

The Reform of Judicial Appointment Process in the Ordinary Judiciary in Egypt

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Abstract

This article argues for the necessity of the reform of the judicial appointment qualification, and the judicial appointment powers in Egypt. The article presents judicial appointment process and requirement as the main case study. It illustrates the difference between *de facto* and *de jure* in the judicial appointment system in Egypt. These differences pave the road to a deeper understanding of legal and political aspects of discrimination against the poor, woman and political opposition within the appointment process. The article discusses the contemporary challenges in judicial appointment. The challenges can be summarized into: gender inequality, elimination of political minorities, and under-privileged citizens. Finally, the article proposes a solution for the problems identified in this article. These solutions are based on reforming the both the judicial appointment qualification, and the judicial appointment powers in Egypt.

Keywords

Egypt – judicial appointment qualification – judicial appointment power – supreme judicial council – judicial reform – ministry of justice

I Introduction

The judicial appointment process involves several legal, political and social aspects.¹ Inconsistency between these aspects can lead to discrimination and

1 Peter Webster, 'Selection and Retention of Judges: Is there one "Best" Method?' *Florida State University Law Review* 1 (1995): 3–5.

inequality, eating away at the core of the judicial system.² Both legal and political aspects of judicial appointment have a great impact on society.³ This is manifested in discrimination against political opponents, underprivileged citizens and women. In terms of gender inequality in judicial appointment in Egypt, presently only 68 out of 15,000 judges are female,⁴ indicating a clear lack of female representation in all three supreme courts (the Court of Cassation, the Supreme Administrative Court (State Council),⁵ and the Supreme Constitutional Court).⁶ Equally, the underprivileged and political minorities rarely have an equal chance in the appointment process.⁷ Hence, this article is in the favor of the necessity of the reform of the judicial appointment qualification, and judicial appointment powers in Egypt.⁸

The judicial appointment process covers two aspects, judicial legitimacy, and that of judicial qualification.⁹ Firstly, the question of judicial legitimacy refers to the source of the judicial authority. In the republic system, while the

2 Theresa Beiner, 'The Con Law Professor with Judicial Appointment Power' *Journal of Appellate Practice and Process* 1 (2013): 6, See, Daniel Nadler, 'An Opportune Moment: The Judicial Appointment Reforms and the Judicial Credentials Demanded by the Charter' *Constitutional Forum* 121 (2006): 131.

3 David A.R. Williams, 'The Judicial Appointment Process' *New Zealand Law Review* 39 (2004): 49.

4 Dalia G, 'Egypt Swears in 26 new female Judges' *Egypt Streets*, June 17, 2015, <<http://egyptianstreets.com/2015/06/17/egypt-swears-in-26-new-female-judges/>> accessed 18 May 2017.

5 The State Council consists of three different branches, which are the judicial, legislative and advisory bodies. As for the judicial branch has exclusive authority over administrative disputes. It consists of the Supreme Administrative Court, the Administrative Courts, the Disciplinary Courts, and the State Commission Board. The State Council Law 47/1972, art. 3.

6 Mahmoud Hamed, 'Egypt: The Lingering Battle for Female Judgeship' in *Gender and the Judiciary in Africa from Obscurity to Parity?* eds. Gretchen Bauer and Josephine Dawuni (2016), 23.

7 Lobna Monieb, 'Egyptian law Graduates denounce class based job discrimination', *Ahramonline*, October 20, 2014, <<http://english.ahram.org.eg/NewsContent/1/0/113461/Egypt/o/Egyptian-law-graduates-denounce-classbased-job-dis.aspx>> accessed 18 May 2017, see Sarah Moawad, 'Egypt's Poor Revolution' *Muftah*, October 24, 2014, <<http://muftah.org/egypts-poor-revolution/#.V5wgjOx81g>> accessed 18 May 2017.

8 For Gender and Judicial Appointment, See Dominc O'Sullivan, 'Gender and Judicial Appointment' *Univeristy Queenland Law Journal* 107, (1996–1997): 108–09, See also, Rosalind Dixon, 'Female Justices, Feminism, and the Politics of Judicial Appointment: A Re-Examination' *Yale Journal of Law and Feminism* 297 (2009–2010): 299–00.

9 Ibid.

judge rules in the name of the people,¹⁰ the actual definition of the role of the people is challenging.¹¹ It may take on a direct form of legitimacy, where the judge is directly elected, or it can take an indirect form, where the judge is appointed by an elected authority that is either the President, or both the President and Parliament (Congress).¹² In Egypt, Article 20 of the 1973 Judicial Authority Law (JAL) states, “judgments are issued in the name of the people.”¹³ The definition of the people, however, was left out. There was no clear definition of ‘the people’ during successive republican eras.¹⁴ The socialist/communist system of Nasser had only one sense or definition of ‘the people’, members of the Socialist Union.¹⁵ Under Sadat’s and Mubarak’s rules, the concept of ‘the people’ was a more imprecise and vague term than that of Nasser’s era.¹⁶ Instead of setting the concept straight to reflect a democratic form of government, these presidents maintained their authority over the judicial appointment process. The 2014 Constitution grants the judiciary full independence in the appointment process.¹⁷ The judiciary is the sole competent authority for judicial appointments. Even though such an act ensures, from the judges’ point of view, independence of the appointment process, it still lacks any form of checks-and-balances among the judiciary, the executive and the legislative authorities. As a result, the definition of ‘the people’, who are the purported source of the judge’s legitimacy, remains unclear.

Secondly, the concept of judicial qualification starts once a candidate enrolls in law school.¹⁸ Any law student is a potential candidate for a judicial career. Holding a law degree is the first requirement towards a judicial career. A judge in a District Court, is a potential judge for the Court of Appeals, and similarly a judge in the Court of Appeals, is a potential candidate for the

10 Law 89/1986 Regarding the Organization of Certain Cases of Public Invitations for General Subscription.

11 Thomas Cooley, ‘The Fundamentals of American Liberty’ *Michigan Law Journal* 149 (1894): 149–50.

12 US Example.

13 The Judicial Authority Law 46/1972, art. 20.

14 Peter Mansfield, ‘Nasser and Nasserism’ *International Journal* 670 (1972–1973): 675.

15 Amr Shalakany, *Izdihar wa-Inhiyar Al-Nukhba Al-Qanuniyya Al-Misriyaa* (Cairo, Al Shorouk Publishers, 2013), 277.

16 Ibid.

17 The 2014 Constitution, art. 100 states “Court decisions shall be issued and implemented in the name of the people.”

18 Juan Mayoral, Urszula Jaremba, and Tobias Nowak, ‘Creating EU law judges: the role of generational differences, legal education and judicial career paths in national judges’ assessment regarding EU law Knowledge’ (2014) 21 J European Pub Pol 1120, 1123.

Supreme Court.¹⁹ The judicial appointment process reaches its peak when the candidate holds a position in the Supreme Court.²⁰ Judicial qualification covers three aspects, they are: general judicial requirements, judicial education requirements, in addition to judicial training requirements.

There are several general judicial requirements that most jurisdictions adopt. One of the most important general requirement is the nationality of the judge.²¹ It is rare to find a foreign judge within any judicial system.²² Other requirements concern the number of years of experience as a lawyer, and whether he is a law professor, or a prosecutor. Education requirements, however, can vary across states, with some leaning towards more than just a law degree.²³ There are only three states that require nothing but a law degree to become a judge: the United States, the United Kingdom, and Egypt.²⁴ Many states require a Master's degree in law as a prerequisite for judicial appointment.²⁵ The third aspect of judicial qualification concerns the training requirement, which come in two forms. The first is pre-appointment training, while the second concerns continuing education and training.

This article is divided into three main sections. The first is a case study on the Egyptian judicial appointment methods. It includes two key aspects that are related to judicial qualification requirements, in addition to judicial appointment powers. This part illustrates the difference between *de facto* and *de jure* in the judicial appointment system in Egypt. These differences pave the road to a deeper understanding of legal and political aspects of discrimination within the appointment process. The second section discusses the contemporary challenges in judicial appointment. The challenges can be summarized into: gender inequality, elimination of political minorities, and under-privileged citizens. The third and final section proposes a solution for the problems identified in this article.

19 Ibid.

20 Ibid.

21 The nationality requirement is not exclusive requirement in Egypt. It is a general requirement in most of the universal jurisdictions like the US. See in that regard, 'Citizenship requirements for employment in the Judiciary', *United States Courts*, Washington, 2017 <<http://www.uscourts.gov/careers/search-judiciary-jobs/citizenship-requirements-employment-judiciary>> accessed 18 May 2017.

22 Ibid.

23 Lorne Sossin, 'Judicial Appointment Democratic Aspirations, and the Culture of Accountability' *University of New Brunswick Law Journal* 11 (2008): 25.

24 Ibid.

25 Barbara Hamilton, 'Criteria for Judicial Appointment and Merit' *Queensland Univeristy Technology Law Journal* 1 (1999): 12.

II Judicial Appointment Rules in Egypt

A *Judicial Appointment Qualifications*

The required judicial qualifications in Egypt are very few, compared to requirements of Germany, and France.²⁶ The current form of judicial education requirements is based on three major aspects: judicial education, Pre-appointment, and Post-appointment judicial training. The first aspect of judicial qualification is judicial education. The JAL does not require any form of training beyond the required law degree.²⁷ Nonetheless, the law grants the right to certain categories of lawyers to apply for judicial positions. In theory, Article 39 identifies a category of people who claim the right for appointment in the judiciary. These aforementioned potential candidates should fulfill one of the following conditions, they have to:

1. have previous work experience as a judge, or worked in a similar position according to the law,
2. be a senior public prosecutor,
3. be a public prosecutor with four years of experience,
4. be a junior judge with the State Council, a junior lawyer at the state litigation authority, or a senior administrative prosecutor,
5. lawyers, who have worked at the Court of Appeals for four years, and have a working experience of nine years, and
6. be a law professor, having held this position for at least nine years.²⁸

In practice, however, judicial appointment in Primary Courts is restricted to senior public prosecutors, who have reached the age of 30.²⁹ This is a tradition

26 Lee Epstein, Jack Knight and Olga Shvetsova, 'Comparing Judicial Selection Systems' *William and Marry Bill of Rights Journal* 7 (2001–2002): 11, see also, Harold Laski, 'The Technique Appointment' *Michagant Law Review* 524 (1926): 529.

27 A law degree is required to appoint as a prosecutor, which is the only practical path to be appointed as a judge. Refer in that regard to Adel Omar Sherif, 'Overview of the Egyptian Judicial System, and its History' *YearBook of Islamic and Middle Eastern Law* 3 (1998–1999): 12.

28 The Judicial Authority Law 46/1972, art. 39.

29 Joining the Public Prosecutor Office is usually the first step for judicial appointment. There is not any educational requirement for to join the prosecution except holding a law degree. *Ibid.*, at art. 38 mandates only one educational requirement, a Bachelor of Laws. It indicates the general rules of judicial candidates to be: (1) an Egyptian national, (2) not less than 30 years old, (3) holding a Bachelor of Laws from a law school in Egypt, or a foreign comparable degree, (4) does not have criminal or disciplinary records, even if the

based on Article 49.³⁰ As for the Court of Appeals, the only way to appoint judges there is by way of seniority: judges must be at least 43 years of age, and have at least 10 years of working experience in Lower Courts.³¹ Article 9 of the JAL states that “the MoJ has the right to nominate the Chairperson of the Primary Courts, with the approval of SJC, for a renewable term of one year.”³² This discrepancy between theory and praxis goes back to the authority in charge of appointment, which is the Supreme Judicial Council (SJC). In the last 20 years, the SJC has never opened its doors to any other category, except on two occasions to appoint female judges.³³ There are currently only 68 female judges.³⁴ The SJC has neither issued a statement prohibiting the appointment of other categories, nor opened up applications to these categories.³⁵ As a result, appointment is naturally restricted to senior public prosecutors.

The second aspect concerns Pre-judicial appointment training. The National Center of Judicial Studies (NCJS) is the body responsible for providing training to judges and prosecutors.³⁶ It was established in 1981.³⁷ It is the principal institute in charge of providing specialized training to judges throughout their professional careers.³⁸ It falls under the supervision of the Ministry of Justice, which is the competent authority for appointing the Director of the NCJS, following the of the SJC.³⁹ The NCJS Director is also the Chairman of the its Board. The Board consists of the Director, the Attorney General, four judges, and four experts appointed by the Minister of Justice.⁴⁰

candidate is during any criminal rehabilitation process, and (5) be of good standing and reputation.

30 Ibid., at art. 49 states “the selection of court judges of first instance of class (B) [is] by way of promotion from members of the prosecution on the basis of their seniority, work and inspection reports.”

31 Ibid., art. 116.

32 Ibid., art. 9 states that “the Minister of Justice is the competent authority to appoint the president of the primary court. Unlike the court of appeals, the appointment is done through the seniority principle.”

33 Ahmed El Sayed, ‘Female Judges in Egypt’ *YearBook of Islamic and Middle Eastern Law* 135 (2006–2007): 135–36.

34 They were appointed through an internal call for appointment from the Administrative Prosecution Authority *ibid.*, at 136.

35 *Ibid.* at 137.

36 Mohamed Serag, ‘Legal Education in Egypt’ *South Texas Law Review* 615 (2001–2002): 617.

37 *Ibid.*

38 *Ibid.*

39 The National Center of Judicial Studies Law 347/1981, art. 4.

40 *Ibid.*, at art. 3.

There is no formal mandate for Pre-appointment training in judicial appointment.⁴¹ Law schools and the judiciary do not recognize judicial internships.⁴² In practice, some law firms hire law students, on informal basis, to help them acquire legal expertise. Law students are not authorized to formally appear in courts, even under the supervision of a senior attorney.⁴³

Judicial pre-training for judges differs from that of prosecutors.⁴⁴ In theory, the JAL does not explicitly mandate any pre-academic, or professional training for judges.⁴⁵ Nonetheless, the JAL implicitly requires these types of training by virtue of the appointment of judges, who come from diverse backgrounds. The JAL provides equal opportunity and ensures diversity by appointing candidates from different professional and academic backgrounds. The candidates include law professors, administrative prosecutors, public prosecutors, as well as lawyers. Whereas in praxis, the Ministry of Justice limits appointments to senior public prosecutors only. Limiting the appointment process prompts a need for pre-judicial training. Additionally, public prosecution training is limited to criminal law.⁴⁶ All prosecutors in Egypt lack the necessary training in other legal fields, such as civil law, commercial law, as well as labor law. The Ministry of Justice and the SJC necessitate such training for new judges. The objective behind this training is to fill the gap between theory and practice. The entire pool of candidates is requested to undergo a one-month training program during their last summer at the Public Prosecution Office.⁴⁷

The absence of Pre-appointment training (judicial clerkship) at law schools is owed to two reasons. Firstly, law schools neither synchronize clerkship

41 Hiram Chodosh, Stephen Mayo, 'Fathi Nguib and Ali Sadek, Egyptian Civil Justice Process Modernization: A Functional and Systemic Approach' *Michagan Journal of International Law* 865 (1995–1996): 865.

42 Ibid.

43 The judicial system in the US and Germany, however, is based on providing judicial externships to law students 'Practical Training of law student PTLs' *The State Bar of California*, 2015, <<http://admissions.calbar.ca.gov/Education/LegalEducation/Practical-TrainingofLawStudentsProgram.aspx>> accessed 18 May 2017.

44 Stephen Rosenbaum, 'Legal Clinic is More Than a Sign on the Door Transforming Law School Education in Revolutionary Egypt' *Berkeley Journal of Middle Eastern & Islamic Law* 39 (2012): 65.

45 Ibid.

46 Mohamed Arafa, Towards a Culture for Accountability: A New Dawn for Egypt, *Phoenix Law Review* 1 (2011–2012): 34.

47 'New Judges training' *National Judicial Studies Center*, 2014 <<http://www.jp.gov.eg/project/Default.aspx?proj=6qDVSeW2mi5YG%2bPVbz4mBg%3d%3d&&pagid=2pAKJqx%2f329BGDzKDWMQ%3d%3d>> accessed 18 May 2017.

opportunities with the Ministry of Justice, nor with private law firms as a means of offering technical and professional support to their students. This tendency by law firms, while seemingly might appear inexplicable, it may be attributed to a tradition of centralized decisions of educational policies in Egypt.⁴⁸ There are two institutions that make the umbrella of the educational structure in Egypt. The first is the Ministry of Education, which supervises “all post-secondary education, planning, policy formulation, and quality control activities.”⁴⁹ The second institution is the Supreme Council of Universities, which formulates “the overall policy of university education and scientific research in universities, and determines the number of students to be admitted to each university, each year.”⁵⁰ As a general rule, there was no record of either of these two bodies coordinating with the Ministry of Justice, or the Supreme Judicial Council in an attempt to offer legal education to judges. The Ministry of Justice and the SJC only depend on the NCJS to offer legal education, or training programs to their members.⁵¹

The third aspect is Post-judicial appointment training. The Public Prosecution Office believes that “the best way to learn how to fight, is to have one.”⁵² New prosecutors start their careers without any training. This continues until the end of the first two years of their appointment. During these first two years, each district attorney aide is assigned to the supervision and guidance of a senior public prosecutor.⁵³ The role of the NCJS begins with the end of the first two years of appointment. It is then that junior prosecutors undergo a three-month long training period at the NCJS, for the first time. Senior judges are hired to teach junior prosecutors and new judges their new responsibilities. Training provides major help in rectifying various common mistakes that were committed during the first two years of practical experience. As far as judges are concerned, there is no requirement for formal continuing education,

48 Mehmet Tosun and Serdar Yilmaz, ‘Centralization, decentralization and conflict in the Middle and North Africa, Equality and Economic Development’ November 2008 <http://www.erf.org.eg/CMS/uploads/pdf/1223988638_15thAC_INST_Tosun_Yilmaz.pdf> accessed 18 May 2017.

49 ‘Higher Education in Egypt’ Egypt Country Profile, 2004, <http://eacea.ec.europa.eu/tempus/participating_countries/impact/egypt.pdf> accessed 18 May 2017.

50 Ibid.

51 At the end of the training, there is a final exam that each judge or prosecutor has to pass. There are not any failing grade. However, the best three students are awarded a full paid trip to attend an international training abroad. This reward increases the competition among the participants.

52 Ibid.

53 Judicial Instruction for Prosecutors Manual, art. 795.

except for judges employed by the State Council, who are required to hold two legal diplomas in law.⁵⁴ Other types of training are largely unregulated and depend mainly on funding provided by the Ministry of Justice.⁵⁵

B Judicial Appointment Stages

The judicial Appointment process can be divided into six different stages. The first starts with the announcement of an SJC vacancy in the local media, targeting fresh law graduates to join the Prosecution Office. As stated earlier, there is no form of public call to join the bench. The call is published in two broadly circulated national newspapers, as shown in Figure (1). The advertisement states the terms and conditions for the application. It specifies when application forms will be made available, as well as the deadline for submission. After submitting the application, the SJC selects candidates who meet the minimum requirement, primarily, a law degree with a general grade of “Good”,⁵⁶ and sets a date for interviews.

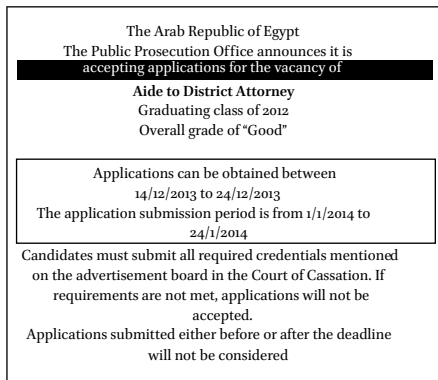


FIGURE 1 Advertisement of judicial appointment in public newspapers⁵⁷

54 State Council Law number 47/1972, art. 73/5.

55 Ibid.

56 The Judicial Authority Law 46/1972, art. 116. In 2011, the total number of candidates scoring ‘good’ was 4000, of which only 400 were selected to work as aide to district attorney. Moreover, the application process for appointments is open at the end of the fourth year of law school. This process is limited to graduates of each year; graduates of previous years are not eligible to apply. There is no legal rule to prevent such a practice. However, SJC tends to limit the scope of applications and those who are eligible to apply. This is shown in the advertisement in the figure below, which is limited to graduates of the 2012 school year only.

57 The advertisement can be found on public newspapers the printed versions.

The second stage is the exam, or the SJC interview stage. In theory, the JAL does not specify any entry test condition.⁵⁸ In praxis, however, the SJC schedules interviews for all applicants in order to assess their legal prowess. Candidates are asked three criminal law questions, one of which should be addressed correctly. At the conclusion of the interview period, results are not divulged by the SJC to candidates. Candidates are then only informed in the event of a positive feedback, and in the case they got accepted as district attorney aides. This takes a duration of 12–24, starting with the date of the interview. Names of successful candidates are then sent by the SJC, to the Ministry of Justice to commence the third stage.

The third stage starts with the receipt of the names of potential candidates by the Ministry of Justice. During this stage, the Ministry of Justice runs all necessary security and background checks on candidates. It cooperates then with the Ministry of the Interior in obtaining criminal and political record clearances, which make up the fourth stage. The JAL does not clearly indicate the nature of crimes that potentially stand in the way of a candidate's appointment. Candidates should have no criminal, disciplinary, or rehabilitating records.⁵⁹ It is mandatory that they are of 'good' standing and reputation.⁶⁰ The connotation of 'good' and 'bad' reputation is left to be determined by the SJC and the security agencies.⁶¹

If the candidate's record is cleared, the application goes through a second round of background checks, which involves the candidate's family's criminal record. In theory, the background check is limited to that of the candidate. However, in practice, the SJC, and the Ministry of Justice extend their security check to include the candidate's extended family's backgrounds, the fourth degree of kinship (second cousins and their spouses).⁶² In their application, candidates are asked to fill out a family-tree form. This form includes names,

58 The only legal exception is in the case of appointing assistant public prosecutors. Since 2006, no one has been appointed directly to be assistant public prosecutor. The SJC never discloses the reason why this mode of employment has ceased to be used. This appointment process is based on The Judicial Authority Law 46/1972, art. 116. It states "no one can be appointed in the position of assistant public prosecutor, except the aide of district attorney, unless the candidate passes a comprehensive exam."

59 The Judicial Authority Law 46/1972, art. 38 states "candidates should have no criminal records, and has a good reputation."

60 *Ibid.*, "be of good standing and reputation" is a vague term that there is not much about it. It is left as it is to open the door to the illuminate any candidate for such reason.

61 *Ibid.*

62 *Ibid.*

addresses, and employment standing of family members. the background check includes parents, grandparents, siblings, uncles, and cousins, as well as their spouses.⁶³ Both the candidates and their fathers are furthermore required to submit fingerprinting record to verify data submitted on their criminal background. In the event that a crime has been committed by a member of the candidate's family, this is enough reason for the elimination of the the candidate from the pool of appointees.⁶⁴

The fourth stage gives the National Security Agency (NSA) the authority to examine the candidates', and their families', political affiliation as well. The SJC and the Ministry of Justice practice a zero-tolerance policy regarding political connections, specifically in regards to that with Islamists, liberal parties, or similar groups.⁶⁵ In theory, there is no direct legal foundation for such extensive security checks of the candidates by the NSA. However, it has been argued that Article 73 that stipulates the prohibition of political participation of both judges and courts, also applies to potential candidates of the judiciary. Article 73 of the JAL clearly forbids participation, in any form, in political activity: "courts are banned from expressing any political view, and judges are prohibited from engaging in any political action. This could mean suspension of election to the General Assembly, regional bodies, political organizations, unless after the person in question submits his/her resignation."⁶⁶ In practice, the Ministry of Justice is the only competent authority for coordinating between the SJC and the NSA. This step is not publicized by the SJC to the candidates. However, in reality, if a candidate chooses to challenge the requirement of a security check of his/her relatives, he is instantly eliminated from the list of candidates.⁶⁷ Automatic exclusion is immediately applied without any justification.

63 Appendix 3 of the Public Prosecution Office appointment application contains charts of the application family members. Each candidate has to fill this appendix at the best of his knowledge. It is also important to know that such appendix also exists in the police and army academies. So, they can make sure that no police or army officer would have any political affiliation.

64 Ibid.

65 Atef Farouk, 'Exclusion of the Muslim brotherhood from the public prosecution appointment' *Vetogate*, July 27, 2013, <<http://www.vetogate.com/447110>> accessed 18 May 2017.

66 The Judicial Authority Law 46/1972, art. 73.

67 This information is required in the application for the aide to the district attorney. The application asks much information about candidate and his family's history. It also requires any stating any travel or relation with international organization, see in that regard the general terms in Maysar Yassin, al-watan tanshor shorowt al-taqadam lewazefat ma'awn al-nayabah, *Waten Newspaper*, November 21, 2014 <<http://www.elwatannews.com/news/details/602292>> accessed 18 May 2017.

The fifth stage is a mandatory medical examination involving blood and urine sampling, the aim of which is to ensure that potential candidates are free of alcohol and substance dependency. In theory, this test is neither obligatory, nor enforced by the JAL.⁶⁸ Again, in reality, the SJC and the Ministry of Justice enforce and mandate such tests for each candidate. Even though the law does not stipulate such a requirement, candidates cannot go against the norm, and challenge this requirement taking off taking the test. Each year, candidates who fail the medical test are excluded from the list of candidates.⁶⁹ This medical test is for first-time appointees only; which means that when prosecutors are promoted to judges, there is no such requirement again. The same applies if a junior judge is promoted to work at the Court of Appeals, the Court of Cassation or the Supreme Constitutional Court.

In stage six, a presidential appointment ruling is dispensed for the appointment of new candidates.⁷⁰ The President is given complete and ultimate authority by the JAL to issue the decree of appointment of judges and aides to public prosecutors.⁷¹ The names of the accepted candidates are published in "two widely distributed newspapers."⁷² After which point, candidates take the long-awaited-for judicial oath before the Minister of Justice. The oath reads: "I swear by the almighty God to judge among people with justice and respect to the laws." The same oath will again be sworn when a senior prosecutor is promoted to become judge. The oath is generally required in the life of the judge on three occasions only: when a judge is appointed as an attorney general, as president of the Court of Cassation, and as a judge at the Supreme Constitutional Court.⁷³ In all of these cases, the judge takes the oath before the President of the Republic.⁷⁴

When prosecutors are promoted to judges at the age of 30, there is no prerequisite of passing the previously described five steps, at this stage of their careers, judges will only take the final requisite.⁷⁵ Again, the SJC forwards

68 The Judicial Authority Law 46/1972, art. 118.

69 Tarek Hafez, 'Wokala al-nayabah aljodod yodown al-kashf al-tabi we-yanhown ijrahat t'ynahom' *Masress*, July 13, 2014, <<http://www.masress.com/elfagr/1641454>> accessed 18 May 2017.

70 The president can refuse to appoint certain candidate, but cannot propose to add a new name. However, there is not any evidence that the president refused or proposed certain names. The presidential decree is a procedural issue.

71 The Judicial Authority Law 46/1972, art. 44.

72 Ibid.

73 The Judicial Authority Law 46/1972, art. 71.

74 Ibid., art. 44.

75 SJC takes a major role in the appointment of new prosecutors because 2014 Constitution considers Public Prosecution Office as an integral part of the judiciary. The 2014

the names of the successful senior public prosecutors to the President of the Republic to issue the presidential appointment decree. New judges are then sworn in before the SJC.⁷⁶ The Court of Cassation is the supreme court for the ordinary judiciary. As for the SCC, the appointment procedure goes through an internal call for applications. The announcement is sent (by the SCC) to the ordinary judiciary, and the state council. The announcement is thus distributed internally among judges for those who wish to apply for a position at the SCC.⁷⁷ The process for the appointment with the State Council, is similar to that of the ordinary judiciary.

As far as the appointment of the attorney general is concerned, the SJC is the competent authority to handle the appointment process. Prior to 2014, the President of the Republic was the only authority who had complete control over appointing the attorney general.⁷⁸ However, this has changed with the formulation of the 2014 Constitution. The Constitution has transferred this authority over to the SJC.⁷⁹ After the assassination of the Attorney General Hesham Barakat in 2015,⁸⁰ the appointment process of appointing a new attorney general was deferred for over six months.⁸¹ The reason for the delay was that the President had wanted to appoint the new attorney general himself. This has created tension, since the SJC upheld its constitutional position, and sole right to perform the appointment process.⁸² Eventually, the SJC has won the

Constitution, art. 189/1 states “the public prosecution is an integral part of the judiciary. It is responsible for investigating, pressing charges and prosecuting all criminal cases except what is exempted by law. The law establishes the public prosecution’s other competencies.”

76 The Judicial Authority Law 46/1972, art. 44.

77 The 2014 Constitution, art. 193/3 states “the General Assembly chooses the Court’s President from among the most senior three vice-presidents of the court. It also chooses the vice-presidents and the members of its Commissioners Authority, who are appointed by a decree from the President of the Republic. The foregoing takes place in the manner defined by the law.”

78 The Judicial Authority Law 46/1972, art. 44 and 119.

79 The 2014 Constitution, art. 189/2 states “public prosecution is carried out by a Prosecutor General who is selected by the Supreme Judicial Council from among the Deputies to the President of the Court of Cassation, the Presidents of the Court of Appeals or the Assistant Prosecutor Generals, by virtue of a presidential decree for a period of four years, or for the period remaining until retirement age, whichever comes first, and only once during a judge’s career.”

80 Egypt Prosecutor Hisham Barakat Killed in Cairo attack, Middle East, *BBC News*, 29 June 2015, <<http://www.bbc.com/news/world-middle-east-33308518>> accessed 18 May 2017.

81 Mariam Jabal, Khlaf Dostori Yoajal Iktiar al-Na'b al-Am, *Albawaba News*, 11 September 2015, <<http://www.albawabhnews.com/1493128>> accessed 18 May 2017.

82 Ibid.

battle, and appointed the new attorney general Nabil Sadek. The judicial oath, however, had to be taken before the President of the Republic.⁸³

III Contemporary Challenges in the Judicial Appointment Process

A *Class Segregation*

The first category of candidates that was eliminated from the appointment process is that of candidates who hail from humble economic and financial backgrounds. The history of this exclusion dates a long way back, before the start of the Republic era even. When Egypt was still a Monarchy, the King had ultimate and sole authority to appoint judges. Article 7 of the 1947 Judicial Independence Law states, “the appointment of judges is carried out through a monarchical decree.”⁸⁴ The 1952 *coup d'état* overthrew the monarchy.⁸⁵ It propagated against the domination of the upper class in the Egyptian society. One of the most prominent potentials of the Revolution, was to increase visibility and participation of candidates who come from under-privileged financial and economic classes. These candidates were promised appointment in the army, the police, and the judiciary, that was a promise that still remains to be fulfilled.⁸⁶

The lower classes have battled for ages, and have met with innumerable obstacles to take their fair share of these jobs. Successive regimes have covertly suppressed that wish of the underprivileged, from obtaining equal right access to public jobs, especially that of judicial appointments. Being high achieving and intelligent students of law did not intercede for their inclusion into public office. Inconveniences to join the judiciary continued.⁸⁷ In 2011, 138 candidates claimed that they were rejected from the appointment process because their parents did not hold a university degree.⁸⁸ Exclusion of the underprivileged

83 ‘Nabil Sadek Sworn in by Sisi as Egypt’s New Prosecutor General’, *Ahram Online*, 19 September 2015 <<http://english.ahram.org.eg/NewsContent/1/0/141872/Egypt/0/Nabil-Sadek-sworn-in-by-Sisi-as-Egypt-s-new-prosecu.aspx>> accessed 18 May 2017.

84 Judicial Independence Law (1947), art. 7.

85 F.R.C. Bagley, ‘Egypt Under Nasser’ *International Journal* 193 (1955–1956): 19.

86 Tareq al-Bashri, *al-harakah al-sayasiyah fi Misr*, (Cairo, Dar al-Shorouk, 2nd ed. 2002), 539–542.

87 Mahmoud Al-Masry, ‘Istba’ad Ta’ynat al-nayabah besabab mo’hel al-waladiyn aw al-faqr’ *Albawabh News*, December 19, 2015 <<http://www.albawabhnews.com/275627>> accessed 18 May 2017.

88 Lobna Moneib, ‘Egyptian Law Graduates Denounce Class-Based Job Discrimination’ *Ahram Online*, October, 20 2014 <<http://english.ahram.org.eg/News/113461.aspx>> accessed 18 May 2017.

has been brought to the attention of the SJC several times. The issue, however, has neither been overtly acknowledged, nor justified in any official announcement.

Even though the SJC has never divulged its reason for this type of elimination, the Minister of Justice recently declared his position. In May 2015, the Minister of Justice, Judge Mahfouz Saber, was asked during a television interview whether “the son of a garbage collector stood any chance of appointment as a public prosecutor.”⁸⁹ To this question, Judge Saber replied “the judge should be from a *proper* social class ... with all due respect to garbage collectors, and to those below, or above him ... a *proper* environment, and a good social class are necessary ... I am not saying he should be an aristocrat ... I am saying the class should not be very low.”⁹⁰ As a result, of this statement, Saber resigned from office a week later.

The SJC netiehr denied, nor supported his statement.⁹¹ It is common knowledge that underprivileged citizens do not stand an equal chance in the appointment process, or secure judicial or prosecution jobs. The Minister’s resignation was not the result of an untruthful, ; rather it was for expressing in public, a truth that has for decades remained unspoken. Such inequality favors judges’ sons, and their relatives, who make up an undeclared quota.⁹² President of the Judges’ Club, Judge Al-Zend asserts that “appointing the offspring of judges is a practice that will never cease will continue ... there is no single force in Egypt that can stop such a tradition.”⁹³ The Judges’ Club is the only democratic organization within the Egyptian judiciary.⁹⁴ His statement was considered the first official statement from a high-ranking member in the judiciary to publicly speak of the this hidden quota. Prior to Al-Zend’s statement, there was a covert consensus of such a practice, of giving preference to children and relatives of

89 albayt baytak – wazear al-‘adl ya yomkan an ya’mal ibn ‘amal anzafah be-qada, *YouTube*{0:00–0:38} May 10, 2015 <<https://www.youtube.com/watch?v=7H8mPdTJUWw>> accessed 18 May 2017.

90 Ibid.

91 Candidates get to know that they were excluded after the publication of the presidential appointment decree. The decision is only limited to the name of the appointees. It does not include any information about who was executed and why the candidate was excluded.

92 Mohamed al-Isamwi, ‘al-Zend: Ta’ye’an abna al-Qodah sayastmeer, we lan tastati’ qah fi Misr Iqaf haza elzahf al-moqasas’, *Ahram newspaper*, March 9, 2012 <<http://gate.ahram.org.eg/News/182259.aspx>> accessed 18 May 2017.

93 Ibid.

94 El-sayed Gamel el Din, ‘Complaint against Prominent Judge Ahmed El-Zend Referred to Judicial Council’ *Ahramonline*, 6 March, 2014 <<http://english.ahram.org.eg/News/96037.aspx>> accessed 18 May 2017.

members of the judiciary. It was not until later that the press tracked down the appointees and their relatives. Successive reports were published in the local newspaper *Al Shorouk*. The first report came out in 2013,⁹⁵ and revealed that more than 114 out of 475 appointees (24%) in the Public Prosecution Office were relatives of members of the judiciary.⁹⁶ In 2014, this percentage increased from 25% to 35%. 168 out of 485 district attorney aide appointees were relatives of judges.⁹⁷ The report showed parents of 87 candidates worked in the Court of Appeal, parents of 11 candidates worked in the Court of Cassation, and parents of 55 candidates were judges and prosecutors.⁹⁸ Both reports revealed the names of the candidates, and their kinship to members of the judiciary.⁹⁹

B *Gender-based Segregation*

In theory, there is no legal hinderance to the appointment of women as judges or prosecutors. Furthermore, successive judicial laws have not prohibited women from joining the bench. The language of the JAL is very clear in referring to candidates in a gender-neutral tone. Moreover, advertisements for judicial vacancies never state that positions are restricted to male candidates.¹⁰⁰ In reality, however, women stand a meager chance of joining the bench as judges, or criminal prosecutors. Raising the issue of women appointment in the judiciary was brought up for the first time in 1951. Professor Aisha Rateb, who was Egypt's first female ambassador, was the first woman to apply for the position of judge in State Council.¹⁰¹ Not surprisingly, her request was denied. She then sued the State Council's administration for denying her request. She fought her case all the way to the Supreme Administrative Court.¹⁰² Professor Abdel Razzak Al-Sanhuri, the founder of modern administrative and civil laws, also

95 Ahmed Sa'd, 'Abna al-Qodah yastahowzown ala rob' ta'ynat dof'at al-nayabah al-gedidiah' *Shorouk newspaper*, December 7, 2013 <<http://shorouknews.com/news/view.aspx?cdate=07122013&id=32b2ce69-695b-484d-b358-2214a8cdc824>> accessed 18 May 2017.

96 Ibid.

97 Ahmed Said, 'Bel-asma ... abna al-qodah yastohwazown ala 35% men ta'yanat elnayabah al-gedidah' *Shorouk newspaper*, 17 July 2014 <<http://www.shorouknews.com/news/view.aspx?cdate=17072014&id=52446aeg-860f-4183-8c4c-31818a678860>> accessed 18 May 2017.

98 Ibid.

99 Ibid.

100 Monah Omar, 'al-Marah fi al-Qada al-Masry: Khotowat Mahdowdah la tasna' rab'an' *Al-Ahram newspaper*, 17 August 2013.

101 Earl Sullivan, *Women in Egyptian Public Life* (Contemporary Issues in the Middle East, 1986), 82.

102 El Sayed (n 34), at 135–136.

denied her appeal as President of the Supreme Administrative Court.¹⁰³ He stated that there were no barriers against the appointment of women, except on administrative grounds.¹⁰⁴ Hence, the decision to exclude the applicant was sustained as long as there was no evidence of misuse of power against the claimant, Al-Sanhuri stated:

Limiting some jobs – in the ordinary judiciary, and state council – to men, and excluding women, is based on the administration's discretion. The administration enjoys full authority and vision that enables it to determine the suitability of any candidate, and according to the nature of certain appointments. The administration can also base its decision on long-standing customs and surrounding environment. This shall not be interpreted as underestimating the value of women, or their dignity. It shall furthermore neither underestimate their intellectual, cultural, and educational levels, nor shall infringe their rights. However, it is left to the discretion of the administration to determine the suitability of certain jobs, for certain categories. The administration shall by no means jeopardize the principle of legal equality.¹⁰⁵

The ban on women to join the bench continued all the way until 2007, with the exception of two cases.¹⁰⁶ Firstly, women were allowed to join the

103 Shams Al Din Al Hajjaji, 'The Egyptian Judiciary in the Age of the Republic: The Role of Internal Conflicts in Controlling the Judicial System' *Indonisia Journal of International and Comparative Law* 363 (2017): 378.

104 Supreme Administrative Court, Case No 30 (February 2, 1952).

105 Ibid.

106 There is not any case from women suing the SJC. This is due to the lack of legal responsibility of the SJC. Even though there is a constitutional mandate to ensure the transparency of the state agencies, the JAL and the judicial practice take a stand against this right. On the one hand, the 2014 Constitution stipulates that there should be a forum in which citizens can file complaints regarding access to public data being withheld. It also maintains that responsibility must be taken in cases of non-conformity. On the other hand, the JAL protects the judicial administration from any redress sought by the public. Members of the public cannot force the judiciary to disclose such data. Article 84 of the JAL limits the right to complain against judicial administrative decisions, including the request to disclose judicial data, to judges and prosecutors. The Judges' Circuit at the Cairo Court of Appeal, which is responsible for all cases relating to the annulment of judicial administrative decisions, will not hear any case related to a constitutional mandate unless the plaintiff is a judge or prosecutor. Members of the public are not able to seek legal redress before the Judges' Circuit, even if individuals have been harmed by the judicial administrative decision. Consequently, the current formulation of the JAL constitutes an obstacle

administrative prosecution Office, only to fill a quota of 25% of the workforce.¹⁰⁷ Secondly, Justice Tahani Al-Gebali was the first and the last justice to join the Supreme Constitutional Court.¹⁰⁸ In 2007, the exception extended to a new initiative to open the doors for women to join the bench.¹⁰⁹ This initiative was limited to female administrative prosecutors, who wished to join the ordinary judiciary. As a result, 31 female administrative prosecutors were able to join the ordinary judiciary as judges.¹¹⁰

One of the major drawbacks affecting the progress of women's appointment in the judiciary, was the failure of the State Council to recognize their right to be appointed initially. In 2010, the State Council announced welcoming nominations of female applicants to join the bench. Sadly, this decision triggered major opposition from the General Assembly. The General Assembly called for an urgent meeting to challenge the decision of the Board. In the meantime, 24 female candidates filled out their applications. Before the closing date and during the submission period, the State Council's General Assembly (the whole judges working at the State Council) held an urgent session to nullify the decision of the State Council board to appoint women. This was the manifestation of a real blow to equity and inclusion. This decision led to massive speculation, and innumerable debates surrounding the reasons and motives behind such a step.¹¹¹ It has instigated many protests from feminist movements, and women's rights groups in Egypt, many of which have expressed their concern about the future of equality in the country. The movement has thus far succeeded in imposing a constitutional right that is not yet in force.¹¹²

in enforcing the constitutional right, resulting in its inapplicability. Shams Al Din Al Hajjaji, A Call for Judicial Reform in Egypt, *Vienna Journal of International Constitutional Law* 1 (2017): 8.

107 Omar (n 104).

108 Tahany el-Gebali, Muslim Women: past and Present, *Women's Islamic Initiative in Spirituality and Equality*, (2015) <http://www.wisemuslimwomen.org/muslimwomen/bio/tahany_el-gebali/> accessed 18 May 2017, See also, Amina Elbendary, 'Tahani El-Gebali' *Al-Ahram Weekly online*, 19 February 2003 <<http://weekly.ahram.org.eg/2003/625/profile.htm>> accessed 18 May 2017.

109 Ibid.

110 Omar (n 104).

111 Eman Hashim, 'The Ball in the Egyptian State Council's Court: Female Judges' *Patheos Muslim Media Watch*, March 1, 2010 <<http://www.patheos.com/blogs/mmw/2010/03/the-ball-in-the-egyptian-state-councils-court-female-judges/>> accessed 18 May 2017, See also, Hadeel Al-Shalchi, 'Women judges stir up old debate in Egypt', *boston.com*, 6 April, 2010 <http://www.boston.com/news/world/middleeast/articles/2010/04/06/women_judges_stir_up_old_debate_in_egypt/> accessed 18 May 2017.

112 The 2014 Constitution, art. 11 states "the state commits to taking the necessary measures to ensure appropriate representation of women in the houses of parliament, in the manner

Justice Adel Farghaly, a member of the General Assembly of the State Council, further made an argument against the inclusion of women in judicial appointment. In so doing, he firstly distinguished between rights and obligations. He regarded joining of the judiciary as an obligation, rather than a right.¹¹³ He maintained that Egyptian men endure more obligations than women. He gave an example of mandatory military service, which he said is a prerequisite that women are exempt from.¹¹⁴ He stated that the “refusal to appoint women to senior judicial positions has always been based on the fact that Egyptian women are not asked to perform military service and ‘offer sacrifice’ like men.” He further stipulated that women occupy judicial functions in western countries because women there equally perform military service, along with various jobs equal to those of men, including jobs of physical labor.¹¹⁵ Secondly, judges and prosecutors are required to relocate to different districts every three to five years. This continuous relocation process would not suit the nature of women, as care givers. He stated that “judicial work in Egypt is not suitable for women, as they cannot balance their work with personal life duties. They have always been the major care providers for their families, unlike men.”¹¹⁶

Currently, there is a constitutional dictate for judicial appointment of women, opening doors for women to join the bench.¹¹⁷ Nonetheless, until mid 2017, the SJC had just initiated one special appointment call that is limited for new female candidates to join the bench.¹¹⁸ As for the Public Prosecution Office it is still limited to male candidates only.¹¹⁹ The 2014 Constitution leaves the debate open to the discretion of the administration to appoint women filling judicial vacancies. Firstly, Article 9 eliminates any form of discrimination against women. It states “the state ensures equal opportunity for all citizens without

specified by law. It grants women the right to hold public posts and high management posts in the state, and to appointment in judicial bodies and entities without discrimination.” This constitutional right is not enforce.

113 This understanding is based on the Islamic Shaira’a Jurisprudence to nature of judiciary. *See in that regard*, Yousuf Ali, ‘Appointment of Muslim Women as Judges in the Courts: A Textual Analysis from Islamic Perspective’ *International Conference on Humanities, Historical and Social Sciencens* 200 (2011): 201.

114 Ibid.

115 Hashim (n 115).

116 Ibid.

117 The 2014 Constitution, art. 11.

118 Dalia G. (n 4).

119 Mariam Rizk, ‘Egypt Interview Female Judges for Positions in Different Courts’ *Ahram Online* 29 March 2015 <<http://english.ahram.org.eg/NewsContent/1/64/126401/Egypt/Politics-/Egypt-interviews-female-judges-for-positions-in-di.aspx>> accessed 18 May 2017.

discrimination.”¹²⁰ Secondly, Article 11 mandates that the administration appoints women in the judiciary. The article explicitly states the right of women to secure official judiciary posts. This article withholds any argument by the administration that inhibits the appointment of women in certain posts.¹²¹

C *Political Affiliation Segregation*

The JAL bans both courts and judges from either declaring their political opinion, or participating in any political forum.¹²² This ban is restricted to judges and courts. Moreover, the SJC and the Ministry of Justice have extended the ban to include judicial candidates. Their practice encourages the exclusion of candidates with a political affiliation. Even though political orientation is not a crime, there is a tradition of excluding candidates for their, or their families’ engagement in politics. This unwritten tradition allows the NSA to interfere in the appointment process, as it can exclude any candidate for these reasons.

The NSA, which carries out the security check on candidates, is notorious for its ambiguity, and lack of transparency in conducting background checks for new candidates. It is widely known that the majority of the police force is corrupt, and lacks transparency.¹²³ Candidates are not allowed access to their security files that contain background checks. This means that in the case of exclusion, they are unable to contest or appeal their security status.¹²⁴ The NSA does not reveal the content of their files, and treats them with a great deal of confidentiality, and lacking transparency.¹²⁵ There has never been a

120 The 2014 Constitution, art. 9 is not enough to ensure that women will secure positions in the judiciary. The same article existed when *al-Sanhori* stated that it is no prejudice against women in the appointment of certain posts, as long as there is no misuse of discretionary power of the administration. Article 3 of the 1923 Constitution stipulates “Egyptians are equal. They are equal in practicing civil and political rights and duties. Discrimination based on ethnic origin, language, or religion is prohibited.”

121 The 2014 Constitution, art. 11/2 states “state commits to taking the necessary measures to ensure appropriate representation of women in the houses of parliament, in the manner specified by law. It grants women the right to hold public posts and high management posts in the state, and to appointment in judicial bodies and entities without discrimination.”

122 The Judicial Authority Law 46/1972, art. 119.

123 Mohamed Arafa, ‘Towards a Culture for Accountability: A new Dawn for Egypt’ *Phoenix Law Review* 1 (2011–2012) :9.

124 See Emad El Din Shahin, Brutality, torture, rape: Egypt’s crisis will continue until military rule is dismantled, *The Guardian*, 6 March 2014 <<http://www.theguardian.com/commentisfree/2014/mar/06/brutality-torture-rape-egypt-military-rule>> accessed 18 May 2017.

125 Tarek Masoud, ‘Egyptian Democracy: Smothered in the Cradle or Stillborn’ *Brown Journal of World Affairs* 3 (2013–2014): 5.

comprehensible reason why these reports are handled in such a manner, with regard to both general and national security checks.

Having family NDP affiliation does not stop candidates from joining the bench, while any affiliation to Islamist groups, like the Muslim Brotherhood (MB), is considered political affiliation, resulting in instant elimination from candidacy. Currently, the ban on political participation is restricted to Islamist political affiliation.¹²⁶ The absence of real political parties in Egypt before the 2011 Revolution, has resulted in the MB being the only serious political competitor of the National Democratic Party (NDP).¹²⁷ NDP-affiliated officials banned the MB both before January 2011, and after July 2013.¹²⁸ The leading political parties in the country were predominantly the NDP, and the MB.¹²⁹

IV Proposed Reform of the Egyptian Judiciary

This article, based on the previous presentation of judicial appointment in Egypt, recommends the following three major venues of reform of the appointment system. Firstly, the SJC must undergo complete makeover. The need for reform of the SJC is primarily due to the lack of checks and balances. Historically, the Egyptian judiciary has never accepted the interference of the President of the Republic in the selection of its members, as illustrated in the above mentioned dispute that arose between the SJC, and the President on the appointment of the attorney general in 2015.

Moreover, the new SJC shall not include any members of the legislative authority, until the idea of public involvement is widely accepted among judges. Egypt does not have independent house of representatives. In the 2015 parliamentary elections, allegations emerged that the Egyptian General Intelligence Directorate (GID), had interfered. Mr. Hazem Abdel Azim, the former-member

¹²⁶ Ibid.

¹²⁷ Ash Bali, 'From Subjects to Citizens: The Shifting paradigm of Electoral Authoritarianism in Egypt' *Middle East Law and Governance* 38 (2009): 57.

¹²⁸ Sharon Otterman, 'Muslim Brotherhood and Egypt's parliamentary elections' *Council on Foreign Relations*, December 1, 2005 <<http://www.cfr.org/egypt/muslim-brotherhood-egypts-parliamentary-elections/p9319>> accessed 18 May 2017.

¹²⁹ Kristen Stilt, 'Islam is the Solution: Constitutional Visions of the Egyptian Muslim Brotherhood' *Texas International Journal* 73 (2010–2011): 74–5, see Eric Trager, 'Unbreakable Muslim Brotherhood: Grim Prospects for a Liberal Egypt' *Foreign Affairs* 114 (2011): 121, see also, Elizabeth Iskander Monier, 'Arab Spring and Coptic Muslim Relations: From Mubarak to the Muslim Brotherhood' *European Yearbook of Minority Issues online* 169 (2012): 170–1.

of President Abdel Fatah al-Sisi's presidential campaign, stated that "For the love of Egypt' a political association, which won all 120 closed-list seats, was founded under the supervision of the GID, and that meetings surrounding its establishment were held at GID headquarters."¹³⁰ As a result, any reform based on the participation of both executive or legislative authorities would face major resistance from the judicial community.

Secondly, the SJC is the competent authority for appointing judges and prosecutors.¹³¹ As indicated earlier, it is not founded on principles of democracy. The appointment authority should be separated from the SJC. Also, the judicial appointment process should be assigned to an independent body that includes judges, lawyers, law professors, and representatives from the public. The role of this body would be to separate between the authority of impeachment, from that of appointment. The appointment authority will work to ensure equal treatment among a pool of diverse candidates, and work against discrimination.¹³² As shown previously, there is a long history of discrimination against women, and more particularly the underprivileged, despite the fact that discrimination is illegal and prohibited.¹³³ Potentially, this reform will impact and promote the inclusion of women, the underprivileged, as well as political minorities.

As far as gender equality is concerned, the 2014 Constitution mandates the appointment of women in the judiciary.¹³⁴ However, in the past two years, women have not had an equal share of appointment in both the ordinary and the administrative judiciary.¹³⁵ The SJC continues to ban women from being part of the judiciary, as it has done previously with the lawyers' quota in appointments.¹³⁶ The JAL stipulates two quotas for lawyers to be appointed as judges and prosecutors. Article 47 states that the yearly quota should not be less than 25% for the appointment of judges in primary courts, and 10% for appointments in the Court of Appeals.¹³⁷ Article 118 states that the quota of

130 Ahmed Fouad, "Did Egyptian intelligence meddle in recent elections?" *Egypt Pulse, Al-Monitor* January 1, 2016 <<http://www.al-monitor.com/pulse/originals/2016/01/egypt-parliament-accusation-interference-intelligence.html#>> accessed 18 May 2017.

131 The Judicial Authority Law 46/1972, art. 77 bis 1.

132 Webster (n 1) at 5.

133 Ibid.

134 Ibid.

135 Cooley (n 11) at 150.

136 Ibid.

137 The Judicial Authority Law 46/1972, art. 47.

lawyers shall be no less than 25% of the total appointees each year for the Prosecution Office.¹³⁸

The underprivileged and political minorities, who meet the appointment requirements, would obtain support from non-judge members of the SJC, while judges would be more objective in their rejection of underprivileged candidates. Both professors and lawyers would represent the essence and core of the legal profession. Even though disagreements exist between them and judges, there is still a great deal of mutual respect among members of the legal community in Egypt. The underprivileged and political minorities, as well as other members of the SJC, would benefit from increased diversity in the SJC.

Thirdly, there are three new judicial requirements that should be added to the current appointment requirements, namely improving education standards,¹³⁹ introducing judicial internship programs for law graduates,¹⁴⁰ in addition to banning any political reports from appointment requirements.¹⁴¹ Education standards need to be improved.¹⁴² Allowing minimum education requirements leaves the doors for mediocre candidates, especially with the increasing number of law graduates in Egypt.¹⁴³ Improving higher educational standards can improve the appointment requirements, such as legal diplomas, or LL.M.¹⁴⁴ This will not result in an added financial burden for candidates, as the cost of one diploma at Cairo University costs less than \$100.¹⁴⁵

Training, prior to appointment, must be a prerequisite to the Egyptian legal system. The implementation of this system would achieve four purposes. Firstly, it will provide law students with a deeper perspective on the intricacies of the court system.¹⁴⁶ Secondly, law interns would contribute to judges' efforts in research, data collection, editing, and writing. Thirdly, interns would come at no additional cost to the judiciary, since they gain knowledge in exchange for their services.¹⁴⁷ And finally, at the end of their internships, interns would be handed assessment reports that could later be used as additional references during the appointment process.¹⁴⁸ As for the political reports requirement,

138 Ibid., art. 118.

139 Nadler (n 2) at 123.

140 Ibid., at 124.

141 Ibid.

142 Mayoral (n 18) at 1130.

143 Ibid.

144 Ibid.

145 Serage (n 37) at 617.

146 Ibid.

147 Ibid.

148 Tosun and Yilmaz (n 49).

banning such reports would end the executive authority's influence on the nomination process. Active political affiliation of judicial members can be legally handled through an impeachment process,¹⁴⁹ while executive intervention cannot be rectified later.¹⁵⁰

v Conclusion

To sum up the main goals of this research, they can be summarized in the following points: Firstly, a new construction of the SJC must be introduced to reflect democratic and accountable judiciary system to the public, which is the source of judicial authority. The judiciary has to adopt transparency, a painful exercise as it may sound. Failing to abide by the new construction will surely result in the continuation of a tendentious, and sectarian system. This will continue to raise the question that lurks in the minds of the people, "when will the judiciary rid itself of corrupt and prejudiced practices, both internally and externally?"

The SJC must attract new members in the appointment committee. Benefits will be immeasurable, this will reflect a democratic and transparent appointment process. Additionally, it will showcase the legitimacy of the committee's members. New members can be senior professional, who enjoy respect and credibility within the judicial community. Secondly, now is the time for the elimination of all discriminatory practices against candidates of lower classes, political affiliation, and women, among others. It is no longer acceptable that while the law does not recognize any form of discrimination among individuals, the judiciary still continues to exercise such discrimination. Finally, there is a need to choose only those who worked for and attained the highest educational and professional standards. Those who have gone through extra education, as well post-appointment training programs (internships). These, along with post graduate degrees, should be the only criteria required for judicial appointment.

149 Ibid.

150 Ibid.