of voluntary organizations that are independent from the state, the economy, and the family—is carried out by working on rights. The concept of women's rights is one of the most significant. It could also lead to democratic transformations by challenging tyrannical leaders and obliging the state to accept liberal reforms. According to the classical model, years of official oppression by tyrannical states is considered to be the trigger to launch spontaneous bouts of political activity among civil/secular groups, which organize a critical mass of resistance against the regime. The absolute power of this popular lobby achieves partial changes in accumulative negotiations with ruling elites that lead eventually to complete institutional transformation towards democracy.⁹ Political science literature followed the role of civil society organizations in the fall of tyrannical governments in Latin America, Central and Eastern Europe, East Asia, and Sub-Saharan Africa. In these areas, civil society facilitated democracy by restricting state authoritativeness, sensationalizing the cost of oppression, and mobilizing international support for reform. By the mid-1990s, the consensus among Western academics and policy makers was that a lively civil society is considered an indispensable condition for democracy¹⁰.

Therefore, the strong interdependence between the concept of citizenship as a pillar for democratic development and the process of consolidating rights with "women's rights" at its heart could be established. Women could be described as the biggest sector that could suffer from any disruption in the concept of citizenship. Thus, the violation of the concept of citizenship could be monitored from a gender perspective through monitoring of any discrimination against women on three levels:¹¹

- 1- **The participation of women in drafting the constitution:** measures against discrimination should consider two main elements:

⁸ In a Cairo conference in 1994, health, population, and all development sectors in Egypt were concerned with this concept, which was Arabized from the population conference document by gender to study the mutual relations between man and woman in society.

⁹ Sean L. Yom, "Civil Society and Democratization in the Arab world," *The Middle East Review of International Affairs*, 2005.

¹⁰ *Ibid.*

¹¹ Mohamed Al Agati, "Ant-Discrimination Law: The Path to Citizenship," p. 6.

- a. The banning or prevention of the participation of a citizen in the Constituent Assembly for reasons related to gender.
 - b. The satisfactory percentage of participation of women on initiatives submitted in this area.
- 2- **The drafting of the constitution's words:** discrimination against women should not take place in drafting the constitution. In relation to, for example, the ambiguity of the plural in the Arabic language which refers to both the masculine and feminine, discrimination should be measured based on articles that actually specify the gender.
- 3- **The level of rights in different areas:**
- a. Social and economic discrimination through the violation of the economic rights based on gender, including discriminatory hiring and promotion practices within public and private institutions, or denying women economic rights afforded to other groups.
 - b. Political discrimination through violation of political rights based on gender (e.g., banning women from candidacy in elections or from assuming high political positions or from other political rights afforded to other groups).
 - c. Cultural discrimination through violation of cultural rights based on gender (e.g., denying women personal rights or other cultural rights afforded to other groups).

2. Historical experience based on Egyptian constitutions

The current constitutional declaration of March 20, 2011, stipulates in Article 7 that "law applies equally to all citizens, and they are equal in rights and general duties. They may not be discriminated against due to race, origin, language, religion, or creed." This article, despite its banning stipulation, according to researchers in this field "only includes a directive principle and does not impose obligation on any of the State authorities/branches to achieve real as well as legal equality among all individuals."¹²

Here, we will attempt to address three constitutions that constitutional scholars consider key markers in the development of the Egyptian constitutional history; namely: the 1923 constitution that was the result of the 1919 revolution; the draft 1954 constitution that never saw light but because of its outstanding level, it is acclaimed by scholars as a reference for students of constitutional law; and finally the constitution of the last 40 years of Egyptian history.

¹² Abdullah Khalil, Directions of World Constitutions-Handbook of Human Rights in World Constitutions, Development Support Center, 2012, p.20.

1- At the level of participation

While the banning of women from taking part in drafting the constitution has never been raised, the participation of women has been traditionally limited in Egyptian constitution drafting committees. The thirty-member legislative committee which drafted the 1923 constitution included no women at all. Prime Minister (PM) Adli Pasha issued his decree to formulate the thirty-member legislative committee to develop the Egyptian constitution April 3, 1922; hence, a new confrontation started with this committee as women started a new phase of struggle. The Al-Wafd Central Committee issued a strongly worded statement attacking the constitutional committee and the constitution itself which was also similar to what took place with the fifty-member committee that developed the 1954 constitution. Following the eruption of the July revolution, a committee formed of fifty members was established to draft the new constitution of the country under the leadership of PM Ali Mahir. Even though this latter committee included some of the greatest Egyptian minds in various disciplines, it was devoid of any representation of women.¹³

As for the 1971 constitution, according to the demands of the President of the Republic, the People's Assembly (PA) developed the main principles for the constitution. The PA formulated a special committee composed of eighty of its members to assume the function of drafting the constitution. Four main committees branched from the latter; namely: basic components of society, liberties, and ethics; system of government; local administration system and basic laws; and finally a fourth committee to receive the proposals of the public, classify them, and distribute them among the three previously mentioned committees respectively. This committee was also devoid of women.

Accordingly, it is clear that the proportion of participation of women in committees drafting the constitution was non-existent. Hence, we cannot measure or evaluate based on this; especially with the changes that took place in Egyptian society and the participation of women in the last forty years. However, the Constituent Assembly principles shall not include any banning for the participation of women.

2- At the formulation level

Despite the lack of participation of women in the three constitutions, there was no gender-based identification for the categories addressed in any of their articles. As for articles in which only men, and not women, were addressed, following those stipulating equality between women and men, there is reference to men in the three constitutions in ten articles, namely: Articles 20, 28, and 147 in the 1923 constitution; and six times in Articles 29, 44, 57, 128, 130, and 187 in the 1954 constitution; and only once in Article 54 in the 1971 constitution. These relate to the

¹³ Fatma Khafagy and Safaa Mourad, "The Woman and the Constitution," p.8.

judiciary five times, security or police three times, the military once, and Islamic jurisprudence/Shari'a once. Thus, the minimum is for this specification not to include more categories than the three categories mentioned in previous constitutions: military, police, and the judiciary.

3- At the level of rights

The development of the conditions of women's rights in the three constitutions under study could be defined as follows. The 1923 constitution ignored the right of women's representation in the "House of Representatives" (Parliament), as it was called at the time. It also ignored women's right to be a candidate and vote. Provisions of this constitution also referred to equality and non-discrimination based on origin, language, and religion but did not refer to it on the grounds of gender, which provides more protection for women's right to equality. This shows clearly that the condition of women was not impacted positively with regards to the equality of Egyptians before the law; it was general and vague and did not stipulate special protection for the rights of women.¹⁴

Meanwhile, the 1954 draft constitution was more advanced; Article 3 stipulated that "Egyptians are equal before the law. They are equal in rights and general duties with no discrimination between them on grounds of origin, language, religion, creed or social or political opinions." Article 5 explicitly stipulates that "voting is a right for Egyptians aged 21 years old according to the provisions of the law; women practice this right according to the terms and conditions developed by the law." This is the only constitution that mentioned the word "women." In Article 43, "labor law organizes the work of women and juveniles and the state is committed to establish organizations that facilitate the work of women and appropriation between her work and familial duties."

Then, the 1971 constitution takes a new step ahead, represented in the following articles:

Article 8: The State shall guarantee equality of opportunity to all citizens.

Article 10: The State shall guarantee the protection of motherhood and childhood, take care of children and youth and provide suitable conditions for the development of their talents.

Article 11: The State shall guarantee the proper coordination between the duties of woman towards the family and her work in the society, considering her equal status with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence.

¹⁴ Ibid., p. 11.

Article 40: All citizens are equal before the law. They have equal rights and duties without discrimination between them due to race, ethnic origin, language, religion or creed.

This constitution is the clearest and most precise in the endorsement of women's rights to equality, non-discrimination, and in endorsement of the State's obligation to foster working women and support her in assuming her various and several roles in taking care of her family and in performance of her productive work in society. It emphasizes the concept of equality, through Articles 8 and 40; while it provides a type of positive discrimination for women in Articles 10 and 11.

Based on this development, it could be emphasized that the criteria here, at minimum, shall not be less than complete equality in addition to some articles that provide positive discrimination for the interest of women.

3. International treaties and agreements

Here, three international treaties, which are considered essential references to the workers in the field of gender internationally, are addressed; namely: the Universal Declaration of Human Rights issued in 1948, the International Covenant on Economic, Social and Cultural Rights (of 1976) and the third is the specialized agreement in this area, that is the Convention on the Elimination of All Forms of Discrimination against Women (the CEDAW), which was adopted by the United Nations (UN) General Assembly in 1979 and was effective since 1981 following the receipt of the required 20 ratifications. The latter is based on two principles: the universality and indivisibility of women's rights. It shows, in a legally binding way, the internationally accepted gender-related principles applicable to all women. It was adopted as an international frame that ensures women's complete equality with men with no distinction, exclusion or restriction based on sex in political, civil, economic, social, and cultural fields. A judicial committee on discrimination against women was officially established; its function is to monitor the implementation of the signatory states. In 2000, the optional protocol to the Convention, through which individual complaints on cases of lack of implementation of the articles of the agreement or in cases of violation of rights by signatory states, was issued. Egypt signed this agreement in 1980, and it was ratified in 1981. **However, Egypt's acceptance of the agreement was not absolute since it had reservations on Articles 2, 4, 9 (II), 16, and 29 (II).**¹⁵

¹⁵ **General reservation on article 2:**The Arab Republic of Egypt is willing to comply with the content of this article, provided that such compliance does not run counter to the Islamic *Shari'a*. **Reservation to article 9, paragraph 2:** concerning the granting to women of equal rights with men with respect to the nationality of their children, without prejudice to the acquisition by a child born of a marriage of the nationality of his father. This is in order to prevent a child's acquisition of two nationalities where his parents are of different nationalities, since this may be prejudicial to his future. It is clear that the child's acquisition of his father's nationality is the procedure most suitable for the child and that this does not infringe upon the principle of equality between men and women, since it is customary for a woman to agree, upon marrying an alien, that her children shall be of the father's nationality. **In respect of article 16:** concerning the equality of men and women in all matters relating to marriage and

The Universal Declaration of Human Rights¹⁶ guaranteed complete equality between sexes in Article 2; as it bans discrimination on any basis including gender, in Article 7 establishes equality before the law, Article 16 defined the right to marry and form a family with the consent of both parties, and Article 23 proclaimed equality in work.

As for the International Covenant on Economic, Social and Cultural Rights,¹⁷ Article 2/2 made sure that all articles are exercised without discrimination based on several grounds including sex. Article 7 stipulated equality in the right to work and wages among sexes, and Article 10 stipulated the rights related to the protection of mothers during "a reasonable period before and after childbirth. During such periods working mothers should be accorded paid leave or leave with adequate social security benefits."

As for the CEDAW,¹⁸ the agreement was developed and adopted to acknowledge women's human rights and their protection and preservation. It aimed at the elimination of all forms of discrimination and distinction practiced against women based on gender in order to achieve equality between sexes in all aspects of private and public life.

The agreement acknowledges the importance of women's work, participation, and productivity in society. It aims at reflecting this realization on individuals, institutions, and governments in all areas. It focusses on the fact that women's rights are holistic, global, and indivisible. The CEDAW stipulates that discrimination is any distinction, exclusion, prevention, or favoritism aiming at the denial or rejection of equality of rights and its protection. Discrimination is a denial for the principle of equality and insult to human dignity. The definition of discrimination against women was mentioned in Article 1 of the CEDAW as follows: "discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women,

family relations during the marriage and upon its dissolution, without prejudice to the Islamic *Shari'a's* provisions whereby women are accorded rights equivalent to those of their spouses so as to ensure a just balance between them. This is out of respect for the sacrosanct nature of the firm religious beliefs which govern marital relations in Egypt and which may not be called in question and in view of the fact that one of the most important bases of these relations is an equivalency of rights and duties so as to ensure complementary which guarantees true equality between the spouses. The provisions of the *Shari'a* lay down that the husband shall pay bridal money to the wife and maintain her fully and shall also make a payment to her upon divorce, whereas the wife retains full rights over her property and is not obliged to spend anything on her keep. The *Shari'a* therefore restricts the wife's rights to divorce by making it contingent on a judge's ruling, whereas no such restriction is laid down in the case of the husband. **In respect of article 29:** The Egyptian delegation also maintains the reservation contained in article 29, paragraph 2, concerning the right of a State signatory to the Convention to declare that it does not consider itself bound by paragraph 1 of that article concerning the submission to an arbitral body of any dispute which may arise between States concerning the interpretation or application of the Convention. This is in order to avoid being bound by the system of arbitration in this field." Available at www.un.org/womenwatch/daw/cedaw/reservations-country.htm and www.egyptiancedawcoalition.org/resources/eg%20reservations%20on%20cedaw.aspx .

¹⁶ United Nations General Assembly, The Universal Declaration of Human Rights (Arabic), December 10, 1948, available at www1.umn.edu/humanrts/Arab/b001.html .

¹⁷ The International Covenant on Economic, Social and Cultural Right, University of Minnesota , available at www1.umn.edu/humanrts/Arab/b002.html .

¹⁸ CEDAW, the Egyptian Association for Community Participation Enhancement www.egyptiancedawcoalition.org/resources/eg%20reservations%20on%20cedaw.aspx .

irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” The convention defines the practices that are based on discrimination as inclusive of all differentiation whether based on distinction, exclusion, or restriction or based on sex and part of its impact or purposes is preventing women, whether married or unmarried, from the enjoyment of their human rights on an equal footing with men or hindering them from this. The article also includes intentional or unintentional discrimination as well as a distinction in treatment which could result in different effects against the interest of women in comparison to men. Article 1 stipulated clearly that the aim of this agreement is to eliminate discrimination in all public fields, whether political, social, economic, or civil. In addition, in light of the fact that discrimination against women is more of interference in private life, the agreement is also concerned with referring to discrimination in any other field, including private distinction or family distinction, in the frame of its terms and conditions. Signatories to this agreement undertake:

- to repeal all the laws which constitute discrimination against women and develop appropriate laws that prevent discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against any act of discrimination;
- to ensure the elimination of all acts of discrimination against women by any person, organization or enterprise; and
- to embody the principle of the equality of men and women in their legal system.

The CEDAW acknowledges all rights and not just part of them, including: political, civil, social, economic, and cultural. These rights entail provisions related to education, work, political participation, equal rights, duties in the family, and social security. A committee was established to supervise the commitment and fulfillment of states party to the CEDAW as well as the optional protocol for submitting complaints by individuals or groups. According to this agreement, party states present a report about the different measures taken to enforce the terms and conditions of this agreement and about the relevant progress made after a year from the beginning of its enforcement in relevant states every four years or whenever the committee demands. These reports shall clarify the factors and difficulties affecting the fulfillment of the adopted commitments in the agreement. The committee reviews these reports and prepares its comments.

According to the three agreements, it could be stressed that these conventions and treaties, which are binding to Egypt, require that the new constitution adopts the principle of complete equality. This means, at the level of formulation, referring to these treaties and conventions in higher legislation—namely, the constitution—to affirm the government’s commitment and guard against the divergence from these principles in future legislation complementing the constitution. This reference encourages adapting previous laws that violate this equality. It could change

stereotypical customs and traditions that degrade women, aiming at achieving equality not only before the law but in the law itself.

At the level of participation of women in the constitution drafting committee, the agreements point to the importance of taking needed measures to realize this equality. This means that the Constituent Assembly shall have a just proportion of women (i.e., a quota) enabling women to take part in the constitution.

With regards to rights and the forms of political, economic, and social discrimination that exist, international agreements have been helpful in offering clear and specific points that we can look for in the new constitution including:

- equality before the law,
- the right to marry and form families with the consent of both parties,
- equality in work,
- equal right to work and to wages among sexes,
- protection of mothers during a reasonable period before and after childbirth,
- rights of working mothers, and
- the protection of women against exploitation and violence.

4. International experiences

The most important experiences are shown in the constitutions of Brazil, South Africa, and Turkey. The three states are significant because they were able to form democracies in the last two decades from similar conditions as those of the Egyptian case.

The constitution of Brazil¹⁹

Article 5 stipulates that "All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property, on the following terms." The first term states that "men and women have equal rights and duties under the terms of this Constitution."

The constitution of Turkey²⁰

The constitution of Turkey stipulates equality before the law in the draft that was amended in May 22, 2004; Article 10, which was amended on February 9, 2008, states:

¹⁹ Abdullah Kalil, Principle of Equality and Non-Discrimination Between Men and Women, Handbook of Human Rights in World Constitutions.

²⁰ Ibid.

All individuals are equal without any discrimination before the law, irrespective of language, race, colour, sex, political opinion, philosophical belief, religion and sect, or any such considerations. Men and women have equal rights. The State shall have the obligation to ensure that this equality exists in practice. No privilege shall be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

The constitution of South Africa²¹

The 1993 transitional constitution of South Africa (enforced until 1996) remained a temporary instrument that aimed at paving the way until a permanent constitution could be adopted. It is worth noting that the Constitutional Court in South Africa played a great role in adopting the permanent constitution currently in effect. The constitution states,

There is a common South African citizenship.

All citizens are-

- a. equally entitled to the rights, privileges and benefits of citizenship;
and
- b. equally subject to the duties and responsibilities of citizenship.

In the bill of rights of the South African constitution there is a special section on equality that is considered the best practice in the area. It stipulates that equality means:

- 1- Everyone is equal before the law and has the right to equal protection and benefit of the law.
- 2- Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- 3- The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

²¹ See www.servat.unibe.ch/icl/sf00000_.html .

- 4- No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- 5- Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

The constitution of South Africa stipulates that there is a national mechanism (i.e., the Commission for Gender Equality) with specified its mission and powers. It is one of three commissions that are stipulated in the constitution; namely: the South African Human Rights Commission, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, and the Commission for Gender Equality. In addition, it is one of the modern constitutions that promoted the protection of women during pregnancy.

Hence, at the level of formulation, upholding the principle of equality always involves either explicit reference to women and men or explicit prevention of discrimination based on gender. As for the level of participation, provisions that emphasise this type of equality, suggest a new concept of equity, which means that women should constitute 50% of the institutions that shall decide the fate of the State (e.g., parliaments). Thus, it is important that inclusion take place in the Constituent Assembly drafting of the constitution. There is a dispute regarding this between equity in candidacy and equity in membership. Although a list of candidates may be half women (e.g., the first name is for a man, then the next is for a woman), this does not necessarily mean the existence of 50% women in the council or the assembly after its formulation. The electoral system should be designed in a way that ensures equity in membership. In regard to the level of rights, essential progress could be made by stipulating in the constitution itself protection mechanisms, whether direct or indirect, through measures addressing discrimination as a whole including on the grounds of gender. These mechanisms are represented in criminalisation or establishment of agencies that assume oversight over this.

5. Analysis of the initiatives submitted to the Constituent Assembly

This part presents a group of initiatives presented at the level of participation, drafting, and rights and the suggestions issued by the assembly until now in relation to the issue at hand to add new criteria based upon the ability of the drafting committee and the constitution to interact with society and achieve its demands. It addresses some of the most important initiatives presented by a group of Egyptian feminist coalitions entitled: "the Feminist Coalition of NGOs Document, Document of Equality in Rights and Liberties, the Document of the Egyptian Woman and the Revolution Constitution, in addition to a paper from the Women and the Constitution working group."

These initiatives were the result of the belief by these groups and institutions in the importance of the participation of the different categories of the Egyptian people, women and men, in drafting the new Egyptian constitution. In light of the efforts of these coalitions, which are composed of feminist organizations, the Egyptian Feminist Union, the Women and Memory Working Group, the Center for Egyptian Women's Legal Assistance (CEWLA), in addition to the Al Azhar Document, the Egyptian National Council, the National Accord Statement, the Al Bradei and Hisham Al Bastawisi Documents, and the Democratic Coalition Document to address the demands of Egyptian women in the new constitution. This depended mainly on identifying the standards for formulating the Constituent Assembly to develop the constitution, studying women's historical position in constitutions through a study of these charters, suggesting some constitutional principles and presenting suggestions for specific provisions around the most important demands of women in the new constitution of Egypt. This is in addition to referring²² to some international agreements and some other references, such as the declaration of foundational principles for the constitution of the new Egyptian state, the constitution of Iraq, and the constitution of Yemen, including some important articles that should be taken into account while drafting the constitution.

Thus, the Egyptian Feminist Union and the Feminist Coalition announced issuing a document that guarantees the rights of women and their liberties in the New constitution entitled: "Equality of Rights and Liberties" to be presented to the Constituent Assembly.

1- Regarding the drafting of the constitution to these initiatives

The forms of constitutional documents and their sections vary; some include direct division for basic constitutional principles into articles related to the characteristics of the state that included the system of the state, its identity, its sovereignty, its most important characteristics, the source of its legislation, as well as other articles on the political system.

A number of the documents, including the one by the Feminist Coalition, focused on a number of international agreements and some basic documents, such as, the declaration of basic constitutional principles to the new Egyptian state, the constitution of Iraq and the constitution of Yemen, including some important articles that should be taken into account while drafting the constitution. In addition, the documents of the Feminist Coalition and the "Women and the Constitution" stipulate the respect for civil, political, social, economic, cultural, and environmental rights referred to in human rights charters. This is in addition to the commitment of the state to all treaties related to women's rights and regarding the banning of promulgation of

²² The Egyptian Feminist Union Document.

national legislation that violate the terms and conditions of these international agreements and charters.

Meanwhile, some of the previously mentioned documents showed effort in the presentation of the features of the state's political system and identity in the new constitution, and ranged from a civil democratic system to a modern one respecting citizenship. However, some ignored declaring the system of the state.

The documents of Al Azhar, Al Baradei, the National Accord, National Council, Egypt Future, and Women's Constitutional Rights agreed on a clear drafting of their articles that Egypt is a modern secular state based on citizenship.

However, none of the documents (of the Democratic Coalition, of Hisham Al Bastawisi, or the Statement of the Principles of Citizenship and Egyptian State) provided a specific suggestion on the nature of the state political system, contrary to other documents.

Another section was related to the religion of the state. Most documents including the Democratic Coalition document as well as Al Azhar document, except for the Papyrus of Human Rights Organizations (HROs) and the Women's Constitutional Rights and the Egypt's Future document, stipulate that Islam is the religion of the state and the Arabic language is its official language.

In addition, other documents added a number of identities to Egypt's Islamic identity,²³ such as an Arab identity, an African identity, and a pharaonic identity. The themes of these documents were similar to what was mentioned in the National Accord Document, the National Council Document, and the Al Baradei Document.

In addition, Al Azhar Document and the Democratic Coalition Document mentioned a number of provisions related to preserving public ethics and morals that control society as part of the state identity.²⁴

As for the source of legislation, all the different documents of basic constitutional principles (except for the Egypt's Future Document, the Women's Constitutional Rights Document, and the Papyrus of HROs) agreed to adopt²⁵ Islamic jurisprudence/Shari'a principles as the main source for legislation.

²³ Article 10, from the characteristics of the state from the National Accord Document; Article 1, from the National Council Document; Article 9, from Al Azhar Document.

²⁴ See Articles 3 and 6 from the section on the construction of the human to the basic values of society from the document of the Democratic Coalition and Article 4 from the Al Azhar Document.

²⁵ The National Council Document clarified the implementation of Islamic jurisprudence/Shari'a principles and developing guarantees related to implementing them is related to the legislator only. He is entitled to select from jurisprudence/Shari'a without adding sacrosanctity to the utterances of scholars and it is also his right to exert effort/improvise to achieve the public

References varied in some documents²⁶ between complete reference to human rights charters and specification of socio-economic rights similar to the National Accord Document, National Council Document, the Papyrus of HROs, the Al Azhar Document, and Women's Constitutional Rights.

On a striking note, a number of documents agree that personal status is implemented in accordance with the different religious canons of citizens. This seems to be an attempt to protect religious minorities from the application of the terms and conditions of Islamic jurisprudence/Shari'a while distancing themselves from enacting purely secular laws that are ensured by the state. This distance can protect rights without discrimination in the field of personal status, as mentioned in each of the documents of the National Council and the National Accord.

All of the documents mentioned respect for rule of law and equality of all citizens before the law. Finally, all initiatives exerted efforts in specifying a complete chapter/section around rights and liberties which agreed upon the right to political participation, education, health, and work in addition to freedom of belief, expression, and association as well as other social, economic, and cultural rights.

2- Participation of women in the Constituent Assembly

Both the National Council Document²⁷ and the Women's Constitutional Rights Document²⁸ focus in detail on the Constituent Assembly. Both documents referred to the necessity of representation of all spectrums of society in the Constituent Assembly to promote the widening of community participation in drafting the new constitution and the right of all citizens, with all their gender, cultural, and economic varieties, to take part in this process.

The recommendations of both documents stipulate the participation of the different civil society institutions and all their categories: professionals, artists, writers, intellectuals, constitutional scholars, workers, students, housewives, and people with disability.

The Women's Constitutional Rights Document was unique in addressing equity in the seats of the Constituent Assembly similar to the experiences of other Arab communities, such as Tunisia and Morocco.

interests that he is concerned with in the frame of achieving the objective of legislation and protecting the Supreme Constitutional Court.

²⁶ Article 21 from the rights and liberties section in the National Council Document allocate two articles from ten articles related to rights and liberties in Hisham Al Bastawisi document and the characteristics of the state from the women's constitutional rights document and Articles 9 and 5 from the Al Azhar Document.

²⁷ Annex of articles about selection criteria for the Constituent Assembly for the constitution at the end of the principles document.

²⁸ See Annex about the vision for selection of the Constituent Assembly and addressing the issue of equity of seats for women at the end of the document.

The National Accord Document presents a brief vision of the Constituent Assembly at the end of the document, in which it states the necessity of selecting the assembly members from outside the People's Assembly (PA) and Shura Council, which was also agreed upon in the National Council Document. This is in addition to the representation of all spectrums of the Egyptian society and commitment of the assembly to the articles of rights and liberties.²⁹ Some initiatives warned against discrimination of citizens, whether man or woman, from taking part in the drafting committee for reasons related to gender.

Following the revolution of January 25th, the criteria of formulating the Constituent Assembly to draft the constitution came to be incompatible with the basic rules for the formulation of constitution drafting agencies. It is known that these committees are elected, and that one of the main pillars of drafting a new constitution is that the constituent agency includes a variety of sectors to include as members into account in a way that ensures a representation that expresses the plurality of Egyptian society without discrimination on grounds of sex, creed, class, origin, ethnicity or ideological or party affiliation. This was called for by the Feminist Coalition, which presented its vision on the Constituent Assembly,³⁰ its terms of reference, and selection criteria focusing on:

- variation among its members from both sexes in a way that ensures a representation that is expressive of the plurality of Egyptian society without discrimination on grounds of gender, creed, class, ethnicity or other such factors,
- implementation of the principle of equity of seats in the Constituent Assembly,
- inclusion of female, feminist, and human rights representatives in the assembly to ensure including a women's rights vision in the Egyptian constitution,
- representation of Egyptian female experts in all legal and scientific fields in addition to female experts in the field of international law and charters as well as others given that the constitution is a document of general principles that is related to all rights of all citizens (men and women) and requires the efforts of everyone in all fields,
- representation of Egyptian female thinkers, writers, and artists,
- representation of women from the different production and development sectors (e.g., students, workers, farmers, housewives),
- representation of women from all ages (i.e., young women, middle aged women, older women),

²⁹ See the fourth and final sections in the National Accord Document.

³⁰ The Feminist Coalition of NGOs Document.

- representation of women with disabilities, and
- consideration by the Constituent Assembly of unique specialized experiences and skills in its selection of women and men candidates. It shall have the freedom to formulate committees from its members and may employ external advisors (not from among its members).

3- Rights-related articles

a) Right to equality and equal opportunities

Similar to the 1971 constitution, most draft documents stressed the complete equality of citizens without discrimination on grounds of creed, colour, or sex. However, some documents were unique in including more specific equality provisions. Some even added a new term such as equal opportunities for all. Other documents, particularly³¹ the National Council and National Accord documents, specified direct articles around equality between male and female citizens. This is in addition to the equity article, where the language was gendered as it was for all the articles of rights and liberties in the Women's Constitutional Rights Document.

b) Right to political participation

All documents stated the right to political participation for all citizens without discrimination in terms of being candidates or voting. The Women's Constitutional Rights Document added³² an article that guarantees the right to take the necessary measures to include all sectors of society in the making of political decisions. In addition, there are a number of suggestions related to ensuring the integrity and confidentiality of the election process, specifying the conditions for general ballot casting, among other suggestions agreed upon by most submitted documents.

Some initiatives demanded the state to take all measures to abolish discrimination against women, stressing the necessity of women having 35% of the seats and positions and developing mechanisms and procedures to support them, including commitment from the state to guarantee equality between sexes in assuming public posts.³³

³¹ See Article 3 concerning the rights and liberties section from the National Council Document and Article 4 of the National Accord Document.

³² See the Women's Constitutional Rights political participation paragraph.

³³ Feminist Union Document.

c) Right to quality education that is free from discrimination

Most documents agree on the right to education to all citizens without discrimination. However, the National Accord Document was unique to stress education as a right of everybody based on equality and equal opportunities without caste distinctions related to financial capabilities. In addition, the Women's Constitutional Rights Document introduces an article on the state ensuring educational services without geographical discrimination. In addition, the right to education article ³⁴ necessitates that educational processes and curricula be free from all features of discrimination among citizens.

d) Right to health, reproductive health, and health insurance

Most documents agree to state the right to health to all without discrimination; however, the Women's Constitutional Rights, in particular, includes the right of reproductive health and ensures the provision of reproductive health services for women. It also includes articles related to ensuring the right to health without discrimination based on gender or geographical areas. Furthermore, a number of documents also include people with disability, in the National Accord Document and the Women's Constitutional Rights Document.³⁵ Some documents specify a number of articles related to providing health insurance in case of illness, aging, or disability. This is reflected in the documents of the National Accord, National Council, and Women's Constitutional rights. In some documents such as the model of the Al Bradei document, a complete article is included about social welfare as a right ensured by the state, in regards to health, housing, unemployment subsidy.

e) Right to work, qualification, equal roles among sexes, and minimum wages

A number of documents link the right to work as being a genuine part of socio-economic rights of citizens. In addition, some drafts define the returns of work, particularly specifying minimum wages, as a constitutional right of citizens. All documents state the right to work in general for citizens. However, a few documents are unique in stressing the right to work on the basis of equality, equal opportunities, and everyone's right to assume public posts with no discrimination on grounds of gender (e.g., the documents of the National Council and Women's Constitutional Rights).

³⁴ Article 10 from the National Accord Document.

³⁵ See Article 9 from the rights and liberties from the National Accord Document, the health articles from the Women's Constitutional Rights, and Article 6 from Al Baradei's Document.

More specific drafts deal with providing women with opportunities to work in dignity, starting from their right to choose their work freely, equality in training opportunities, wages, providing a work environment free from violence (e.g., the document of Women's Constitutional Rights). In addition, a number of documents stress everyone's right to assume³⁶ public posts and functions based upon equality and equal opportunities without discrimination. There is an article in the same document stressing the right of men and women together to perform their roles whether at work or in the family.

f) Right to protection from torture and domestic violence

A number of documents give importance to the protection of citizens from illegal detention and criminalization of torture. However, the Women's Constitutional Rights Document adds the necessity of providing constitutional protection for women both in the public and private spectrums in addition to pointing out the necessity of providing protection for women from domestic violence.

g) Personal status

A number of documents addressed personal status, in their articles about the source of legislation as a key foundation for the state, further complicating women's personal status. There was some variation in later formulations on protecting family and children's rights.

Meanwhile, the Women's Constitutional Rights Document refers to personal status as a genuine part of socio-economic rights, including specification of age of marriage and dissolving of family relations according to the development of the social, economic, and cultural context of society. It also addresses the development of mechanisms for the protection of all family members from domestic violence.

Few of these documents included clauses on constitutional guarantees. It was only clear stipulated in two documents; namely, the National Council Document, the National Accord Document and the Women's Constitutional Rights Document. The documents of the National Council, the National Accord, and the Women's Constitutional Rights showed interest in establishing a number of constitutional guarantees. Some documents did so by including these articles in the special section on the characteristics of the state, while some proposed including

³⁶ See Article 5 from the rights and liberties section from the National Council Document and Article 8 from the National Accord Document and right to labor articles from the Women's Constitutional Rights.

them in the special section around rights and liberties, and yet others by including them at the end of the document as a guarantee for all the principles.

Unlike other documents, The National Accord Document includes several constitutional guarantees in different parts of the document; there are guarantees to the articles on the characteristics of the state³⁷ and other guarantees to the articles on rights and liberties.³⁸

Meanwhile, the documents of the National Accord, Al Bradei, and Hisham Al Bastawisi gather³⁹ constitutional guarantees in one article stipulating prevention of changing the articles of rights and liberties in the constitution. In addition, the National Accord Document is unique as it specified another guarantee to the principles, considering their violation an encroachment on the constitution and a threat to state sovereignty; parties and individuals may resort to the constitutional court to resolve these violations,⁴⁰ according to the guarantees of the National Council Document.

6. Evaluation matrix for the new constitution

| Level | Participation in writing | Formulation | Rights |
|--|---|---|--|
| Minimum level (previous concepts and constitutions) | <ul style="list-style-type: none"> - Disallow the banning or prevention of the participation of a citizen in the drafting committee for gender-related reasons, - Ensure a satisfactory proportion of women’s participation that responds to the initiatives submitted in the field, and - Ensure that the Constituent Assembly rules do not ban the | <ul style="list-style-type: none"> - No articles will be specified for men only and not women. - Women may not be excluded and no additions that promote discrimination against women or could be used negatively against women may be included. - This specification shall apply to the three categories mentioned in | <ul style="list-style-type: none"> - Prevent the violation of social, economic, political, or cultural rights based on grounds of gender. - Establish complete equality but provide positive discrimination in the interest of women in some articles. |

³⁷ Article 7 on the protection of the secular state which was branched into three points around the role of the constitutional court, its role, formulation of political parties, and the role of the armed forces.

³⁸ Article 21 from the rights and liberties sections, prohibiting the interpretation of any provision of the constitution in contradiction with the rights and liberties stipulated in the constitution or the Universal Declaration of Human Rights or in violation to the principle of citizenship and equality before the law.

³⁹ An article was added relating to the protection of the section on rights and liberties in a third part in the document addressing constitutional guarantees, Article 11 from the Al Bradei’s Document, and Article 1 from Hisham Al Bastawisi Document.

⁴⁰ Article 2 from the third section about the constitutional guarantees from the National Accord Document.

| | | | |
|---|---|--|---|
| | participation of women in forming the constitution. | previous constitutions: the military, the police, and the Judiciary. | |
| Binding level (international treaties and agreements) | <ul style="list-style-type: none"> - A fair proportion of women (i.e., a quota) should be present in drafting that enables them to participate in the constitution and binds the entity in charge of forming the Constituent Assembly to include a specific number of women. | <ul style="list-style-type: none"> - The constitution should refer to international charters and treaties related to women, either verbatim or by allusion. | <p>The constitution should mention the following rights:</p> <ul style="list-style-type: none"> - Equality before the law - Right to marry and form families with the consent of both parties - Equality in work areas - Equality in the right to work and wages between both sexes - Protection of mothers for a reasonable period before and after childbirth - Rights of working mothers - Protection of women from exploitation, violence, and trafficking - Complete political participation - Right of women to an education that is equal to men. |
| Hoped level (international experiences and initiatives submitted to the Constituent) | The constitution drafting should include a concept of equity in candidacy or in membership. | <ul style="list-style-type: none"> - In relation to rights and liberties, the constitution should stipulate the principle of equality, explicitly mention men and women, and explicitly ban | <p>The constitution should include additional rights through mechanisms of direct or indirect protection:</p> <ul style="list-style-type: none"> - Mechanisms addressing discrimination as a whole, |

| | | | |
|-----------|--|--|--|
| Assembly) | | discrimination on the basis of gender. | <p>including gender-based discrimination, such as criminalization and establishment of control agencies.</p> <ul style="list-style-type: none"> - Protection articles in the constitution for rights and liberties that are adequate to the concepts of gender and citizenship. |
|-----------|--|--|--|

III. Part Two: Analysis of the Constitution

Pursuant to Article 60 in the Constitutional Declaration promulgated in March 2011 and based on a call from the Supreme Council of Armed Forces (SCAF) for all members of the Shura Council and the People's Assembly (PA) to elect during the first six months of their election a Constituent Assembly (CA) of 100 original members and 50 reserve members to draft a constitution, this assembly shall develop a new draft constitution for the country in no more than 6 months to begin from the date of its formation. Said draft shall be presented to the people for referendum after 15 days from the completion date. This constitution shall be effective from the date of approval by a referendum.

However, the first CA was dissolved by an administrative court verdict on April 10, 2012 as a result of electing 50% of its members from the PA and Shura Council, which is contrary to all constitutional traditions since it establishes the hegemony of the legislative branch on the rest of the branches of authority by being heavily involved in drafting the constitution. Following various prolonged dialogues around the criteria for the formulation of the new CA, which continued until June 12, the SCAF called for all the different political forces to convene in order to select the CA. This eventually ended with a joint meeting between unappointed members of the PA and Shura Council chaired by Prof. Mohamed Saad Tawfik El-Katatni, Speaker of the PA, which resulted in the formation of a new assembly on June 18, 2012 which presented several drafts. This was done in the midst of a lack of social consensus around the said assembly as it was formed based on the logic of majority and minority among the elected councils. One of which was dissolved by a court verdict before presidential elections so that all its drafts reinforced a fierce polarization between political and Islamic forces.

With the Constituent Assembly's work nearing completion, the withdrawal of civil society actors from the Assembly and the law suits they filed calling for the Assembly's dissolution and re-election based on consensus, and the clash that arose between Islamic factions and the judiciary over the judiciary's in the constitutional draft, driven by fears of a hidden agenda to dissolve the Assembly, President Mohammed Morsi issued a Constitutional Declaration on November 21, 2012 declaring the immunity of the CA from dissolution by the Judiciary with a two month extension of its functions. However, this declaration caused further aggravation of the situation, given that political opposition forces perceived this as overstepping the Judiciary. This is in addition to the objection to other articles in the declaration. And this is what made the committee speed up the process of issuing the final draft of the constitution, which then took place on November 30, 2012.

Constituent Assembly's mechanisms to develop the constitution⁴¹

The Constituent Assembly is composed of five specialized thematic/specific committees:

- 1- **Committee of Basic Features of the Egyptian State and Society:** undertakes looking into and developing the draft constitution's provisions relevant to the following issues: basic features of the state such as social, moral, and economic characteristics.
- 2- **Committee of Rights, Liberties and Public Responsibilities:** undertakes looking into drafting provisions relevant to the following: rights of the Egyptian citizen, different liberties, public responsibilities, litigation rights, rule of law, and guarantees for the protection of public rights and liberties.
- 3- **Committee on the System of Rule and Public Authorities:** undertakes looking into and drafting provisions of the draft constitution relevant to the issues of the legislative branch, both chambers of the executive branch, the presidential institution and government, the judiciary, regulatory forces (armed forces and the police), local administration, local community councils, local executive organs, regulating mutual relations between authorities and constitutional institutions and common terms between them.
- 4- **Committee of Oversight and Independent Agencies:** undertakes looking into whatever is relevant to independent bodies and oversight agencies and drafting provisions related to them.
- 5- **General Drafting and Research Committee:** undertakes supporting the CA and its committees in presenting visions, suggestions, and needed preparatory work.

These committees shall present their reports to the Bureau of the CA and the General Drafting and Research Committee, including proposed constitutional provisions agreed and not agreed upon supported by an explanatory note for its terms, philosophy, and sources. They shall be committed to the times of the meetings, referred to in the CA general activity plan, and the deadlines for finishing their reports.

Each committee can select a rapporteur to present their reports before the CA and respond to members' inquiries. Members of the committee shall not take part in discussing its report before the CA.

This chapter presents a qualitative and quantitative analysis of the work of the CA issued on November 30, 2012. This is based on the criteria formulated in the first chapter and is a

⁴¹ See the Constituent Assembly website at <http://dostour.eg/2012-07-14-10-37-53/aliel-3amal/2012-03-31-19-09-01> .

clarification of what agrees, disagrees, or conflicts with these criteria as well as what it lacks. This is in order to classify what the constitution reached in each level (less than the minimum level, the minimum level, binding level, hoped level) relevant to the three previously mentioned axes: participation, drafting, and rights.

The quantitative analysis will be based upon grading each axis according to five levels as stipulated in the following table:

| | |
|--|---|
| Less than the minimum | 0 |
| The minimum | 1 |
| In between the minimum and the binding | 2 |
| Binding | 3 |
| In between the binding and the hoped | 4 |
| Hoped | 5 |

The degree is transformed into a percentage for each axis or for the total of the three axes.

1. Participation in drafting

Regulations or criteria proposed for the formulation of the CA do not stipulate any prevention or banning on the participation of any citizen in the drafting committee for reasons related to gender. The constituent rules of the CA do not include any ban on women or their work from participating in the assembly; in fact Egyptian women, for the first time, are present in the latter to take part in drafting the constitution; 8 women were elected among the 100 CA members; they are:

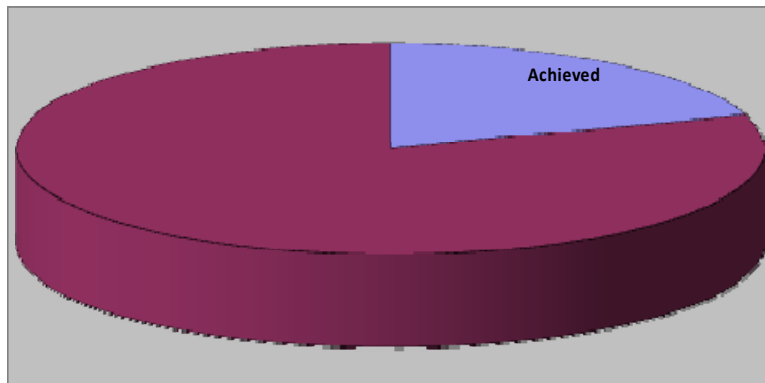
- 1- Professor Iman Qandil, Assistant Secretary General of Al Wasat Party and the head of the Women's Secretariat in the Party. She joined the Committee of Proposals and Dialogues in the CA.
- 2- Professor Amani Abul-Fadl, one of the female leaders of the Muslim Brotherhood. She worked in the CA Committee of Liberties.
- 3- Professor Omaima Kamel Abdel-Hai Al Salamoni, a professor of public health and Social Medicine and Presidential Advisor on the Affairs of Women. She is also one of the leaders of the Freedom and Justice Party. She joined the Committee of Rights and Liberties in addition to the Proposals and Dialogues Committee.
- 4- Professor Manal Mohammed El-Shorbagi, a professor of political science at The American University in Cairo, and member of the System of Government Committee and the Drafting Committee.
- 5- Ms. Manal Mamdouh El-Tiby, a human rights activist. She joined the assembly by as a representative of Al Noba. She worked in the Committee of Rights and Liberties. She resigned from the CA as a result of her dissatisfaction with the suggested provisions and sensing the hegemony of one faction over authority. She expressed this concern in her letter of resignation sent to the Constituent Assembly.⁴²
- 6- Ms. Huda Mohammed Anwar, a physician, member of the Muslim Brotherhood, and former PA member. She worked in the Committee of Basic Characteristics of Society in the CA.
- 7- Ms. Shahira Halim Dous, a member of Al Wafd Party. She withdrew from the CA at the beginning.

⁴² See <http://gate.ahram.org.eg/News/254797.aspx>

8- Professor Suad Kamel Rezq, Dean of the Faculty of Administration and Information Systems in the French University in Cairo. She was a member of the Committee of Proposals and Dialogues.

However, by the end of the discussion, the number of women decreased to only five, following the resignation of Ms. Manal El-Tiby, Ms. Shahira Halim Dous, and Prof. Suad Rezq. The first objected to the Chapter of Rights and Liberties, the second objected to the method of management of the assembly, and the third resigned again after returning at the end of the assembly's work due to dissatisfaction with the product itself. Therefore, the CA issued the Draft Constitution with 5 women, 4 of them belonging to the political Islam faction, from a total of 85 votes in the final session.

However, in terms of percentages, the level of participation of women was from the beginning low, at 8%, and eventually decreased in the final stages to around 6%. This percentage is not representative of the percentage of women in society and could therefore not reflect the vision of women for the new constitution of Egypt or the demands of women. In addition, as the majority of this percentage belongs to the same political faction, it is therefore expressive of a specific perspective regarding women. Hence, there was not a fair percentage of women (i.e., a quota) that could have enabled them to take part effectively in the constitution since the body forming the committee was not bound by the participation of a specific number of women. This is in addition to the absence of the concept of equity in candidacy, like the Tunisian experience. Having said this, the participation of women satisfied the minimum requirement, with the existence of women for the first time in the history of drafting Egyptian constitutions. However, it does not exceed this, whether as regards quantity (the number) or quality (variation or specialization). Participation in drafting should receive a grade 1 out of 5 degrees.



2. Formulation

The feminine form of the word "citizen" (*muwatina*) was not mentioned in the draft of the constitution in any of the articles except in the preamble, as those who developed it considered the masculine form of the term "citizen" (*muwatin*) incorporates males and females. Hence, if we accept this, articles are neither drafted for men only (or women) nor do they exclude women or offer aspects of negative discrimination against them except regarding the three categories mentioned in previous constitutions: the military, police, and judiciary.

In addition to this, the preamble emphasizes in "The dignity of the individual is part and parcel of the dignity of the homeland. And a country in which women are not respected has no dignity; for women are the sisters of men and partners in national achievements and responsibilities."⁴³ This article is positive as some might view it and even replace the concept of equality with partnership as the fourth point clarifies that it refers to equality between citizens (men and women). However, Article 64 addresses the issue of martyrs and their rights. It stipulates: "The state honors the martyrs of the 25 January Revolution as well as martyrs of war and of national duty, as well as the wounded. The state supports their families, as well as the injured and war veterans, the families of those disappeared during war, and similar cases. They, their children and their wives are prioritized in employment opportunities. The foregoing is organized by law." "Wives" in this context denies the concept of equality between men and women on this issue; as if women or girls should not be martyrs and their families should not have equal rights similar to those of the man in this case.

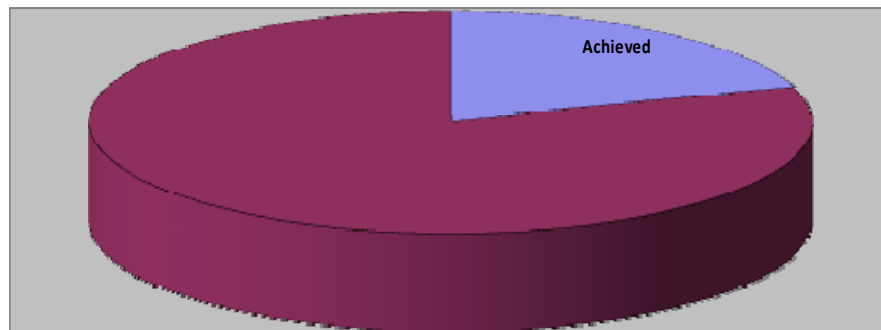
In addition, by following up the discussions in the assembly, it is worth noting that members of the Islamic faction, especially Salafi, had quite an aggressive position against international treaties and charters and they appeared in television programs claiming that these are charters and agreements that call for homosexuality. Also, they insisted on not using certain terms touching on economic and socio-economic rights replacing, for example, the term "sustainable development" with "steady development" and the term "housing right" with "right to housing", it was natural, thus, that they were even stricter towards women-related treaties like CEDAW which they claimed is an agreement that contradicts with Egyptian traditions and ethics. Accordingly, international charters and treaties related to the issue of women as well as other issues were not referred to whether through quotation or reference.

As for the article related to rights and liberties and stipulating the principle of equality between men and women or banning discrimination based on sex, it occupied a big part of the public discussion during deliberations on different constitution drafts. Members of the Constituent Assembly insisted on including the qualification: "in a manner that does not conflict with the rules of Islamic Shari'a," something to which civil society actors strongly objected. Opponents to this clause contended that Article 2 which stipulates that "the principles of Islamic Shari'a are the primary source of legislation" was sufficient and that there is no need for such clause, especially

⁴³ Translation of articles of the new Egyptian Constitution is provided from the unofficial translation prepared by International IDEA (www.idea.int). [Translator's note.]

in the article regarding women. In the final constitution, the article that specifically addresses the issue of women was omitted and only the articles of general equality between citizens were included: Article 9 states that "The state commits to ensuring safety, security and equal opportunity for all citizens without discrimination" and Article 33 holds that "All citizens are equal before the law. They have equal public rights and duties. There can be no discrimination between them in that regard." This is quite an inadequate article as it does not specify types of discrimination, including gender or sex. Also the other 70 articles of that same constitution do not refer to a law that regulates this. Hence, they were not considering the promulgation of a law to combat or criminalize discrimination in order to solve this problem, which is one of the demands of human rights organizations, including feminist organizations.

In addition, Article 10, which stipulates, "The state guarantees maternal and child services free of charge, and guarantees the reconciliation between the duties of a woman toward her family and her work," reflects the impression the drafters of the constitution have of women as mothers for whom taking care of the family is a duty borne by them alone and not with men. This is a breach of the principle of equality between men and women as it differentiates between citizenship roles based on gender. Therefore, this constitution does not achieve more than the minimum criteria, which exists only in the preamble. Moving to actual articles, the principle of equality between males and females does not appear at all except in provisions that emphasize equality and non-discrimination between citizens in general, without, however, referring to international charters signed by Egypt. In addition, this document does not include specific articles relevant to women or gender. Thus, this part is similar to the previous one (i.e., participation) does not exceed the minimum standard. Formulation should receive a grade of 1 degree out of 5.



3. Rights

None of the articles of the constitution could be described as diminishing economic, political or cultural rights based on gender. In addition, the preamble of the constitution emphasized complete equality, " Equality and equal opportunities are for all: male and female citizens; for there is no discrimination, nepotism, or favoritism in rights and duties." This is the only reference to "female citizens." However, at the same time, we do not see any articles granting women positive discrimination; as it was rejected in the assembly with the old excuse, which the expert literature on the subject addresses, claiming that this is against equality. In any case they breached this argument regarding breadwinning women in Article 10 that holds, "The state provides special care and protection to breadwinning and divorced women as well as widows."

As for reference in the constitution to the following rights for women, the table below clarifies the subject, its relevant article, and comments:

| Subject | Article | Provision | Comment |
|--|---------|--|--|
| Equality before the law | 33 | All citizens are equal before the law. They have equal public rights and duties. There can be no discrimination between them in that regard. | From a citizenship-based approach, this article expresses what is needed from it; however, from a gender-based approach, it is quite premature as there should be determinants for the types of banned discrimination, including gender. |
| Protection of women from exploitation, violence, and trafficking | 73 | All forms of oppression, exploitation and sex trafficking are prohibited and criminalized by law. | Limiting human trafficking to sex alone undermines and restricts considerations on banning. In addition, forced exploitation differs from forced labor and the existence of the idea of forced labor undermines the importance of Article 63 even if it was enforced by law. In addition, the refusal to add "human trafficking" in this article and not specifying the age of the child in Article 70 in this constitution that allows marriage with minors is contrary to the |

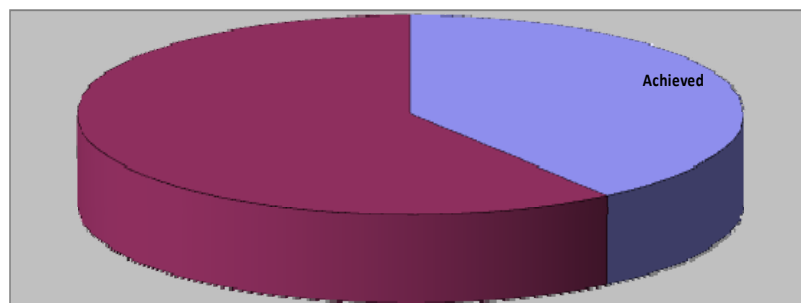
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| | | | claims of its developers. |
| <p>Equality in fields of work, in the right to labor, and in wages among sexes</p> | 63 | <p>Work is a right, duty and honor for every citizen, guaranteed by the state on the basis of the principles of equality, justice and equal opportunities.</p> <p>There can be no forced labor except in accordance with law.</p> <p>Public sector employees work in the service of the people. The state employs citizens on the basis of merit, without nepotism or mediation. Any violation of the foregoing is a crime punishable by law.</p> <p>The state guarantees for every worker the right to fair pay, vacation, retirement and social security, healthcare, protection against occupational hazards, and the application of occupational safety conditions in the workplace, in accordance with the law.</p> <p>Workers may not be dismissed except in those situations that are set out by law.</p> <p>Striking peacefully is a right which is organized by law.</p> | <p>The word "guaranteed" (<i>takfuluhu</i>) depreciates the right. The word used should have been "committed." In addition, forced labor must never be allowed for any reason even if by law, it is similar to the ill-reputed forced labor law in Egyptian history. Moreover, the conditions for dismissing a worker should include more protection, more than "in accordance with the law." Finally, the article does not stipulate, due to the previously mentioned word "guarantee", any form of unemployment benefit, which should have been linked with this right. Here, citizenship rights are violated equally between men and women, in addition to the absence of any reference to the conditions of women at work.</p> |
| <p>Right to marry and form a family with the consent of both parties.</p> <p>Protection of mothers during a reasonable period before and after childbirth.</p> <p>Rights of</p> | 10 | <p>The family is the basis of society and is based on religion, morality and patriotism.</p> <p>The state and society oversee the commitment to the genuine character of the Egyptian family, its cohesion and stability, and the consolidation and protection of its moral values. The foregoing is as organized by law.</p> <p>The state guarantees maternal and child services free of charge and guarantees the reconciliation between the duties of</p> | <p>This article prioritizes the importance of the family as an entity but it does not address the notion of rights and duties of the parties of this social institution. In addition, no advantages were referred to in regards to giving birth, both before and after. As for the rights of working mothers, it only refers to supporting women in reconciling her duties towards her family with her work, which helps to achieve some of the demands of working women, despite the</p> |

| | | | |
|--|----|---|--|
| working mothers. | | a woman toward her family and her work. The state provides special care and protection to breadwinning and divorced women as well as widows. | negative drafting to which we referred previously. |
| Complete political participation | 6 | <p>The political system is based on the principles of democracy and consultation, citizenship (under which all citizens are equal in rights and public duties), political and multi-party pluralism, the peaceful transfer of power, the separation and balance of powers, the rule of law, and respect for human rights and freedoms. All of the foregoing is as provided in the Constitution.</p> <p>It is prohibited to form a political party that discriminates between citizens, whether on the basis of gender, origin or religion.</p> | This article cannot be sufficient to achieve complete political participation, which is not referred to in any other article. In addition, the banning of the establishment of political parties that discriminate between citizens, "on the basis of gender, origin or religion" is insufficient, since it might not be based on "the establishment" but rather on the programs and practices that it implements. |
| Women's right to an education that is equal to men | 58 | <p>Every citizen has the right to high quality education. It is free throughout its stages in all government institutions and is obligatory in the primary stage. The state works to extend that obligation to other stages.</p> <p>The state supports and encourages technical education, and oversees education in all its forms. The state allocates sufficient percentage from the national revenue to technical education.</p> <p>All educational institutions, public and private, local and otherwise abide by the state's educational plans and objectives, with a view to creating a link between education and the needs of society and production.</p> | This is a good article, even though the notion of "high quality" requires basic indicators. In addition, it does not refer to the right of women to an equal education to that of men. |

It is worth noting here that there is a distinction between citizens based on religious identity (in Articles 2 and 3).⁴⁴ The linking of these articles with personal status primarily affects women, especially if we include the cultural context and previous experience in this matter. The use of these legitimate excuses has resulted in the deterioration of women's rights, whether for Muslims or Christians.

As for direct or indirect protection mechanisms for women, they were not achieved at all in this constitution. There are no mechanisms to address discrimination as a whole including that based on sex like criminalization or establishment of oversight agencies. Despite the fact that the chapter on independent agencies makes stipulations regarding (diplomatic) legations and heritage and military bodies, no item addresses discrimination among citizens nor is there an item concerned with the rights of women.

Based on the existence of some rights that include all citizens with the absence of allocation of specific rights to women and lack of mechanisms to ensure this, it could be said that this part exceeds the minimum level; however, it does not reach the hoped level. Rights should receive a grade 2 degrees out of 5.



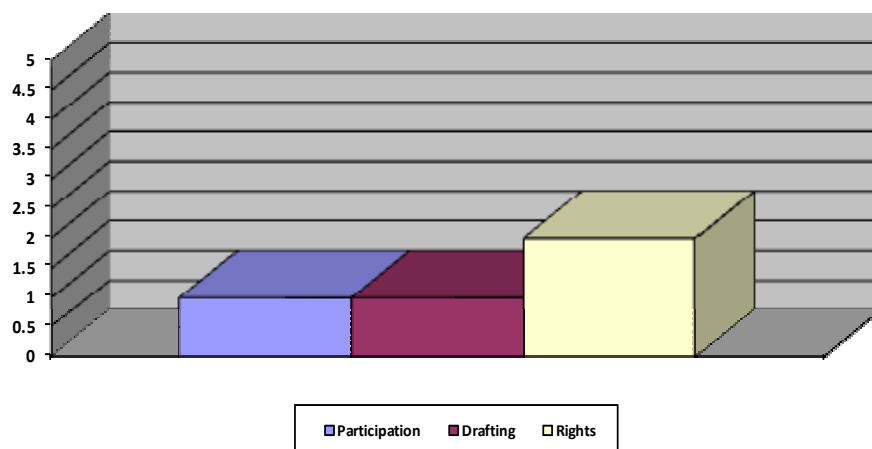
⁴⁴ Article 2 states, "Islam is the religion of the state and Arabic its official language. Principles of Islamic Shari'a are the principal source of legislation." Article 3 states, "The canon principles of Egyptian Christians and Jews are the main source of legislation for their personal status laws, religious affairs, and the selection of their spiritual leaders."

4. Summary

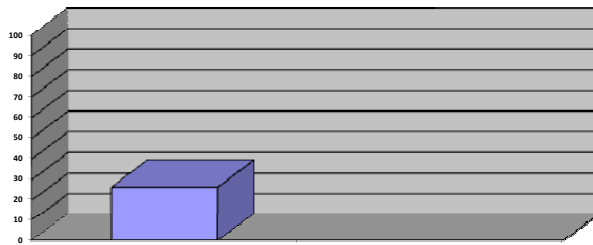
At the level of women’s participation, there is nothing in the constituent rules of the assembly that bans the participation of any citizen in the drafting committee for reasons related to gender; however, the participation of women was unsatisfactory and does not reflect the initiatives presented in this field. Despite the fact that constituent rules of the assembly do not include any banning of the participation of women or their work in it, the participation of women, whether regarding quality or quantity, was weak. This is because there was no fair percentage of women (i.e., a quota), or a specific number with which the assembly was bound, and the concept of equity in candidacy or membership was completely absent.

At the level of drafting, none of the articles are concerned with men only, except the three categories mentioned in previous constitutions: the military, the police, and the judiciary. However, there are articles from which women were excluded. Even though nothing was added to these articles in order to negatively discriminate against women, there is no reference to international charters and treaties related to women, whether by reference or quotation in this constitution. In addition to this, regarding rights and liberties, this constitution stipulates the concept of equality between women and men and bans discrimination, but it does not specify types of discrimination, including gender.

This document did not diminish economic, political or cultural rights based on gender; however, the document does not concretize full equality and does not include articles affording positive discrimination for women. While mentioning equality between citizens in many rights, the document does not clarify the position of women and nor provide clear support for women in this regard. As for the existence of direct or indirect protection mechanisms for women to address sex-based discrimination as a whole through, for example, criminalization or establishment of oversight agencies, there is no reference to this in this constitution.



Thus, it could be observed that the estimation of a percentage for the constitution regarding the conditions of women from a citizenship-based approach does not achieve, in any of the axes, the hoped level/standard following a public revolution in which all citizens, both women and men, took part, or the binding standard which should be present in any 2012 constitution. Transferring the quantitative evaluation (4 degrees out of 15) into a percentage does not even reach 26.5% and rather leads to describing this constitution as a constitution that is against women.



IV. Conclusion

By reading world constitutions, it is clear that there are different generations of constitutions. The first generation is represented by historical constitutions that appeared with the establishment of states or due to huge changes: the Magna Carta in Britain or the American constitution. The second is the post-World War II (WWII) generation; these are either post-occupation constitutions or after the fall of pre-war regimes constitutions. They are connected to the reconstruction of a state, similar to the French and German constitutions or those of national liberation. The third could be called democratic transition constitutions; starting with the Spanish constitution, after the fall of Franco's regime, followed by the Portuguese constitution, and what subsequently followed in several African, Southern European, or Latin American states. Among the most important are the constitutions of India, Brazil, and South Africa. What is interesting about the new generation is related to rights and liberties, based on international charters as their main reference. The political system is referred to in a broader sense, including local councils, civil society, and political parties as part of the system in addition to the three branches of authority. This generation of constitutions is characterized by detailed articles, the philosophy of which is the inclusion of text on the subject in question, whether a rule, principle, or one of the authorities, and a clarification of what is most relevant to it in terms of powers, guarantees, specializations and the determinants of this specific issue. The legislator is unable to add

restrictions in relevant laws and his or her function is limited to explanation and development of the punishments related to these determinants only. This philosophy is reflected on the conditions of women as it provides them with protection in light of the concept of proper citizenship that supports the most marginalized categories of society including women.

Despite the fact that the new constitution of Egypt is being written after approximately 40 years since the appearance of a new generation of modern constitutions, which were created in circumstances quite similar to the current conditions of Egypt, it is closer to traditional constitutions (post-WWII constitutions) whether regarding its form or content. The chapter of rights and liberties is based on individual effort and historical accumulation, since it ignores and takes an aggressive position against international charters, even though 16 Arab states made use of and reference to them whether in their basic laws or constitutions, including Saudi Arabia (Articles 70 and 81) and the Sudan (Articles 27 and 49). In addition, they do not replace them with Arab regional charters issued by the Arab League or Islamic ones issued by the Organization of Islamic Conference. In addition, many of the articles provide liberties but then restrict them elsewhere (an example is the press in Article 48 and when addressing authorities in Article 54). This is in addition to the absence of clearly drafted mechanisms that protect marginalized or weak categories "such as peasants, women and workers." The constitution expresses the background of its drafters more than the general national vision. It is also clear that there is a specific interpretation for some factions that took part in drafting of the constitution regarding a number of articles that could differ from the common interpretation, which they will attempt to impose in the future (e.g., the article on punishment according to the provisions of the constitution and taking opinion before legislation). Some articles also constitute basic contradiction with the preamble regarding freedom such as forced labor, trial of civilians before military tribunals, shutting down newspapers, dissolution of political parties, and child labor, even if an article stipulates that it is organized by the law. These principles should be completely banned, in coherence with the objectives of the constitutions, mentioned in the preamble. Following a revolution that will be classified as one that synthesizes a modern generation of revolutions, constitution drafters chose to draft an obsolete constitution.

V. Recommendations

Based on this situation, it will be incumbent on those concerned with the concept of citizenship, and particularly the feminist movement, to work in the forthcoming period on a number of strategies. They must guarantee respect from the authorities of the rights related to citizenship and women, through legal, political, and social mechanisms.

The legal mechanisms should be based on working through cases raised at the specialized courts to guarantee compliance with international conventions and treaties signed by Egypt, as well as

guarantee that Egyptian legislative authorities do not violate the rights stipulated in these conventions and treaties. Legal mechanisms must also strive to interpret ambiguous provisions in the new constitution to preempt future attempts by reactionary factions from offering different interpretations. In this respect, the civil society organizations must take the initiative without waiting for the passage of legislation that threatens the concept of citizenship. Civil society organizations should adopt a strategy of proactive action rather than reaction as is often the case.

On the political level, a broad coalition must be formed that comprise concerned civil society organizations, political parties, and youth organizations. This coalition should aim at protecting the concept of citizenship and setting rules not only to affirm this concept, but also to realize manifestations of it on the ground. For example, one way of doing this would be by having the parties in this coalition nominate a percentage of women in their electoral lists and to pledge to reject any legislation that violates this concept that may be proposed in the assemblies in which they participate. A key role of this network would also be to lobby supporters within state institutions and activate international mechanisms to guarantee the non-violation of citizenship rights and women's status in Egypt.

As for the social level, a strategy should relate to the work of those concerned with women's issues on the ground and employ slogans that support the concept of citizenship and the rights of women through media campaigns. Such a strategy should be accompanied by working on the ground in different parts of Egypt to clarify the importance of this concept. These rights should not be considered only in the political sphere or its centrality to the democratic process, but also in the field of economic and social rights and the effect of the neglect of these rights on the situations of citizens (men and women) in their everyday lives and their living standards.

These strategies for working in the short term do not negate the need to continue efforts at amending the constitution in the medium term to align with binding criteria stipulated in international conventions and agreements that this study attempted to analyze. The hope is that this will be a first step in the development of these constitutional provisions from the binding level to the desired level. These steps will be built on international experiences and local initiatives on this subject through legislation complementary to the constitution after its amendment.