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## Constitutional Amendments and Devious Routes



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## Egypt: Constitutional Amendments and Devious Routes

### EIS Monitoring and Documentation Unit

In an [interview](#) with CNBC in late 2017, Egypt's Abdel Fattah Al-Sisi categorically denied an intention to amend the Egyptian Constitution. He also emphasized that he is committed to two 4-year presidential terms, and that he is against changing this system, adding: "We have a new Constitution now, and I am not with conducting any constitutional amendments during this period; I will respect the Constitution article that allows the President to remain in office for only two 4-year terms."

Only a few months later, pro-regime media outlets early 2018 started to talk about constitutional amendments that allow Sisi to stay in power even after he ends his two terms in office stipulated by the Constitution of 2014, in addition to some other amendments.

*In this report, we will examine various ideas put forward by circles close to the regime, through which we can discern details of these proposed amendments.*

### Early promotion of constitutional amendments

Promotion of the idea of constitutional amendments – to ensure that Sisi will remain in power after the end of his second term – has started early. However, talk about these amendments took much more momentum early 2018 and particularly after the presidential election in May 2018.

In February 2017, MP Ismail Nasr al-Din [announced](#) that he would mobilize MPs to sign a proposal he had prepared for amending the Constitution. He said that these amendments include extending the presidential term to six years instead of four, granting Sisi the capacity to appoint and dismiss members of the government, and

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abolishing the two-term barrier for presidential candidacy so that Sisi could run for a third term. In addition, there were [other calls](#) within the House of Representatives (parliament) to conduct constitutional amendments for extending Sisi's term in office. However, talk about the need to make constitutional amendments declined and the issue was temporarily closed following harbingers that the West is dissatisfied with such move at that [timing](#).

Also, Speaker of the House of Representatives Ali Abdel-Aal [participated](#) in the early promotion of the constitutional amendments. During discussion of a doctoral thesis at the Faculty of Law, Mansoura University in August 2017, he said that any constitution that is prepared during a state of instability requires review and reconsideration after restoring stability to the country. He added that the president of the country does not have the capacity to change a minister, except after a parliamentary ratification, "which is out of reason."

## Regime's ideas about constitutional amendments

### First: necessary amendments

Early 2018, preliminary steps were taken starting with talk about the need to introduce constitutional amendments to ensure that Sisi will remain in power after the end of his second term, without going into details about the articles that should be amended. In a TV [interview](#) on TEN satellite channel, Emad Adib, a pro-regime media man, talked about the need to amend the current Constitution to ensure that the President of the Republic will continue in power, saying "This constitution ... is completely unviable," setting as an example the constitutional amendments carried out by the Chinese parliament in March 2017, that removed presidential term limits (two five-year presidential terms), giving President Xi Jinping the right to remain in office indefinitely.

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In the wake of this statement, another remark came from Mostafa al-Fiqi, Mubarak's former secretary of information, who – during an [interview](#) with a program called “Happening in Egypt” that is aired on MBC Egypt TV channel – said: “Limiting the presidential terms in the constitution to only two terms of 8 years is extremely short and should be amended and extended.” Explaining his point of view, Al-Fiqi said Sisi seeks to save (political) parties and give them space for freedom and movement, and that Sisi is also interested in youth, health and education, which may take longer than four years (his second term in office).

### Second: Increasing the presidential term from 4 to 6 years

In mid-2018, there was talk about proposals to address constitutional amendments aimed at keeping Sisi in power. The main proposal during that period was to extend the term of office to 6 years instead of 4 years, that requires amendment of Article 140 of the Egyptian Constitution, which states that: “The President of the Republic shall be elected for a period of four calendar years, commencing from the day following the termination of the term of his predecessor. The President may only be reelected once.” The proposal includes amending the first paragraph of this article to include increasing the term of office from four to six years, especially that in case of amending this article, the Constitution does not prevent the current president from benefiting from the amendment, and allowing him to run for a second term (of six years) after the [amendment](#).

### Third: Extension of presidential terms to more than two terms

Another proposal included amending Article 140 of the Constitution to extend the terms of presidency from two to three terms. [The Guardian](#) in a report published on 1 August 2018, said that a petition demanding that Abdel Fatah al-Sisi remain in power



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beyond his two-term limit was circulating within Egyptian institutions and among pro-state figures. The document states it is part of a campaign called The People Demand, and calls for a change to the constitution to allow Sisi to remain president beyond his second term. The Guardian said “Signatories give their name and personal details such as a national identification number to approve amending article 140 of the constitution, which stipulates that the president is elected for two presidential terms of four years.” “We demand amending it to three terms,” the [petition](#) reads.

“The campaign was marred by multiple reports of pressure, and intimidation for Egyptians to sign ... A headteacher in Damietta was suspended after posting a sign instructing employees to sign the petition,” The Guardian said, adding that signatories are also paid to sign the petition and provide their personal data. “One local television channel broadcast covert footage of working-class citizens being paid to sign the petition,” the British newspaper said.

In the same context, an Egyptian lawyer filed a [lawsuit](#) before the Court of Urgent Matters, in which he demanded that the Speaker of the House of Representatives obliged to call on the parliament to convene for amending Article 140 of the Constitution that states that “The President may only be reelected once” to allow the re-election of the President for more periods as long as the people agree to this through a referendum.

#### Fourth: State sovereign bodies plan for the amendments

Late 2018, [Mada Masr](#), an independent Egyptian news website, published a report indicating information from various sources confirming that plans to amend Egypt’s Constitution, including changes that would extend Abdel Fattah al-Sisi’s term in office, were underway, with changes to be introduced in the first half of 2019, citing "three

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different sources in Sisi's office, the General Intelligence Service (GIS) and Parliament who have attended private meetings within various state bodies in recent months". The Egyptian website also said "meetings have been held on a nearly daily basis at the GIS headquarters between GIS officials and the president's office in order to finalize the amendments and the date of the referendum through which they will be passed." According to Mada Masr, "the amendments will see Sisi retain his position as president beyond 2022, which should mark the end of his second and final term in office, according to the current Constitution." Also, the number of MPs in Parliament will be reduced to 350, instead of the current 595, and the Shura Council — the upper chamber of Parliament that was dissolved by the 2014 Constitution — will be reinstated to share legislative power with the House of Representatives. Other amendments limit the authority of Parliament, which is currently empowered to approve Cabinet formations and to withdraw confidence from the government, as well as to prosecute and impeach a sitting president.

Among the proposed amendments according to Mada Masr is the removal of Article 241 on transitional justice, which was drafted in the wake of President Mohamed Morsi's ouster. Article 241 states that Parliament must draft a transitional justice law aimed at truth-seeking and accountability, as well as propose frameworks for national reconciliation.

### Fifth: Launching referendum on constitutional amendments

On December 29, Yasser Rizk, board chairman of Akhbar Al Youm who is also close to Sisi, published an [article](#) entitled "The long-awaited year of political reform", where he pointed out the most likely constitutional amendments, as follows:

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- Article 140 should be changed to increase the presidential term to six years to allow President Al-Sisi to stay in office beyond 2022, as well as Article 226, which prohibits any amendments to the articles relating to the re-election of the President of the Republic.
- Extension of the presidential term to six years is a transitional article that does not apply to presidents coming after Sisi.
- Drafting a new constitutional article to state that at the end of 2022, an entity called the “Council for the Protection of the State and the 30 June Revolution” be created to take over for a transitional period of five years. This proposed council would be headed by Al-Sisi in his capacity as the founder of the 30 June political system, and includes as members the pre and post-Sisi presidents, speaker of parliament, prime minister, head of the Constitutional Court, minister of defense, chief of the general intelligence service, and heads of the councils for women, media and human rights affairs. This council will make sure that elected presidents after 2022 observe the principles of the 30 June 2013 Revolution and the 3 July statement which Al-Sisi delivered on the eve Mohamed Morsi was removed from office.

Interestingly, Rizk's proposal is in line with a proposal that was leaked from [confidential sources](#) in a report published by Mada Masr on 22 November 2018 about constitutional amendment consultations, suggesting creation of the “Council for the Protection of the State and the 30 June Revolution”, to be headed by Sisi forever.

Khalid Fahmi, a journalist, comments on this in a post titled “[Presidential Council](#)”, saying that the idea of the transitional council proposed by Yasser Rizk is not new, as it had been discussed by former President Gamal Abdel Nasser and his defence minister Abdel Hakim Amer in September 1962, quoting the memoirs of Abdel Latif al-

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Baghdadi, one of Nasser's revolutionary council as follows: "It was agreed that the State should establish political institutions to ensure the future and to implement the provisions of the National Charter (the 1961 Charter). They agreed to form a Presidency Council as a collective leadership to be considered the supreme body of State. That council would be entitled to draw up and pursue public policies and to approve laws and decisions before they are issued by the President of the Republic." (Al-Baghdadi Memoirs Part II, pp. 178-179).

### Sixth: The last chapter of the constitutional amendments

Early February 2019, a group of parliamentarians submitted a proposal to the Speaker of the Egyptian Parliament Ali Abdel Aal to amend a host of constitutional articles including presidential term limits. The proposal was submitted by head of the state-allied Alliance to Support Egypt coalition MP Abdel Hady al-Qasabi and signed by one fifth of members of the House of Representatives. The amendments included extension of the presidential term from four to six years to enable Abdel Fattah al-Sisi to run for elections for two further terms after his second term concludes in 2022, which could keep him in office until 2034.

According to the sources in the Alliance to Support Egypt, the amendments will tackle several other issues beyond the presidential term limits, including allowing the president to appoint at least one vice president; reintroducing two state bodies effectively dissolved by the 2014 Constitution: an upper house of Parliament, formerly called the Shura Council but now to be called the Senate, and the Ministry of Information, which will replace the national authorities for press and broadcasting; and stipulating a 25 percent representation quota for women in parliamentary elections, with "adequate" representation for youth and Coptic Christians. This is in



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addition to adding an article that will make the Armed Forces “responsible for protecting the civil state, the sources said. Hardly had 48 hours passed when the suggested amendments were [approved](#) by Parliament’s General Committee and referred to the plenary for voting and ratification, which means that the structure of amendments will go in this direction.

In the same context, Yasser Rizk – who has published a number of articles in Akhbar Al Youm to promote the constitutional amendments – predicted in an [article](#) he published on 4 February 2019 titled “The path of political reform that was launched” that the referendum on constitutional amendments will be held at the end of April or early May, before the beginning of the Muslims’ fasting month of Ramadan. Yasser Rizk's expectations cannot be viewed through his own vision and political assessment, as he is viewed as being close to Sisi and the circles of power, which means that the date mentioned by Rizk in his last article may be the actual agreed date for the referendum on the proposed constitutional amendments.

### **Annex: Constitutional articles likely to be amended**

*Here are the constitutional articles that have recently been discussed, and are likely to be amended:*

#### **Article (226):**

The articles relating to Article 226 constitutes a major problem to the government’s plans to conduct constitutional amendments, because it protects the articles relating to presidential terms, rights and freedoms in the constitution. Thus, it represents an obstacle in the way of proposed amendments. However, there is more than one proposal to address this article, most notably to delete the last paragraph, as Article 226 states that:

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- “The amendment of one or more articles of the Constitution may be requested by the President of the Republic or one-fifth of the members of the House of Representatives. The request shall specify the articles requested to be amended and the reasons for such amendment.”
  - “In all cases, the House of Representatives shall discuss the amendment request within 30 days from the date of its receipt. The House shall issue its decision to accept the request in whole or in part by a majority of its members.”
  - “If the request is rejected, the same articles may not be requested to be amended again before the next legislative term.”
  - “If the amendment request is approved by the House, it shall discuss the text of the articles requested to be amended within 60 days from the date of approval. If approved by a two-thirds majority of the House’s members, the amendment shall be put to a public referendum within 30 days from the date the approval is issued. The amendment shall be effective from the date on which the referendum’s result and the approval of a valid majority of the participants in the referendum are announced.”
- The last paragraph of Article 226 states that: “In all cases, texts pertaining to the re-election of President of the Republic or the principles of freedom or equality stipulated in this Constitution may not be amended, unless the amendment brings more guarantees.”

### Article (140):

In addition to a proposal to delete the last paragraph of Article 226, there is another proposal to amend the first paragraph of Article 140 of the Constitution to include increasing the term of the presidential term from four to six years. In the event that this article is amended, there is nothing in the Constitution that prevents the current

president from benefiting from amendment, which allows him to run for two more presidential terms (12 more years in office).

The first paragraph of Article 140 states that: “The President of the Republic shall be elected for a period of four calendar years, commencing from the day following the termination of the term of his predecessor. The President may only be reelected once.”

*There are a number of other articles that it is unclear whether or not they will be amended, including:*

#### Article (151):

Article 151 of the Constitution requires that the State should hold a referendum in the event of treaties related to sovereignty rights. “Voters must be called for referendum on the treaties related to making peace and alliance, and those related to the rights of sovereignty. Such treaties shall only be ratified after the announcement of their approval in the referendum.” It seems that the regime does not want to face any obstacles in treaties regarding the waiver of Egyptian territory as happened in the crisis of the waiver of the Egyptian islands of Tiran and Sanafir to Saudi Arabia by seeking to amend Article 151 to allow the [President](#) of the Republic to conclude such treaties with no need to hold a referendum. The Articles end stating: “In all cases, no treaty may be concluded which is contrary to the provisions of the Constitution or which results in ceding any part of state territories.”

#### Articles (18, 19, 21, 23):

There are some paragraphs in Articles: 18, 19, 21, and 23 that observers believe they are likely to be amended by the regime, as follows:

- Article 18: "The State shall allocate a percentage of government spending to health equivalent to at least 3% of Gross National Product (GNP), which shall gradually increase to comply with international standards."
- Article 19: "The State shall allocate a percentage of government spending to education equivalent to at least 4% of the Gross National Product (GNP), which shall gradually increase to comply with international standards."
- Article 21: "The State shall allocate a percentage of government spending to university education equivalent to at least 2% of the Gross National Product (GNP), which shall gradually increase to comply with international standards."
- Article 23: "The State shall sponsor researchers and inventors and allocate a percentage of government spending to scientific research equivalent to at least 1% of the Gross National Product (GNP), which shall gradually increase to comply with international standards."

### Article 121:

The expected amendments may also include Article 121 which the Speaker of the House of Representatives repeatedly described as an obstacle to the Parliament activity. Article 121 states that:

- "The meetings of the House and resolutions passed thereby shall not be deemed valid unless attended by the majority of its members."
- "In cases other than those requiring a special majority, resolutions shall be passed by the absolute majority of the members present. In case there is a tie of votes, the subject matter in deliberation shall be deemed rejected."
- "Laws shall be issued by the absolute majority of the members present, provided that such majority constitutes not less than one third of the House members."



- “The Laws deemed complementary to the Constitution shall be issued by a majority of two thirds of the House members. Laws regulating presidential or parliamentary or municipal elections, political parties, the judiciary, related to judicial bodies and judicial organizations, and those regulating the rights and freedoms stipulated in the Constitution shall be deemed complementary to the Constitution.”

#### Article 204:

This article, which addresses the military judiciary in the Constitution, is also likely to be amended in the coming period to allow the referral of defendants in cases of damage to national security to the military judiciary, under the pretext of combating terrorism and achieving a speedy justice.

Article 204 of the current Constitution states that: “No civilian shall face trial before the Military Court, except for crimes that constitute a direct assault against military facilities or camps of the Armed Forces, or their equivalents, against military zones or border zones determined as military zones, against the Armed Forces’ equipment, vehicles, weapons, ammunition, documents, military secrets, or its public funds, or against military factories; crimes pertaining to military service; or crimes that constitute a direct assault against the officers or personnel of the Armed Forces by reason of performing their duties.”

#### Article 147:

Observers also say that Article 147 of the Constitution will be subject to likely amendments to allow Sisi to “relieve the government from carrying out its duties”, and appoint and dismiss ministers without need to consult with the prime minister or the parliament. It states that:

- “The President of the Republic may relieve the government from carrying out its duties, subject to the approval of the majority of the members of the House of Representatives.”
- “The President of the Republic may conduct a cabinet reshuffle after consultation with the Prime Minister and approval of the House of Representatives by an absolute majority of the members present, which must not be less than one third of its members.”

#### Article (107):

Also Article 107 of the Constitution is expected to be amended. It states that:

- “The Court of Cassation shall have jurisdiction over the validity of membership in the House of Representatives. Appeals shall be submitted to the Court of Cassation within a period not exceeding thirty days from date on which the final election results are announced. Appeals shall be adjudicated within sixty days from the date of the receipt thereof.”
- “In the event that a judgment declares a membership invalid, the invalidity of the membership shall be effective as of the date on which the court judgment is notified to the House.”

#### Article (32):

Article 32 of the Constitution is also expected to be among proposed amendments as it contains paragraphs that regulate the exploitation of natural resources, seen by the government as “very difficult” in the course of long-term investments. Also, it prohibits disposition of the State’s private property as follows:

- “Disposing of State’s public properties is prohibited. Granting the right of exploitation of natural resources or public utility concessions shall be by virtue of a law for a period not exceeding thirty (30) years.”
- “Granting the right of exploitation of quarries, small mines and slatterns, or granting public utility concession shall be based on a law for a period not exceeding fifteen (15) years.”

## Conclusion

It is clear that there is real intention for conducting constitutional amendments that have been prepared and promoted for more than a year and a half. It seems that the ruling regime believes that this is the best time to proceed with these amendments to avoid any likely unfavorable circumstances.

The philosophy of these amendments seems to be focused on two main directions:

**First,** to allow Sisi to remain in power for life.

**Second,** to constitutionalize the political role of the military institution.

The proposed amendments entitle the military institution to protect the constitution and the civil State, allowing the Army to intervene, as a constitutional duty, to adjust the political path if it believes from its own point of view that it contradicts the Constitution or the civil State. Although this has been the case since 1952, what is new here is that this situation will be constitutionalized as part of the Egyptian political system.