



LAW, THE RULE OF LAW, AND RELIGIOUS MINORITIES IN EG YPT

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This article analyzes the protection of the rights of religious minorities by Egypt's legal and judicial institutions. The article argues that the Egyptian Constitution, while offering protection of human rights and the right of freedom of belief, retains a significant escape clause--the subordination of Egyptian legislation to the Islamic Shari'a--which has made it possible to abuse those rights. In addition, the executive branch has its own loopholes for circumventing the rule of law: the presidential decree. The article explores the legal status of religious minorities in Egypt and demonstrates the problem of protecting human rights in Egypt.

For centuries, the Western world has struggled to define human rights. Article 18 of the United Nations' Universal Declaration of Human Rights of 1948 states that each person has "the right to freedom of thought, conscience and religion." This concept is challenged in the Middle East by governments and societies in the name of cultural relativism. Amid a religious resurgence and the spread of Islamism, it has become a major challenge to enforce the principles of religious freedom, due to the interrelationship of the concepts of nationhood, human rights, and religion. Egypt, like many other countries in the region, must frequently grapple with the explosive mix of the forces of nationalism, liberalism, and Islam.

While the Egyptian Constitution does offer considerable protection of human rights, and particularly the right of freedom of belief, there exist significant loopholes which have made the defense of those rights quite impossible. This article discusses whether the legal and judicial institutions in Egypt offer an adequate environment for the protection of the rights of religious minorities, and

whether, the rule of law does in fact protect these rights.

This study will first analyze the Egyptian Constitution to assess how far it provides a reliable framework for the protection of religious freedom based on the principle of equality. Second, the laws that pertain to religion and religious freedom in Egyptian legislation are discussed, followed by an evaluation of the respect for the rule of law in the executive branch. Finally, a case study is brought to illustrate the predicament of religious minorities in Egypt.

Egypt as a Test Case on Religious Minorities

The question of minorities has always been connected to the question of human rights. Since the First World War, it has been generally agreed that the existence of dissident minorities could become a threat to peace if they were not granted sufficient protection. In his official address to the League of Nations in 1922, Prof. Gilbert Murray stated that:

The question of minorities is not merely a humanitarian question. It is not merely that there are certain people suffering from oppression

whom we wish to help; it is that the new condition of Europe is threatened with extreme danger if, in any one of the new states, there is [a] permanently disaffected element allowed to continue.¹

This question is as relevant to the Middle East region today as it was to Europe then, since it also consists of fairly young states whose territories were demarcated without much heed to their demographic composition. Pressure has been exerted on the developing nations of the Middle East by outside powers and international financial institutions to liberalize and democratize their regimes. But by adopting Western conventional wisdom and structural reforms, the stability of regional states is arguably put into even greater jeopardy. Since the principles of equality and religious tolerance are important elements of modernity and democracy, an understanding of the status of minorities in some of the nations where structural reform programs were introduced offers a critical test for the success of those reforms and the applicability of the neo-liberal school of thought in this region.

Egypt is a good test case for examining these issues since it has one of the longest records of attempting (and facing challenges of) modernization in the region. Moreover, this experience can provide an insight to the experiences of other Middle East countries.

RELIGION, RELIGIOUS FREEDOM, AND THE EGYPTIAN CONSTITUTION

The Egyptian Constitution

According to the Egyptian Constitution, Egypt is a democratic society in which Islam is the state religion. However, the Constitution provides for freedom of belief and worship. Article 40 of the Constitution maintains, "All citizens are

equal before the law. They have equal public rights and duties without discrimination due to sex, ethnic origin, language, religion or creed." Article 46 further stipulates that "the State shall guarantee the freedom of belief and the freedom of practicing religious rites." More Generally, Article 8 guarantees "equal opportunity to all Egyptians."²

Regarding the status of international law, Article 151 stipulates that the "President of the Republic shall conclude treaties and communicate them to the People's Assembly, ratified with suitable clarifications. They shall have the force of law after their conclusion, ratification and publication according to the established procedure." Furthermore, the Constitution states that international law takes precedence over domestic law. According to the ruling of the Supreme Constitutional Court in Case No. 22 of 1992, the interpretation of human rights clauses in the Constitution (Articles 40-63) should be interpreted in accordance with democratic norms and international standards. The Court also ruled that ratified treaties are a limitation on the legislative body, inasmuch as that any legislation issued must comply with the standards dictated by those treaties.³ Thus, equality for all and the pursuit of equal opportunities are ensured by law via the Constitution and human rights treaties which Egypt has ratified.

Despite this, there are limitations with respect to the equality requirement. In Case No. 4 of 1971 brought before the Supreme Court, the term equality in the articles was interpreted as follows:

...the principle of equality before the law does not mean a mathematically calculated equality applied to all people regardless of their different circumstances and legal status. The legislature, in the interests of the public, has the interest to set general and abstract standards by which

equality before the law is determined. Consequently, only those people who meet these standards can exercise the rights guaranteed them by law.⁴

Thus, the equality requirement can be jeopardized if it is deemed inconsistent with public policy or public interest. The inclusion of public interest in the decisionmaking process confuses the issue, making it hard to assess the standards by which the equality requirement should be evaluated. Taken to an extreme, it is possible to claim that this decision allows for a subjective evaluation of equality, which could have critical repercussions for religious equality and freedom of religion.

Faraj Fawdah, an Egyptian liberal intellectual assassinated in 1992,⁵ provided interesting background information about the article on "freedom of belief" found in the Constitution. He noted that the original text of the 1923 Constitution stipulated that "freedom of religious belief is absolute." However, one of the religious ulama of al-Azhar pushed to delete the word "religious" from the text, stating that belief and religion are two separate concepts.

Fawdah insisted that, as the Constitution did not clearly indicate that freedom of religious belief was provided and protected, the notion of freedom of religion in Egypt would remain endangered, confining freedom of belief merely to a choice of schools of thought within Sunni Islam.⁶ Religious belief is thus a very limited concept and should not be mistaken with religious practice. It is a deliberate confinement of the term so that a clear contradiction with *Shari'a* (code of Islamic law) is avoided.

A similar qualification was also made in relation to the adoption of international law in Egypt. Upon ratification of the International Covenant on Civil and Political Rights, Egypt attached this statement: "...taking into consideration the provisions of

the Islamic Shari'a and the fact that they do not conflict with the text annexed to the instrument, we accept, support and ratify it...."⁷

Islam in the Egyptian Constitution

Thus far, the Egyptian Constitution may be said to provide a basis for the protection of religious rights, though that protection is theoretically susceptible to arguments in favor of inequality whenever it is deemed in the public interest. There are other ways, however, in which the concept of freedom of religious belief in Egypt is not as absolute as in the Universal Declaration of Human Rights.

The most significant inconsistency in the Constitution lies in the very first articles. Article 2 of the Constitution states that "Islam is the Religion of the State, Arabic is its official language and Islamic Shari'a is the principal source of legislation."⁸ It should be noted that the text of this Article was amended in 1980 from the original "Islam is the Religion of the State... and Islamic Shari'a is a principal source of legislation." The amendment was made in order to enhance the role of the Islamic *Shari'a* in the drafting of Egyptian legislation.

The amendment sought to portray Islamic *Shari'a* as the prime source of legislation rather than one source of many that can be used to determine the constitutionality of laws. To many scholars, this shift in mood in Egyptian politics marked a transition to a form of constitutionalism that is based on the sovereignty of the Divine, in contrast to that of Western countries, which is based on popular sovereignty.⁹

In modern political thought, the state is perceived as a legal entity which should not assume any religious or moral character, in contrast to the Egyptian Constitution, which does assume a religious outlook. In his book *Theory of Justice*, John Rawls underscores the importance of this point

when he says that the state should be concerned with the defense of "the right" and not "the good." For a state to assume any moral or religious character, even if that character corresponded to the beliefs of the majority, means that it would run the risk of promoting sectarianism and tarnishing its credibility as a neutral body.¹⁰

Islamic Shari'a and Freedom of Religious Belief

Having highlighted the fact that the Constitution identifies itself with a religion which has its own set of laws, it is necessary to analyze "religious human rights" or the right of freedom of belief and religion under Islamic *Shari'a*.¹¹ Islam and *Shari'a* have a vast array of values, principles, historical undercurrents, and interpretations which have influenced the culture and mind-set of the Muslim world at large and Egypt in particular. For the purposes of this article, a traditional conception of Islamic *Shari'a* is used.¹²

The sources of Islamic *Shari'a* are the Koran and the Sunna (oral traditions of the Muslim prophets) as well the traditions of the earliest generations of Muslims. While reformist scholars claim that Islamic *Shari'a* is an historical text which should be interpreted contextually, orthodox views claim that the Koran and *Shari'a* have universal validity and application. Any attempt to doubt or deny that universality has detrimental consequences. An example of this is the case of Nassir Hamid Abu-Zaid, an Egyptian professor of Islamic thought, who was declared a heretic in 1993 for saying "Islam's teachings should evolve with changes in society." He and his wife were forced to live in exile for fear of their lives.¹³

Abdullah An-Naim asserts that fear of denying or even questioning any of the principles of *Shari'a*--which according to Islamic law identifies one as an apostate--made Muslims view Islamic *Shari'a* as the

only fundamental authority.¹⁴

According to *Shari'a*, a person is free to adopt or reject Islam. This is based on the verse "There is no compulsion in religion. Truth stands out clear from error...." (Koran 2:256). However, once the choice is made, the person assumes certain responsibilities. Accordingly, if one rejects Islam after believing in it, he/she becomes an apostate and is subject to the death penalty. The death penalty is specifically mentioned in the Hadith (oral traditions of Muhammad), which says: "The blood of a fellow Muslim should never be shed except in three cases: That of the adulterer, the murderer and whoever forsakes the religion of Islam."¹⁵ According to an al-Azhar preacher, Shaykh Muhammad al-Ghazali, "Any person or group of people who kill an apostate should not be liable for punishment since they would be fulfilling the legitimate punishments proscribed by Islam and should be treated with leniency."¹⁶

Apostasy is not prohibited in Egyptian law, but it is deemed a violation of public interest (as indicated in different verdicts of the Court of Appeals for Case No. 20 of 1966).¹⁷ Apostasy results in the nullification of the marriage of the apostate, preventing him/her from entering into another marriage, and excluding him from inheritance rights and the person's parental rights are denied.¹⁸ There are many laws relating to the guardianship and inheritance rights of an apostate, including Law No. 25 of 1920, Law No. 52 of 1929, and Law No. 77 of 1943¹⁹--all which outlaw an apostate. All this led Maurits Berger to conclude that Article 46 of the Constitution (regarding freedom of belief) is restricted to non-Muslims, who are free to change their sect, rite, or even religion.²⁰

Islamic Shari'a and Religious Minorities

Believers of other faiths (referred to as *Dhimmi*), such as Christians and Jews, are accepted in Islam, but also experience some limitations of rights as subjects of an Islamic

state. There are significant differences regarding the status of *Dhimmi* populations among various schools of thought. However, traditional *Shari'a* scholars agree that they should not enjoy the same rights as a Muslim.²¹

Simply put then, the position of non-Muslims under Islamic *Shari'a* has been captured in the expression "tolerance of religious pluralism based on inequality."²² This is based on a verse in the Koran that says "Ye are the best community that has been raised up for mankind" (Koran 3:110). Among the restrictions on non-Muslims in Islamic *Shari'a* are: 1) that they may not be allowed to exercise authority over Muslims, and 2) they could not testify against them.²³ Ibn Hazm²⁴ goes further, saying that "[t]he testimony of a Christian or a Jew is not permissible unless a Muslim man dies in a foreign land void of Muslims. Apart from this, the testimony of a Jew or a Christian is not acceptable against another Muslim or even against a Jew or a Christian like him." Ibn Timiyya²⁵ also says, "The testimony of the people of the covenant is not admissible." Among the early traditions of the first Muslim Caliphates it is said that early Caliphs, including Umar Ibn al-Khattab²⁶ gave orders not to hire non-Muslims to positions of tax collection or a position of leadership, even if the non-Muslims' qualifications were far better. In recent times, al-Azhar scholars of Egypt agreed that all Muslim jurists concede that a judge should be a Muslim and that it is forbidden for a non-Muslim to be a judge according to the Koranic verse, "There is no authority of the infidels over the Muslims" (Koran 4:41).

LEGISLATION, CONSTITUTIONAL CASE LAW, AND RELIGIOUS FREEDOM

Until the twentieth century, the Egyptian judicial system was composed of various judicial organs and laws, including

courts for foreigners, national secular courts, Islamic *Shari'a* courts, and Milliyya courts (for non-Muslims). The separate courts for different religious rites and sects were abolished by the time of the establishment of the Republic (according to Law 462 in 1955), in an effort to unify the judiciary in Egypt. However, the tradition of having different codes for promulgating law related to personal status for different religious groups has persisted in Egypt, though to varying degrees across time.²⁷

Shari'a is the official code regulating matters of personal status. Islamic *Shari'a* stipulates that *Dhimmi* should be ruled according to their own religious codes. Correspondingly, Egyptian legislation, in accordance with *Shari'a*, grants non-Muslims a certain degree of autonomy in issues relating to personal status "by way of exception."²⁸

Consequently, within the area of personal status laws there exist areas where the jurisdiction is more lenient towards non-Muslims on the proper regulations and codes than those prescribed by *Shari'a* for Muslims. This in itself is problematic, as the rule of law requires an equal treatment of all subjects.

Another problematic issue is the extent to which *Shari'a* applies to non-Muslims. Non-Muslim autonomy in matters relating to personal status is subject to the decisions of the current leader. Under the current situation non-Muslims have restricted autonomy in the areas of marriage and divorce but not inheritance and guardianship. Article 6 of Law 462 of 1955 stipulates that: First, the two parties involved must share "the same sect and rite" and no contradiction with public policy should be involved in the application of the non-Muslim laws.

As a result, in cases where one of the spouses belongs to a different religious denomination or sect, Islamic law is applied to their marriage. In one case where a mixed couple requested Christian law (one of the

spouses being Christian) be applied, the request was denied, as the matter "relates to the distribution of jurisdictions between Islamic law and special law" and is consequently "the core of public policy."²⁹ As a result, many have opted to convert to the sect of his/her spouse to avoid application of Islamic law to their marriage. That one is forced to change his/her religious affiliation to avoid bureaucratic restrictions is a clear violation of the freedom of belief and religion.³⁰

Another implication of this rule is that if a Muslim man marries a non-Muslim woman (the converse is forbidden according to *Shari'a*) and the man dies, she is not entitled to any inheritance, as *Shari'a* stipulates that non-Muslims cannot inherit from a Muslim.³¹

Apart from personal status laws, very few laws directly relate to Egyptian non-Muslims. Those that do, however, clearly do not seek equality. For example, the testimony of a non-Muslim against a Muslim is not acceptable in a court of law. While this rule is not stipulated by the Egyptian Law of Evidence, it is established in Egyptian case law, based on Article 280 of the Decree on the Organization of the *Shari'a* Courts. The opposite does not hold though, and Muslims may testify against non-Muslims.³² Another example relates to gaining permission for a new house of worship, which is regulated by the Ottoman Decree of 1856.³³ In February 1934, Minister of Interior al-Azabi Pasha issued a ministerial decree adding ten conditions for the building of churches.³⁴ The approval of the Muslim inhabitants of the area is also necessary for permission to plan a church, which must also be signed by the president of the state himself. In addition, for the repair or building of any part of the church, a presidential decree must be issued--even for minor repairs like fixing a broken toilet.³⁵

The Role of the Supreme Court and Religious Minorities

There is a clear inconsistency between the articles on the equal rights of all Egyptians and Article 2 of the Constitution. By stipulating that Islamic *Shari'a* is the principle source of the legislation, Article 2 has raised some serious questions regarding the status of non-Muslims. Furthermore, it has had important cultural implications in creating and sustaining power relations in society and making groups from various backgrounds unable to attain equality.

The Supreme Constitutional Court, which heads the judiciary and was established by Articles 174-178 of the Constitution, played a very significant role in setting constitutionality standards and interpreting Article 2 of the Constitution. Immediately following its establishment, the Supreme Court received many cases pertaining to the equality requirement purported in Articles 8 and 40 of the Constitution [check], questioning the constitutionality of already existing legislation. Most of those cases were in areas related to housing laws, family laws, and landlord and tenant laws.

To understand the position of the Supreme Court, one needs to examine how Article 2 (in its amended version) was interpreted by the court in its decisions regarding the cases it received.

The Court ruled that Article 2 is a requirement for new legislation issued after May 22, 1980, when the Constitution was amended.³⁶ The position of the Supreme Court was to refrain from applying the law in retrospect, and thus, has acted as a system stabilizer. Pressures from Islamists to bring about radical change were met by calls for rationality and a need for gradual transition.

Case No. 74 of 1997 is one of the most prominent cases which involved the status of religious minorities with respect to

personal status law. In this case, a Coptic mother came to appeal the maximum age of custody according to Coptic canonical law, which is lower than that of *Shari'a*. The mother appealed to have a ruling based on Islamic *Shari'a*. The Court ruled that, while *Shari'a* in general does not apply to matters relating to the personal status of non-Muslims, exceptions could be made. After consulting with the Coptic Patriarch, the Court granted the woman her appeal. It was only when the Patriarch indicated that the authoritative regulations were non-peremptory, that the judge took it as a green light to apply the general law in this case.³⁷

This case introduced an important principle in Egyptian case law. Following this case, judges were prompted to distinguish between two sets of Islamic *Shari'a* norms: peremptory norms, which are authoritative principles that have to be applied unquestionably, and non-peremptory norms, which have no binding power and require *ijtihad*, or interpretation, by people in authority. The Court stipulated that it has "such an authority to interpret non-peremptory norms in accordance with the interests of the people."³⁸

The Court can thus be seen to be adopting a midway position between the traditional conceptions of Islam and a more liberal interpretation. The sustainability and progress of such an approach, however, is highly dependent on the individuals in leadership, since the understanding of public interest and public policy is highly elusive. This elusiveness is particularly problematic as the courts rarely make straightforward references to religious minorities in their interpretations of the Constitution's Article 2, trying to avoid the issue where possible. One example of attempting to avoid these issues occurred in 1997, when Mamduh Nakhla, a lawyer and human rights activist, filed suit seeking the removal of the religious affiliation category from identification cards.

The Court responded by referring the case to the State Commissioner's Office, which in turn noted that the legal challenge had not been filed within 60 days of the decree's issuance, as required by law. No rulings have been reached in this case as of yet.³⁹

THE ULTIMATE ARBITRATOR

Egypt has a serious problem maintaining the rule of law, due to the fact that interpretation of the law is largely dependent on the leadership of the time. Matthew Stephenson has defined the rule of law as:

the presence or absence of certain criteria of the law, including the independence and impartiality of the judiciary, equality of all before the law, the absence of laws which are selective, and the accountability of government actions before the judiciary.⁴⁰

Egypt's Constitution guarantees the rule of law (Article 64) and the independence of the judiciary (Article 65). However, these principles have been constantly eroded by the amendments to laws relating to the state of emergency and the recourse to exceptional courts.

With the establishment of the Republic, hope was given to the abolition of the arbitrary rule of the king. Soon after Gamal Abd al-Nasser assumed the presidency, however, the entire judiciary was brought under a centralized body called the State Council. The declaration of the State of Emergency in 1954 entitled the leadership to rule by decree. During Nasser's reign, several exceptional courts were established because "it had been demonstrated that the Civil Courts could not be trusted to deal adequately with the Muslim Brotherhood," the State's prime enemy at the time. By 1969, the judicial autonomy in Egypt was completely

emptied of meaning after a long struggle between the executive and the judiciary.⁴¹

To help his regime gain legitimacy, Anwar Sadat started his presidency by adopting a new constitution that established the independence of the judiciary (Articles 165-173 of the Egyptian Constitution) and the principles of the "Sovereignty of the Law," i.e., the equality of all before the law. However, as Nathan Brown notes, while the Constitution did contain vague assurances regarding the rule of law, it gave constitutional recognition of certain institutions that in effect challenge the rule of law.⁴² For example, whilst maintaining that the judiciary should be independent, Articles 172 and 173 re-affirmed the subjugation of the judiciary to the State Council, which Nasser had established by decree. In addition, the constitution made provisions for exceptional courts designed as a way to bypass the regular judiciary.⁴³ Article 171 provided for the maintenance of the exceptional courts, stating: "The law shall regulate the organization of the State Security Courts and prescribe their jurisdiction and the conditions to be fulfilled by those who occupy the office of judge in them."

Since Husni Mubarak came to power, he has established the military courts, which are justified by the State of Emergency. The State of Emergency came back into effect in 1981, due to the perceived need for punishing terrorists. The military courts were severely abused after 1992 in the wake of several incidents of Islamist violence. Over the years, it has become clear that the military courts are not an independent body since they are under the executive authority. It appears that in a system where the independence of the judiciary is a farce--a principle on paper only--no mechanism exists through which human rights can be achieved.

The Security Dilemma: The State of Emergency

The conflict between human rights and security is always a significant concern. However, even if the security concerns are real, many believe that there need to be limits on the actions and practices of the government by the establishment of an effective rule of law. In the case of the Egyptian Constitution, not enough provisions exist for limiting the power of the executive branch. In contrast, Article 48 of the Constitution introduces a great limitation on human rights if a state of emergency is declared, which can only be done by presidential decree.

However, what constitutes a state of emergency has not been defined. Since 1981, the country has been ruled under a state of emergency, giving the government such means to suppress human rights as establishing special courts where the accused cannot receive all of the constitutional protections of the civilian judicial system. The state of emergency also gives state security forces the right to detain individuals for any reason, many of them subjected to torture. The Emergency Law, by which the state of emergency is maintained, needs to be renewed every three years with the approval of the People's Assembly. The Emergency Law was last renewed in February 2003, with the government introducing the bill to the People's Assembly without prior notice and rushing it through without serious deliberation.⁴⁴

In a move to present Egypt as a modern, democratic country, some changes were introduced to the Emergency Law. The amendment involved the abrogation of some powers but many argued this was a superficial reform restricted to measures involving land reform and economic planning, such as banning construction on agricultural land and the dismantling of old buildings. Mubarak's opening speech in the

First Annual Conference of the National Democratic Party (the ruling party) on September 28, 2003, announced the "[a]nnulment of all military decrees ordered by the [prime minister] under the Emergency Law, unless they are necessary for maintaining law and order."⁴⁵ Since the government itself defines what pertains to law and order, the amendments are expected to be ineffective, and the violation of various human rights, including the right to a fair trial and freedom of expression, will remain.

The difficulty in implementing the rule of law is also attributed to the nature of the Egyptian legislation itself, which is often characterized as excessively vague. Egyptian legislation is often reactive in nature, whereby a law comes into existence to deal with a specific case. The law is selective due to the very process by which it is issued and in an attempt to make it more general it often becomes too vague. An example of such a law, and one that has often been cited in defense of the violation of basic civil rights, is Article 98(f) of the Penal Code. The article prohibits the use of religion "to ignite strife, to degrade any of the heavenly religions or harm national unity or social peace." This article has been the basis for prosecuting many human rights activists, as well as the current prosecution of 50 homosexuals.

The problem is complicated further by the huge body of Egyptian legislation--53,237 active laws according to a 1998 study undertaken by the Egyptian Cabinet--and the lack of judicial review to ensure the consistency of those laws and the many laws from overlapping or conflicting with one another.⁴⁶ This makes establishing a rule of law virtually impossible. The only long-term solution for ensuring human rights in Egypt is the establishment and maintenance of an independent judiciary and the efficient training of all the members of the legal system.

The Case of al-Kosheh

The incident that took place in the al-Kosheh village in Egypt on August 14, 1998, highlights both the problems of police enforcement and how the courts deal with complaints of human rights abuses.⁴⁷ The conflict in al-Kosheh was triggered by the killing of two Copts, whose murderers were believed to be Muslims. Originally, the motive for the murder was believed to be religious in nature and the police feared that such an inter-religious murder might ignite sectarian unrest. Consequently, the police decided to start investigating a higher proportion of Christians in an attempt to frame a Christian rather than a Muslim. Groups of between 50-60 Copts, including women and children, were brought in for interrogation. Many Christians were insulted by the police, some even tortured and subjected to electric shocks.⁴⁸

Bishop Wissa, whose diocese included al-Kosheh, filed complaints with the State Security Investigator, the Chief of the Security, and the Governor of the Sohag region. However, his complaints were rebuffed and he, together with two priests, was accused of damaging state unity and social peace under several articles of the Penal Code. These articles include Article 86, prohibiting the spreading of verbal damage to national unity and social peace; Article 98f, prohibiting the use of religion to "ignite strife, degrade any of the heavenly religions or harm national unity or social peace;" Article 201, prohibiting any clergy from delivering an insult or criticizing an act by the administration in a place of worship, or in a religious gathering, while performing his duty; and Article 145, prohibiting the deliberate provision of incorrect information. Some of these charges carry the death penalty.

The Bishop and priests were not alone in their attempts to shed light on the human rights violations by the police. The Egyptian

Organization for Human Rights (EOHR) published an in-depth report on the torture and police brutality in al-Kosheh. The consequences of this report were not late in coming. Hafiz Abu-Saydi, the secretary-general, was charged with disseminating false information abroad and accepting bribes from the British government. Likewise, Morris Sadik, a lawyer at the EOHR, was charged with disturbing national unity under Article 86 of the Penal Code.⁴⁹

By the end of 2000, violence had broken out, resulting in the death of 21 Christians and one Muslim.⁵⁰ Of the 96 suspects accused in the communal violence, only four were found guilty. One person was sentenced to ten-years imprisonment for possessing an illegal weapon, while the other three were sentenced to two-years imprisonment for setting alight a truck trailer.⁵¹

The al-Kosheh incident highlights a number of problems with the executive and judiciary in Egypt. First and most obviously is the police's disregard for the rules of proper law enforcement. Second, this case highlights various problems with the Egyptian legal system, the most salient being the lack of respect and adherence to the rule of law. In the cases against Bishop Wissa, the two priests, and the human rights groups, it was left to the judge's discretion to translate and implement the law. In this case, the judge decided what constituted "words that are damaging to national unity" (Article 86 of the penal code) and which words were a "misuse of religion which incited sectarian strife." These are obviously subjective matters to some degree, but there must be more objective guidelines and standards laid out for what constitutes these violations. In Egypt, such criteria are highly problematic and generally undeveloped, resulting in the judiciary being dependent on government decisions at any specific time. In this case, the desire to maintain inter-communal calm

led the executive to pervert the pursuit of justice, and in order to gloss over any wrongdoing, the judiciary ignored the human rights abuses done to the religious minority.

CONCLUSION

This article has attempted to answer two questions: 1) to what extent does the Egyptian Constitution and Egyptian legislation provide a basis for protecting human rights in general and the rights of religious minorities in particular; and 2) what is the level of enforcement and sovereignty of the law in upholding the principles of the rule of law.

The analysis presented here has shown that the Constitution provides some protection from discrimination based on religion, but Article 2 of the Constitution as modified presents a challenge given that mainstream *Shari'a* is inherently discriminatory towards non-Muslims. The Constitution also fails to provide judicial independence, without which all rights are subject to abuse and violation. Furthermore, Egyptian legislation often fails to uphold the principle of the rule of law. Laws are vague and do not provide adequate standards for defending people's rights. Moreover, there is a lack of objective guidelines and standards for the judiciary to lay out for what does and does not constitute a violation of the law, as illustrated by the case of al-Kosheh. All of these problems clearly pose serious obstacles on the path to democratization.

The problem here is not just a technical, legal one. Beyond the problems with the Constitution's Article 2 and the numerous legal loopholes and conflicting laws, a main part of the problem will require reforms on the social/cultural level as well. New policies must be established to break down the barriers of hatred and mistrust between Muslims and non-Muslims. The educational curricula needs to be drastically reviewed to eliminate areas which portray

non-Muslims as bad and deserving punishment if they do not convert. The media must also take responsibility for teaching and infusing an aura of tolerance in society.

Only by allowing an open dialogue between Muslims and non-Muslims and by encouraging and promoting tolerance and protection of the equal rights of all under the law will the situation in Egypt begin to improve. Changing preconceived notions in the country's culture is a major task that Egyptian society must undertake. However, it is a challenge that needs to be met if the culture of hatred and the situation of minorities is to advance.

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NOTES

¹ For a full discussion of minority rights under the UN international regime, see Urmila Haksar, *Minority Protection and International Bill of Human Rights* (New Delhi: R.N. Sachdev at Allied Publishers Private Ltd., 1974), p. 2.

² Kevin Boyle and Adel Omar Sherif, *Human Rights and Democracy: the Role of the Supreme Constitutional Court of Egypt* (London: Kluwer Law International, 1996), p. 289.

³ Boyle and Omar Sherif, *Human Rights and Democracy*, p. 89.

⁴ See Boyle and Omar Sherif, *Human Rights and Democracy*, p. 232.

⁵ Faraj Fawdah was assassinated due to his objection the imposition of Islamic Law. In the trial of his assassins, some al-Azhar shaykhs were brought in as experts to defend his assassination as it is considered a serious crime to oppose to the imposition of Islamic law, which makes it legal, according to *Shari'a*, to assassinate him. Nathan Brown, *The Rule of Law in the Arab World: Courts in Egypt and the Gulf*

(Cambridge: Cambridge University Press, 1997), p. 114.

⁶ Faraj Fawdah, *Al-Haqiqah al-Gha'ibah* (The Missing Truth) (Cairo: Dar al-Fikr, 1985), pp. 204-206.

⁷ See Human Rights Committee, Reservations, declarations, notifications and objections relating to the International Covenant on Civil and Political Rights and the Optional Protocols. U.N. Doc CCPR/C/2/Rev.4. (Basic Reference Document) (1995).

⁸ Author's emphasis.

⁹ Nathan Brown, "Islamic Constitutionalism in Theory and Practice," in Cotran, Eugene and Adel Omar Sherif (eds.), *Democracy, the Rule of Law and Islam* (London: Kluwer Law International, 1999), p. 492.

¹⁰ For a discussion on Rawls's conception of right versus good, see Rawls, *A Theory of Justice* (Oxford: Oxford University Press, 1972); Rawls, "The Right and the Good Contrasted," in Michael Sandel (ed.) *Liberalism and its Critics* (New York: New York University Press, 1984); and Katerina Dalacoura, *Islam, Liberalism and Human Rights* (NY: Palgrave Macmillan, 1998), pp. 19-20.

¹¹ Abdullahi A. An-Naim, "Islamic Foundations of Religious Human Rights," in J. Witte and J. D. van der Vyver (eds.), *Religious Human Rights in Global Perspective* (The Hague: Kluwer Law International, 1996), pp. 337-359.

¹² This is in contrast to other modern views, such as the reformist thought that had pushed its way into Islamic political thought in the nineteenth and twentieth century by various scholars, including Rifa'a al-Tahtawi (1801-73), Jamalluddin Al-Afghani (1839-1897), and Muhammad Abduh (1849-1905). See Dalacoura, *Islam, Liberalism and Human Rights*, pp. 82-84.

¹³ Maurits Berger, "Apostasy and Public Policy in Contemporary Egypt: An Evaluation of Recent Cases from Egypt's Highest Courts," *Human Rights Quarterly*, Vol. 25, No. 3 (August 2003), pp. 720-740.

¹⁴ An-Naim, "Islamic Foundations of Religious Human Rights," p. 346.

¹⁵ Abdullahi Ahmed An-Naim, "The Islamic Law of Apostasy and its Modern Applicability: A Case from the Sudan," *Religion*, Vol. 16 (1986), p. 211.

¹⁶ Christian Solidarity Worldwide, *Egypt Annual Report* (Surrey: New Maden, 2002).

¹⁷ Berger has a full discussion of various Cassation (Appeals) Cases that shows the problems with the application of *Shari'a* in personal status. Examples include: Court of Cassation Cases No. 9 of Year 44, December 24, 1975; Case No. 162, Year 62, January 19, 1966; and No. 20n of Year 43, March 30, 1966. For a full discussion, see Berger, "Public Policy and

Islamic Law: The Modern Dhimmi in Contemporary Egyptian Family Law," *Islamic Law and Society*, Vol. 8, No. 1 (Feb. 2001), pp. 88-136.

¹⁸ Ibid., p. 100. See also Christian Solidarity Worldwide, *Egypt Annual Report*, p. 12; and the article entitled "Al-Ghazali: No punishment in Islam for Anyone who kills an Apostate," *al-Hayat*, June 23, 1993.

¹⁹ Berger, "Apostasy and Public Policy in Contemporary Egypt," pp. 730-740.

²⁰ Berger, "Public Policy and Islamic Law."

²¹ An-Naim, "Islamic Foundations of Religious Human Rights," p. 346.

²² Berger, "Public Policy and Islamic Law," p. 91.

²³ Bat Ye'or, An Historical Overview of the Persecution of Christians under Islam. PAST IS PROLOGUE: The Challenge of Islamism Today." Testimony at a Hearing of the U.S. Senate Foreign Relations Subcommittee on Near Eastern and South Asian Affairs. Washington, D.C. April 29, 1997.

²⁴ See Abd El Schafi. *Behind the Veil: Unmasking Islam*. (Caney: Pioneer Book Company), pp. 136-139. The ruling may be found in Ibn Hazm, Vol. 6, Part 9, pp. 405-408.

²⁵ Ibid. For the rulings of Ibn Timiyya on the inadmissibility of non-Muslims' testimonies, see Vol. 14, p. 87.

²⁶ Ibid.

²⁷ Berger, "Public Policy and Islamic Law," pp. 94, 97.

²⁸ Ibid.

²⁹ Ibid., p. 112.

³⁰ Ibid., pp. 94-98.

³¹ Ibid., p. 100.

³² Ibid., p. 113. For some cases where this rule was established in case law, see Court of Cassation. No. 48, Year 30, 2 January 1963; No. 61, Year 56, 29 March 1988.

³³ Center for Religious Freedom, *Egypt's Endangered Christians* (Washington, DC: Freedom Center House, 1999), p. 52. The Hamayouni line refers to the Ottoman Sultan Hattı Humayoun. This decree was originally intended as a regulation on all places of worship, not just churches. In fact, Sultan Humayoun abolished the status of *dhimmi* and maintained that there should be equal treatment of all citizens irrespective of their religion. Moreover, this law actually was issued in response to complaints from Copts, as they were not being allowed to build their churches. Apparently the law was abused later on and became a clear obstacle for Christians. Berger, "Public Policy and Islamic Law," p. 92.

³⁴ Matthew Stephenson, "The Rule of Law as a Goal of Development Policy" in *The Rule of Law and Development* (World Bank, 2001).

<http://www1.worldbank.org/publicsector/legal/ruleoflaw2.htm>

³⁵ The following is a citation of one of those decrees issued in April 21, 1991: Considering the Constitution and Law no. 15 of 1927 which regulates the religious places, the appointment of religious leaders and the questions related to the religions allowed in the state [and] considering Royal Decree no. 30 1928 for the licensing of the establishment of the church of the Coptic Orthodox denomination which is in Mayietin, the Qusan District of Manifiya Province: It is decreed as follows: "Article One: The Coptic Orthodox Church is licensed to renew its toilet which belongs to the Church of Mayiet Bara of the Coptic Orthodox denomination of the Qusan District of Manifiya Province. Article Two: This decree is to be published in the official daily newspapers and is to be effective from the date of its publication." Issued at the President's Office on 6th Shawal 1411 (April 21, 1991)." Center for Religious Freedom, *Egypt's Endangered Christians*, p. 52.

³⁶ The decision was Case No. 20 of 1985. This case was submitted by the Rector of al-Azhar, who claimed that interest rate charged on commercial debt was usury (*riba*). John Murray and Mohamed El Molla, "Islamic Hari'a and Constitutional Interpretation in Egypt," in Eugene Cotran and Adel Omar Sherif (eds.), *Democracy, the Rule of Law and Islam* (London: Kluwer Law International, 1999), p. 512.

³⁷ Ibid., p. 512.

³⁸ Ibid., p. 521.

³⁹ Christian Solidarity Worldwide, *Egypt Annual Report*, p. 23

⁴⁰ Matthew Stephenson, "The Rule of Law".

⁴¹ Brown, *The Rule of Law in the Arab World*, pp. 70-92.

⁴² Ibid., pp. 94-96.

⁴³ Ibid.

⁴⁴ See reports by Human Rights Watch, and article in Human Rights news:

<http://hrw.org/press/2003/02/egypt021403.htm>

⁴⁵ *Al-Ahram Weekly*, October 9-15, 2003.

⁴⁶ EPIC, *EPIC Newsletter* (Issue# 11, April 2000), p. 1.

⁴⁷ To review copies of original material on the incident, including eyewitness sources in Egypt, see the Center for Religious Freedom, *Egypt's Endangered Christians*.

⁴⁸ Ibid.

⁴⁹ Center for Religious Freedom. *Egypt's Endangered Christians*. Washington, DC: Freedom House, 1999, pp. 26-29.

⁵⁰ It is generally believed that the Muslim was killed by a stray bullet, and not by a Christian.

⁵¹ Christian Solidarity Worldwide, *Egypt Annual Report*, pp. 18-20.