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## Free Exercise After the Arab Spring: Protecting Egypt's Religious Minorities Under the Country's New Constitution

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# Free Exercise After the Arab Spring: Protecting Egypt's Religious Minorities Under the Country's New Constitution

JAMES MICHAEL NOSSETT\*

I am concerned that respect for religious freedom [in Egypt] is quite tenuous.

—Former U.S. Secretary of State Hillary Rodham Clinton, July 30, 2012<sup>1</sup>

## INTRODUCTION

The popular uprisings of the Arab Spring brought a bright hope for greater rights and freedoms for the inhabitants of the Arab World. With the toppling of dictatorships and the spread of democracy, peoples that were once oppressed claimed for themselves the opportunity to live in nations governed by the will of society, rather than by the dictates of an oppressive regime. One such people was the nation of Egypt.

On January 25, 2011, Egyptians of all ages began mass demonstrations across the country in protest of the three-decade dictatorship of Hosni Mubarak, demanding increased freedom, political change, and social justice.<sup>2</sup> The demonstrations proved successful: seventeen days later, Mubarak resigned and transitioned governing responsibilities to the Egyptian military,<sup>3</sup> which announced its desires “to permit an elected civil authority to be in charge of the country, [and] to build a democratic free nation.”<sup>4</sup> With democratic elections and the drafting of a new constitution on the horizon, it seemed that the goals of the revolution were to be realized, that oppressions common under the Mubarak regime would cease, and that the longstanding tensions between the nation's government and its religious groups—and sectarian strife among the religious groups themselves—would finally be addressed.

Despite these hopes, the events of the ensuing months brought only deepened social division and more sectarian strife. With Mubarak gone, long-present tensions

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\* J.D. Candidate, 2014, Indiana University Maurer School of Law. This piece is dedicated to the people of Egypt, that they might worship freely and in peace; to the staff of the *Indiana Law Journal*, in recognition of their tireless efforts; to my parents, for their love and support; and to my beautiful wife, Grace, whom I love most dearly. May grace and peace be with you all.

1. Hillary Rodham Clinton, U.S. Sec'y of State, Remarks at the Release of the 2011 International Religious Freedom Report, (July 30, 2012), *available at* <http://www.state.gov/secretary/20092013clinton/rm/2012/07/195782.htm>.

2. *See infra* Part II.B.1.

3. *Full Text: Egyptian President Hosni Mubarak's Resignation Statement*, GUARDIAN (Feb. 11, 2011, 3:22 PM), <http://www.theguardian.com/world/2011/feb/11/full-text-hosni-mubarak-resignation>.

4. Ben Hubbard & Maggie Michael, *Egypt Army Commits to Power Transfer, Israel Peace*, WASH. TIMES (Feb. 12, 2011), <http://www.washingtontimes.com/news/2011/feb/12/egypt-govt-officials-banned-traveling-abroad/?page=all#pagebreak> (quoting statements made by Egyptian military leaders).

between the country's more conservative Islamist factions (including the Muslim Brotherhood) on the one hand, and the country's Coptic minority and liberals on the other hand, took center stage in the form of disputed elections,<sup>5</sup> boycotts of the constitutional drafting process,<sup>6</sup> acts of violence,<sup>7</sup> and large-scale protests.<sup>8</sup> A new government—including the first democratically elected leader of the country, Mohamed Morsi—was elected,<sup>9</sup> and a new constitution was drafted and ratified,<sup>10</sup> but these measures were not enough to quell the tensions.<sup>11</sup> On July 3, 2013, after days of protests, military forces removed the government from power, suspended the new constitution, and installed a new transitional government in an effort to stop the ongoing turmoil.<sup>12</sup> On January 14 and 15, 2014, 38.6% of Egyptians turned out to approve yet another constitution, but proponents of the Morsi government and Islamist parties boycotted the election, deeming it illegal and illegitimate.<sup>13</sup> As of this writing, protests and political upheaval characterize daily life<sup>14</sup> and acts of sectarian violence continue<sup>15</sup>—in short, tensions in Egypt remain high.

For a number of reasons, therefore, the coming months are crucial for the future of Egypt. A stable and legitimate government must be established, and the nation's fractured economy must receive attention.<sup>16</sup> Yet, more importantly, the coming months hold the fate of the Arab Spring in Egypt. Will the goals of the revolution—achieving social justice, increased freedom, and political change—be achieved, or will conditions of life and of politics in Egypt worsen or, at best, remain the same as they were in the Mubarak era?

This Note is particularly concerned with the future of religious exercise in Egypt—that is, the ability of Egyptians to freely exercise their beliefs without restriction by the state, and without interference by nonstate actors. While certain adherents of the nation's dominant religious demographic (Sunni Muslims)<sup>17</sup> have

5. See, e.g., Mohamed Fadel Fahmy, *10 Egyptian Presidential Candidates Disqualified*, CNN (Apr. 16, 2012, 6:15 AM), <http://www.cnn.com/2012/04/14/world/meast/egypt-elections/>.

6. See, e.g., *Egypt's Copts Quit Constitution Drafting Panel*, FOX NEWS (Apr. 2, 2012), <http://www.foxnews.com/world/2012/04/02/egypts-copts-quit-constitution-drafting-panel/>.

7. See *infra* Parts II.B.3.b. and II.C.3.b.

8. See *infra* Part II.B.

9. See *infra* Part II.C.1.

10. See *infra* Part II.C.2.

11. See *infra* Parts II.C.3 and II.D.

12. See *infra* Part II.D.1.

13. See *Egypt Referendum: '98% Back New Constitution'*, BBC NEWS (Jan. 19, 2014, 2:43 PM), <http://www.bbc.co.uk/news/world-middle-east-25796110>.

14. See generally *infra* Part II.D.

15. See *infra* Part II.D.3.b.

16. “[T]he country is currently running a deficit of 15 percent of GDP, while being kept afloat only by the inflow of funds from the Gulf countries.” Dalibor Rohac, *Egypt's Subsidy Nightmare*, CATO INST. (Nov. 6, 2013, 9:27 AM), [http://www.cato.org/blog/egypts-subsidy-nightmare?utm\\_content=buffer8365c&utm\\_source=buffer&utm\\_medium=twitter&utm\\_campaign=Buffer](http://www.cato.org/blog/egypts-subsidy-nightmare?utm_content=buffer8365c&utm_source=buffer&utm_medium=twitter&utm_campaign=Buffer).

17. See *infra* Part I.A.

encountered some state-imposed restrictions<sup>18</sup> and disruptions in their abilities to freely practice their faith, adherents of minority religions in Egypt—Coptic Christians, Baha'is, and others—have long faced both legal and cultural restrictions on and impediments to their abilities to freely exercise their beliefs.<sup>19</sup> Taking the forms of official, state-enforced restrictions on religious exercise, and of oppression, persecution, and sectarian violence by nonstate actors, Egypt's religious minorities have endured decades of limitations on their abilities to practice their respective faiths. Now, in the aftermath of the Arab Spring, Egypt has a prime opportunity to address such restrictions through the adoption of strong and enforceable rights of free exercise in the nation's new constitution.

Therefore, this Note examines the plight of religious minorities in Egypt before, during, and after the Arab Spring—that is, under the Mubarak regime, during the January 25 Revolution and the Morsi government, and into the future—and proposes a number of constitutional design features that the framers of Egypt's new legal system should adopt in order to enable these groups to more freely exercise their beliefs without abuse from state and nonstate actors. The Note begins in Part I with a brief overview of Egypt's religious demographics and cultural conceptions of identity and religious exercise. In Part II, this Note examines the treatment of Egyptian religious minorities by both state and nonstate actors (A) under the Mubarak regime, (B) in the immediate aftermath of the January 25 Revolution, (C) under the Morsi government, and (D) in the immediate aftermath of the June 30 Revolution until the time of this writing. This Note then concludes Part II with an analysis of the future of Egypt's religious minorities as it appears at the time of this writing, identifying a number of concerns regarding their abilities to exercise their beliefs.

Finally, in Part III, this Note argues that Egypt must enshrine religious liberty and free exercise in the nation's new Constitution through guaranteed individual rights and effective enforcement mechanisms to implement such rights against both state and nonstate actors. This Part argues that the framers of Egypt's governing system under its new Constitution should, at the very least, engage in the following steps: (A) explicitly adopt the Supreme Constitutional Court's 1996 interpretation of Article 46 of the 1971 Constitution as the state's official interpretation of similar language in the country's new Constitution; (B) ensure the creation and continuance of institutional structures to incentivize accountability and enforcement of religious freedom guarantees; (C) ensure that its horizontal rights provisions protecting freedom of belief and religious practice are enforced; and (D) ensure the enforcement in domestic courts of international human rights conventions to which it has agreed. Additionally, though it would be more difficult to implement than the

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18. Notably, they have faced a ban on religiously based political parties, see Dina Guirguis, *Stability or Rigidity? Egypt's Use of Constitutional and Executive Power*, WASH. INST. FOR NEAR EAST POL'Y (Nov. 16, 2010), <https://www.washingtoninstitute.org/policy-analysis/view/stability-or-rigidity-egypts-use-of-constitutional-and-executive-power>, and more recently, certain of their political groups—most notably, the Muslim Brotherhood—have been banned and declared to be terrorist organizations, see *Egypt Declares Muslim Brotherhood a Terrorist Group*, FOX NEWS (Dec. 25, 2013), <http://www.foxnews.com/world/2013/12/25/egypt-declares-muslim-brotherhood-terrorist-group/>.

19. See *infra* Part II.A.2.

above steps, this Part further argues that Egypt's leaders should (E) remove restrictive language from constitutional provisions that guarantee religious freedom.

### I. RELIGION AND THE CULTURE OF EGYPT

The challenges that Egypt's minority religions face are the products of the nation's religious demographics and cultural heritage. Therefore, to more fully understand the treatment both past and present of Egypt's religious minorities, one must first understand the country's composition and grasp its concepts of identity and religious exercise.

#### A. Religious Demographics

Both ethnically and religiously, the population of Egypt is very homogenous. Egypt's 85.3 million residents are nearly all ethnic Egyptians (99.6% of the population), and 90% are Sunni Muslims.<sup>20</sup> The remaining 10% of Egyptians belong mostly to religions accepted and recognized by Islamic and government authorities (the "heavenly religions" of Christianity and Judaism),<sup>21</sup> though a small percentage of Egyptians belong to religions that the state does not officially accept or recognize (most notably Baha'is and Shi'a Muslims).<sup>22</sup>

Of the recognized religions, the largest minority religion is Christianity, most of whose adherents are Copts.<sup>23</sup> The Copts are an Egyptian Orthodox sect of Christianity that traces its origin back to the time of the apostles and has its own patriarch (the "Coptic Pope").<sup>24</sup> A much smaller percentage of Christians in Egypt belong to numerous other Christian denominations.<sup>25</sup> In addition, a very small number of Jews still live in Egypt.<sup>26</sup>

Non-Abrahamic religious minorities are only minimally present in Egypt.<sup>27</sup> Members of the Baha'i faith have been in Egypt since 1910,<sup>28</sup> numbering 5000 at

20. CIA, *Egypt*, in WORLD FACTBOOK (2014), available at <https://www.cia.gov/library/publications/the-world-factbook/geos/eg.html>.

21. Islam officially recognizes only the "heavenly" or "divine" or "Abrahamic" religions that pre-existed Islam—Judaism and Christianity. See BUREAU OF DEMOCRACY, HUM. RTS. & LABOR, EGYPT 2012 INTERNATIONAL RELIGIOUS FREEDOM REPORT, U.S. DEP'T OF STATE 4 [hereinafter 2012 BUREAU REPORT], available at <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?year=2012&dclid=208386#wrapper>; Samuel Tadros, Heritage Foundation, *Religious Freedom in Egypt*, BACKGROUND NO. 2487, Nov. 9, 2012, at 5.

22. 2012 BUREAU REPORT, *supra* note 21, at 4.

23. *See id.*

24. *See* Scott Kent Brown II, Comment, *The Coptic Church in Egypt: A Comment on Protecting Religious Minorities from Nonstate Discrimination*, 2000 B.Y.U. L. REV. 1049, 1051–53.

25. *See* Tadros, *supra* note 21, at 2; CIA, *supra* note 20.

26. Approximately 120 Jews still live in Egypt. Tadros, *supra* note 21, at 2. Note, in the early 1900s, Egypt's Jewish population numbered roughly 80,000. David Kenner, *What Happened to the Jews of Egypt?*, PASSPORT: FOREIGN POL'Y L. BLOG (Mar. 27, 2013, 7:43 AM), [http://blog.foreignpolicy.com/posts/2013/03/27/what\\_happened\\_to\\_the\\_jews\\_of\\_egypt](http://blog.foreignpolicy.com/posts/2013/03/27/what_happened_to_the_jews_of_egypt).

27. *See Ahl al-Kitab*, ENCYC. BRITANNICA (2013), available at <http://www.britannica.com/EBchecked/topic/10067/Ahl-al-Kitab>; Tadros, *supra* note 21, at 2–4.

their peak in the middle of the twentieth century;<sup>29</sup> while only a small number of Baha'i followers (roughly 2000) are in Egypt today, they have prominently featured in disputes over religious freedom over the past two decades.<sup>30</sup> Additionally, a small number of non-Sunni Muslims—including roughly 300 Shi'a—live in Egypt today, but are unrecognized due to their beliefs.<sup>31</sup> Further, a handful of Jehovah's Witnesses and Latter Day Saints currently reside in Egypt.<sup>32</sup>

### B. Identity and Religious Exercise in Egypt

The treatment of religious minorities today is due in large part to the ways that Egyptians conceive both their national identity and religious exercise. During the sixteenth to nineteenth centuries, the Ottoman Empire ruled Egypt and administered it such that “[e]ach religious group was [its own nation,] given autonomy in its own affairs.”<sup>33</sup> This practice caused each group to be “viewed as both alien and constituting a collective identity,” and created a situation in which “new religious groups were viewed with suspicion as they deviated and broke away from the organized and recognized sects.”<sup>34</sup> Coupled with the dominance of Islam in the country,<sup>35</sup> this practice has allowed group identities to so permeate Egyptian culture that the country has maintained internal divisions along religious lines.

Surprisingly, out of this divided culture grew an Egyptian nationalism rooted in a common, *Egyptian* identity—one that proved strong enough to weaken and eventually overthrow British colonial authorities in the early-twentieth century.<sup>36</sup> Unsurprisingly, however, with internal upheaval over the last several decades and the twin tides of Pan-Arabism<sup>37</sup> and Islamism<sup>38</sup> that swept the region during the same period, the internal fractures in Egyptian culture have become more pronounced, undermining the “Egyptian” identity that once held the various religious cultures together.<sup>39</sup>

Religious practice in Egypt, in turn, is colored both by this concept of group identity and by the dominance of Islam in the country. As Samuel Tadros aptly

28. See Johanna Pink, *A Post-Qur'anic Religion Between Apostasy and Public Order: Egyptian Muftis and Courts on the Legal Status of the Bahā'ī Faith*, 10 ISLAMIC L. & SOC'Y 409, 410 (2003).

29. *Id.* at 412.

30. See Tadros, *supra* note 21, at 2, 12.

31. U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2010, at 229 [hereinafter 2010 REPORT], available at <http://www.uscirf.gov/sites/default/files/resources/annual%20report%202010.pdf>.

32. The U.S. State Department estimates that there are between 800 and 1200 Jehovah's Witnesses in Egypt, but they are unrecognized due to a 1960 presidential decree. See *id.* at 234.

33. Tadros, *supra* note 21, at 2.

34. *Id.*

35. See Brown, *supra* note 24, at 1051; see also *supra* Part I.A.

36. See Tadros, *supra* note 21, at 2.

37. See generally ELIE PODEH, THE DECLINE OF ARAB UNITY: THE RISE AND FALL OF THE UNITED ARAB REPUBLIC (1999).

38. See, e.g., ARE KNUDSEN, POLITICAL ISLAM IN THE MIDDLE EAST 1 (2003), available at <http://www.emi.no/publications/2003/rep/r2003-3.pdf>.

39. See Tadros, *supra* note 21, at 2.

stated in a 2010 Heritage Foundation study, “[t]he basic Egyptian understanding of religious freedom is limited, often understood as simply freedom to worship, albeit under significant constraints. An understanding of religious freedom as the right of all faiths to bring religiously based values to the public square is virtually nonexistent.”<sup>40</sup> In a 1994 interview, the Mubarak regime’s Minister of Religious Affairs, Muhammed Ali Mahjub, noted that “[f]reedom in Islam means commitment and good behavior, not chaos and disunity,” and that “any attempt to slander religion”—a term that has been interpreted quite broadly<sup>41</sup>—“is a call to dismember the homeland and cannot be termed freedom of expression.”<sup>42</sup> As such, freedom of religious exercise in Egypt is a limited concept, protecting belief itself but not the expression of that belief—particularly if that belief conflicts with the beliefs of others. Accordingly, the guarantees of religious exercise that Egypt has created have heretofore been subject to narrow application.<sup>43</sup>

## II. MINORITY RELIGIOUS EXERCISE IN EGYPT’S PAST, PRESENT, AND FUTURE

The story of minority religious exercise in Egypt’s past and present is one of uncertainty and inconsistency. Rights of religious exercise have always been included in the Egyptian governing structure, at least in some form; yet, minority religions have still encountered many restrictions pertaining to their abilities to exercise their respective faiths—both explicit restrictions and practical ones—imposed by both state and nonstate actors. This Part traces the treatment of religious minorities from the years under Mubarak (Subpart A), during the January 25 Revolution and its immediate aftermath (Subpart B), under the Morsi government (Subpart C), and from the June 30 Revolution to the time of this writing (Subpart D), showing that state and nonstate actors have continued to impede these religious groups in the exercise of their respective faiths in the months since the January 25 Revolution.

### *A. Religious Exercise Under Mubarak*

The Mubarak regime’s policies regarding religious exercise both for religious minorities and for the Islamic majority were inconsistent—at times benevolent, at times harsh, and at times ambivalent. Provisions protecting religious exercise existed in the regime’s Constitution, but state enforcement of these rights often did not occur. Likewise, the state imposed restrictive regulations on religious exercise, interfered with and persecuted religious groups (both majority and minority), and did little to stop nonstate acts of violence against religious minorities.

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40. *Id.* at 3.

41. *See* Parts II.A.2.a, II.B.3.a, and II.C.3.a.

42. Interview by Pedro C. Moreno, Int’l Coordinator of the Rutherford Inst., with Muhammed Ali Mahjub, Minister of Religious Affairs (Awkaf) in Egypt (Sept. 10, 1994), as reprinted in *HANDBOOK ON RELIGIOUS LIBERTY AROUND THE WORLD* 264 (Pedro C. Moreno ed., 1996).

43. *See infra* Part II.A.

### 1. Provisions Under Mubarak

The Constitution under the Mubarak regime<sup>44</sup> was established in 1971 and featured a number of broadly worded clauses protecting religious liberty and religious exercise; however, it also established Islam as the state religion and *the* source of law.<sup>45</sup> Article 40 guaranteed equality “before the law . . . without discrimination . . . due to . . . religion or creed.”<sup>46</sup> Additionally, Article 46 provided that “[t]he State shall guarantee the freedom of belief and the freedom of practice of religious rites,”<sup>47</sup> which Egypt’s Supreme Constitutional Court (SCC) interpreted in the following manner: “No one may be compelled to believe in a religion which [one] denies; to declare the religion to which [one] adheres; to withdraw from the [religion one] has chosen, or to favor a particular religion in prejudice to another, either by way of contempt, defamation or renunciation.”<sup>48</sup> Article 2, however, established Islam both as the state’s official religion and as the foundation of its legal code, thereby allowing legislative implementation of Islamic principles.<sup>49</sup> Though the SCC limited the application of the amended form of this Article to laws passed after the Article was amended,<sup>50</sup> this establishment of religion colored the implementation of religious exercise provisions such as Articles 40 and 46 in practicality, especially for minority religions.

### 2. Religious Exercise Limitations and Abuses

Despite Egypt’s constitutional protections, religious minorities have faced restrictions on the exercise of their beliefs, both from state and nonstate actors.

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44. For a concise summary of Egypt’s former regime and its leader, Hosni Mubarak, see *Profile: Hosni Mubarak*, BBC NEWS (Aug. 22, 2013, 1:36 PM), <http://www.bbc.co.uk/news/world-middle-east-12301713>.

45. See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Sept. 11, 1971, *as amended*, May 22, 1980, May 25, 2005, Mar. 26, 2007, art. 2.

46. *Id.* art. 40.

47. *Id.* art. 46.

48. Case no. 8/17/Supreme Constitutional Court (Egypt), *as quoted in* TAMIR MOUSTAFA, *THE STRUGGLE FOR CONSTITUTIONAL POWER: LAW, POLITICS, AND ECONOMIC DEVELOPMENT IN EGYPT* 166 (2007). An alternative translation reads as follows: “an individual is not to be compelled to accept a creed that he does not share or renounce a creed that he has entered into or that he has proclaimed. One creed should not be discriminated against in favor of others through denunciation, contempt or disdain.” Nathan J. Brown & Clark B. Lombardi, *The Supreme Constitutional Court of Egypt on Islamic Law, Veiling and Civil Rights: An Annotated Translation of Supreme Constitutional Court of Egypt Case No. 8 of Judicial Year 17 (May 18, 1996)*, 21 AM. U. INT’L L. REV. 437, 457 (2006).

49. See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, Sept. 11, 1971, *as amended*, May 22, 1980, May 25, 2005, Mar. 26, 2007, art. 2; Tamir Moustafa, *The Islamist Trend in Egyptian Law*, 3 POL. & RELIGION 610, 610 (2010).

50. See Moustafa, *supra* note 49, at 619–20.

## a. State Actors

Though the state is obligated to protect minority religious exercise, the authoritarian regimes of the past several decades<sup>51</sup> have allowed, enabled, and even authorized a number of significant restrictions on religious expression by minority religions. Through regulatory measures, the Egyptian government made it very difficult for minority religions (both recognized and unrecognized) to build, alter, or rebuild their houses of worship, and the government made it effectively impossible for converts to minority religions or believers in unrecognized faiths to practice their faith in the country.

Restrictions on the building and maintenance of non-Muslim houses of worship are perhaps some of the most obvious and practical state restrictions on minority religious exercise. Since 1856, the state has required that non-Muslims get the permission of the ruler (which, between 1962 and 2005, was interpreted to mean the Egyptian President<sup>52</sup> or the governors) prior to receiving a permit to build or renovate their religious spaces.<sup>53</sup> This requirement has proven more than meddlesome, as the state proved reluctant and slow to grant permission and, even if it did, it proved even more reluctant to allow the building or renovation to continue.<sup>54</sup> Most seriously, this requirement heavily restricted Coptic efforts to reconstruct houses of worship damaged or destroyed by terrorism and sectarian violence.<sup>55</sup> Where religious minorities built or modified their structures without permission, security forces sealed the structures' doors with wax.<sup>56</sup>

Similarly, previous regimes impeded minority religious exercise by requiring that citizens place their religious affiliation on their national ID cards,<sup>57</sup> while only certain religions were officially recognized by the state.<sup>58</sup> Therefore, members of minority religions not recognized by the state—Jehovah's Witnesses, Latter-Day Saints, minority Muslim groups, and Baha'is—were prevented from having

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51. The Nasser Regime (1956–70); the Sadat Regime (1970–81); and the Mubarak Regime (1981–2011). See *Egypt Profile: Timeline*, BBC (Feb. 26, 2014, 7:53 AM), <http://www.bbc.co.uk/news/world-africa-13315719>.

52. See HANDBOOK ON RELIGIOUS LIBERTY AROUND THE WORLD, *supra* note 42.

53. See 2010 REPORT, *supra* note 31, at 232. One report noted a priest's complaint that he could not "even paint without the permission of Hosni Mubarak." See HANDBOOK ON RELIGIOUS LIBERTY AROUND THE WORLD, *supra* note 42, at 267 (quoting Virginia N. Sherry, *The Predicament of Egypt's Christian Minority*, 110 CHRISTIAN CENTURY 717, 717 (1993)).

54. From 1998 to summer 2009, only "67 permits for new churches were approved and 2,475 existing churches were granted permission to expand or make repairs," and "even in cases where approval . . . ha[d] been granted, . . . local security services prevent[ed] construction or repair, in some cases for many years." 2010 REPORT, *supra* note 31, at 232. Thus, "the approval process . . . is [a] time-consuming and inflexible" barrier to minority free exercise. *Id.*

55. See *id.*

56. HANDBOOK ON RELIGIOUS LIBERTY AROUND THE WORLD, *supra* note 42, at 272. For perspective, "[d]uring the first five months of 1992, the government issued only two permits and closed more than seven 'illegally constructed' churches in the Cairo area alone." *Id.*

57. HUMAN RIGHTS WATCH, PROHIBITED IDENTITIES 14 (2007), available at <http://www.hrw.org/sites/default/files/reports/egypt1107webwcover.pdf>.

58. *Id.*; *supra* Parts I.A–B.

national ID cards and, thus, from obtaining birth certificates, enrolling in schools, or securely holding employment.<sup>59</sup> Members of minority religious groups without these national ID cards were effectively prohibited from living, learning, and working in Egypt.<sup>60</sup> Although a recent SCC ruling allowed Baha'is to have the religious identification section of their national ID cards left blank, not all Baha'i applicants received such cards.<sup>61</sup> And, because "Egyptian courts have held that Muslims may not change their identity papers to reflect conversion," converts to minority religions were further impeded and practically discouraged from changing their religious beliefs.<sup>62</sup>

Further, the Mubarak regime restricted minority religious exercise rights by interfering with their activities—including, in some instances, persecuting them through police action—and failing to protect them from acts of violence by nonstate actors.

Whether for political purposes or in accordance with Islamic law, the Mubarak regime and its predecessors actively interfered with and persecuted religious minorities. Presidential decrees heavily restricted or banned various minority religions.<sup>63</sup> The government also enforced Shari'a prohibitions of apostasy and proselytization through article 98f of the Penal Code<sup>64</sup> and the Emergency Laws in order "to detain—and subsequently, often maltreat or even torture—Muslims accused of apostasy."<sup>65</sup> Further instances of state persecution of religious

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59. Tadros, *supra* note 21, at 12.

60. See HUMAN RIGHTS WATCH, *supra* note 57, at 14.

61. See Tadros, *supra* note 21, at 11–12.

62. HANDBOOK ON RELIGIOUS LIBERTY AROUND THE WORLD, *supra* note 42, at 268.

63. For instance, in 1960, President Nasser banned the members of the Baha'i faith by "revoking the community's corporate status and confiscating [their] properties." HUMAN RIGHTS WATCH, *supra* note 57, at 18. A similar 1960 decree banned "all Jehovah's Witnesses activities." U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2013, at 56 [hereinafter 2013 REPORT], available at <http://www.uscirf.gov/sites/default/files/resources/2013%20USCIRF%20Annual%20Report%20%282%29.pdf>. Similarly, in response to sweeping sectarian violence in 1981, President Sadat banished Coptic Pope Shenouda III and arrested hundreds of Copts. Brown, *supra* note 24, at 1062.

64. Article 98f prohibits the use of religion to "ignite strife, degrade any of the heavenly religions or harm national unity or social peace." Maurits S. Berger, *Apostasy and Public Policy in Contemporary Egypt: An Evaluation of Recent Cases from Egypt's Highest Courts*, 25 HUM RTS. Q. 720, 722 n.4 (2003).

65. *Id.* Religious conversion in Islam is a one-way street: minority religions are allowed to convert to Islam, but Muslims may not convert to minority religions unless they formerly belonged to that minority religion—and then only with great difficulty. See Tadros, *supra* note 21, at 10 ("Even in these rare instances, the Interior Ministry has refused to issue [minority ex-converts] new ID cards."); Thomas Najjar, *Democracy Under Islam: Rejection, Adoption, or Containment?*, 6 REGENT J. INT'L L. 419, 428 (2008). According to Shari'a, "Muslims who convert are considered legally dead," they "lose their property to the state," and their marriages "are dissolved." HANDBOOK ON RELIGIOUS LIBERTY AROUND THE WORLD, *supra* note 42, at 269.

minorities<sup>66</sup> include unexplained detentions,<sup>67</sup> detentions for acts of religious expression,<sup>68</sup> and torture or physical abuse during detention.<sup>69</sup>

Previous regimes also facilitated the persecution of religious minorities indirectly by failing to enforce protective provisions,<sup>70</sup> by responding inadequately to religious violence,<sup>71</sup> and by ineffectively preparing to deal with religious violence altogether.<sup>72</sup> Time and again, the state “dealt” with nonstate acts of violence against religious minorities by withholding punishment and hosting “reconciliation sessions” for all parties to play nice and get along,<sup>73</sup> or by meting out punishment haphazardly and arresting members of the victim minority religion.<sup>74</sup> Egyptian security forces, on several occasions, were accused of “allowing Islamic extremists to commit acts of anti-Christian violence with their complete knowledge, sometimes even when they had advance warnings.”<sup>75</sup> One such instance was “the Al-Kosheh violence in January of 2000, where . . . security forces failed to implement any preventive plans between the initial confrontations between Copts and Muslims and the bloody massacre two days later.”<sup>76</sup>

#### b. Nonstate Actors

Facilitated by such inaction by the state, the “most radical” restrictions on minority religious exercise in Egypt came from acts of violence perpetrated by fellow residents of Egypt.<sup>77</sup> Nonstate, sectarian violence in Egypt has been extremely deadly and unfortunately commonplace.<sup>78</sup> While a detailed account of the violence among religious groups is beyond the scope of this Note, in general terms, nonstate acts of violence have caused the deaths of thousands of Egyptians (most of them belonging to religious minority groups) over the last several decades.<sup>79</sup> Facilitated by state inaction, nonstate, sectarian violence proved to be a major impediment to minority religious exercise in Egypt.

66. *See generally, e.g.*, 2010 REPORT, *supra* note 31.

67. *See* HUMAN RIGHTS WATCH, *supra* note 57, at 56–57.

68. *See id.* at 57–58.

69. *See id.* at 56–58.

70. *See* 2010 REPORT, *supra* note 31, at 230.

71. *See* Bureau of Democracy, Human Rights & Labor, 2009 Country Reports on Human Rights Practices: Egypt, U.S. DEP’T OF STATE, <http://www.state.gov/j/drl/rls/hrrpt/2009/nea/136067.htm>.

72. *See, e.g.*, 2010 REPORT, *supra* note 31, at 230 (noting advocacy group concerns that “Egyptian authorities’ repeated characterization of [a 2008 attack on the Abu Fana monastery by armed Muslim Bedouins] as a ‘land dispute’ [though ownership of the land was disputed] ignores the severity of violence faced by Coptic Orthodox Christians”).

73. *See* 2012 BUREAU REPORT, *supra* note 21, at 7.

74. *See* Brown, *supra* note 24, at 1062.

75. *Id.* at 1071 (quoting Bob Hepburn, *Egypt’s Christians Harbor Deep Fears*, TORONTO STAR, Apr. 19, 1993, at A10).

76. *Id.*

77. *Id.* at 1069.

78. *See generally, e.g.*, 2012 BUREAU REPORT, *supra* note 21.

79. For example, from 1990–1994, 1164 Egyptians were killed as a result of nonstate acts of violence motivated in large part by religion. Brown, *supra* note 24, at 1070. For a detailed account and analysis, see generally, for example, 2012 BUREAU REPORT, *supra* note 21.

### B. Religious Exercise During the Arab Spring

As was the case in many countries across the Arab World in 2011, the citizens of Egypt rose up in protest against the existing regime and brought about its downfall, ushering in the hope of a sweeping increase in civil and political rights.<sup>80</sup> While the revolution brought some relief, many of the existing abuses, failures, and restrictions on minority religious exercise remained.

#### 1. Tahrir Square and Beyond

The events of the January 25 Revolution were bathed from beginning to end in the rhetoric of protest for greater rights. Weeks earlier, following the lead of the Tunisians, thousands of Egyptians across the nation rose up in mass protests against the Mubarak regime, beginning on January 25, 2011, most notably in Cairo's Tahrir Square.<sup>81</sup> Their reasons were clear: "We are telling President Mubarak to go . . . . The Egyptian people no longer want this system. [Mubarak has] closed all doors to peaceful change."<sup>82</sup> "In the streets of Cairo, Alexandria, and Suez," Amr Hamzawy reported, "the only slogans heard demanded change, freedom, social justice and a stop to corruption."<sup>83</sup> On February 11, 2011, after two-and-a-half weeks of largely peaceful protests, Mubarak announced that he would be stepping down from the Egyptian Presidency and handing power over to the military.<sup>84</sup> Announcing its intention to govern until free elections could be held,<sup>85</sup> the governing Supreme Council of Armed Forces (SCAF) "dissolved the parliament, suspended the constitution, formed a committee to recommend constitutional amendments, and called for presidential and parliamentary elections."<sup>86</sup> Later, it

80. For an excellent summary of the major events of the Arab Spring in Egypt and the context of the revolution, see Garry Blight, Sheila Pulham & Paul Torpey, *Arab Spring: An Interactive Timeline of Middle East Protests*, GUARDIAN (Jan. 5, 2012, 10:45 AM), <http://www.guardian.co.uk/world/interactive/2011/mar/22/middle-east-protest-interactive-timeline>.

81. See *Thousands Protest Across Egypt, Inspired by Tunisia*, NPR (Jan. 25, 2011, 10:25 AM), <http://www.npr.org/2011/01/25/133208321/thousands-protest-across-egypt-inspired-by-tunisia> (providing an audio recording and transcript of a discussion between host Steve Inskeep and reporter Soraya Sarhaddi Nelson).

82. *Egypt: Thousands Protest Against President Hosni Mubarak—Video*, GUARDIAN (Jan. 25, 2011), <http://www.guardian.co.uk/world/video/2011/jan/25/egypt-protest-president-murabak-video>.

83. Amr Hamzawy, *Egypt: Day of Anger Suggests a New Protest Scene Driven by Youth, Free of Ideology*, L.A. TIMES (Jan. 28, 2011, 1:15 AM), <http://latimesblogs.latimes.com/babylonbeyond/2011/01/egypt-day-of-anger-suggests-a-new-protest-scene-driven-by-youth-free-of-ideology.html>.

84. Chris McGreal & Jack Shenker, *Hosni Mubarak Resigns—and Egypt Celebrates a New Dawn*, GUARDIAN (Feb. 11, 2011, 2:43 PM), <http://www.guardian.co.uk/world/2011/feb/11/hosni-mubarak-resigns-egypt-cairo>.

85. Chris McGreal, *Egypt's Military Rejects Swift Transfer of Power and Suspends Constitution*, GUARDIAN (Feb. 13, 2011, 3:28 PM), <http://www.guardian.co.uk/world/2011/feb/13/egypt-military-rejects-swift-power-handover>.

86. U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, INTERNATIONAL RELIGIOUS FREEDOM

“issued a 63-article constitutional declaration to govern the country through the transition[,] and issued laws governing the formation of political parties and the structure of parliamentary elections.”<sup>87</sup>

## 2. Developments Concerning Religious Exercise During the Revolution’s Immediate Aftermath

The SCAF took a number of steps affecting minority religions when it took over managerial control of Egypt: first, as mentioned above, it suspended and replaced the 1971 Constitution with a new but temporary Constitutional Declaration; second, it repealed or attempted to repeal certain statutory provisions in an effort to make minority religious exercise rights more effective; and third, it made efforts to protect religious minorities from acts of nonstate violence.

Although the March 2011 Constitutional Declaration altered the structure of government, it largely retained the status quo regarding religion: Islam remained the state’s religion and Shari’a remained prominent in the legal culture, but the rights of all were (at least nominally) protected. Article 2 of the document was identical to the same Article in the 1971 Constitution.<sup>88</sup> Article 6 of the document guaranteed the equal protection of laws and equality of rights and duties, and it protected against discrimination “due to . . . religion, or creed.”<sup>89</sup> Article 11 guaranteed “freedom of creed, and practicing religious rites.”<sup>90</sup>

The SCAF acted on behalf of religious minorities by amending provisions of the various codes to prohibit discrimination on religious grounds. Further, the SCAF amended the Penal Code to “prohibit discrimination on the basis of religion . . . [or] faith” and “delineated prison sentences and specific fines for discriminatory acts, as well as [for] failure to prevent discrimination[, including] more severe penalties for government officials found to be complicit in discrimination.”<sup>91</sup> Additionally, the SCAF attempted to amend the requirement that non-Muslim religious organizations get permission from the government for constructing or maintaining houses of worship and replaced it with requirements that would apply to all religions.<sup>92</sup> However, due to discontent on the part of “Muslims, Christians, and Egyptian human rights groups” with the text of the proposal, the amended law was withdrawn.<sup>93</sup>

Finally, the SCAF made some efforts to protect religious minorities from nonstate acts of violence. For example, the SCAF and the Interior Ministry successfully protected celebrations of Coptic Christmas during the 2011–2012

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REPORT FOR 2012, at 51 [hereinafter 2012 REPORT], available at <http://www.uscirf.gov/sites/default/files/resources/Annual%20Report%20of%20USCIRF%202012%282%29.pdf>.

87. *Id.*

88. See CONSTITUTIONAL DECLARATION OF THE ARAB REPUBLIC OF EGYPT, Mar. 23, 2011, art. 2 [hereinafter MARCH 2011 CONSTITUTIONAL DECLARATION].

89. *Id.* art. 6.

90. *Id.* art. 11.

91. 2012 REPORT, *supra* note 86, at 61.

92. *Id.* at 58.

93. *Id.* According to the 2012 report, “some reports have indicated that [an unpublicized, subsequent version of the] draft law covers only churches and not other places of worship.” *Id.*

holiday season, such that they “passed without incident.”<sup>94</sup> Additionally, on October 15, 2011, the SCAF gave bite to the new Article 6 by amending the Penal Code to ban religious discrimination (among other forms of discrimination), and established prison terms and fines for violations of antidiscrimination provisions.<sup>95</sup>

### 3. Limitations of Religious Exercise and Abuses During the Revolution’s Immediate Aftermath

Despite the above steps taken by the SCAF, the revolution and its immediate aftermath did not improve the status of minority religious exercise in Egypt. Rather, impediments and persecutions both official (by the state) and practical (by nonstate actors) continued.

#### a. State Actors

The SCAF continued to allow and even to perpetrate a number of significant restrictions on the religious expression of minority religions through both obstructive regulations and the facilitation of persecution.

Regulations impeding minority religious exercise continued as before.<sup>96</sup> Despite SCAF efforts to amend, the requirement that minority religions have governmental approval for building or remodeling their houses of worship remained.<sup>97</sup> Though converts to Christianity were allowed to display their true religious identity without indicating their former conversion from Islam on their national ID cards, due to a July 3, 2011, court decision, restrictions on Baha’is and other minority religious groups regarding their ID cards remained.<sup>98</sup> Likewise, the SCAF continued the government’s policy of not recognizing certain minority religions, and the antiproselytization and apostasy prohibitions remained.<sup>99</sup>

SCAF authorities continued to interfere with and persecute religious minorities, thereby both directly (through government harassment and attacks) and indirectly (through failure to protect religious minorities against sectarian violence) impeding their abilities to exercise their respective faiths. For example, on October 9, 2011, security forces violently dispersed a group of Copts who were protesting for the rebuilding of a church that had been demolished by extremists.<sup>100</sup> The security forces opened fire on the protestors and killed twelve by running them over with military vehicles.<sup>101</sup> Likewise, the SCAF continued to allow unrecognized minority religions to be arrested and harassed by police forces: “[i]n December 2011, at least four Shi’a Muslims reportedly were detained and charged with ‘insulting and

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94. *Id.* at 61.

95. *Id.*

96. *See supra* Part II.A.2.a.

97. 2012 REPORT, *supra* note 86, at 58.

98. *Id.*

99. *See id.*

100. CAIRO INSTITUTE FOR HUMAN RIGHTS STUDIES, FRACTURED WALLS . . . NEW HORIZONS: HUMAN RIGHTS IN THE ARAB REGION, ANNUAL REPORT 2011, 102 [hereinafter NEW HORIZONS]. This incident became known as the “Maspero Massacre.” *Id.*

101. *Id.*

denying tenets' of Islam," and "[i]n January 2012, Egyptian authorities closed the Shi'a Hussein mosque in Cairo to prevent Shi'a Muslims from observing Ashura."<sup>102</sup>

SCAF authorities indirectly facilitated the persecution of religious minorities by failing to protect religious minorities from acts of violence perpetrated by nonstate actors, and by failing to adequately punish perpetrators of such acts, thereby passively allowing the destruction of Coptic churches and other acts of sectarian violence.<sup>103</sup> For example, on May 7–8, 2011, security forces assigned to protect the Virgin Mary Church in Imbaba abandoned their post when militants arrived, and despite "several indications that groups of Muslims would attempt to attack other churches in the area, . . . [security forces did not] deploy[] . . . around other churches in the area."<sup>104</sup> The SCAF also continued the use of "reconciliation sessions"<sup>105</sup> to try to ease sectarian tensions, and did not always seek out and punish the perpetrators of such actions.<sup>106</sup>

#### b. Nonstate Actors

Sectarian violence continued to be the most significant impediment to minority religious exercise during this period. According to a report by Voice of America, "[i]n 2011, approximately 94 people—mostly Coptic Christians—died as the result of sectarian violence in Egypt, 70 [after] the fall of Mubarak."<sup>107</sup> With the upheaval of the government and the rise of Islamist groups, nonstate actors had further opportunity and greater strength with which to effectively reduce minority religions' exercise abilities to little significance. In 2011, extremists attacked a number of historic Sufi mosques in Alexandria,<sup>108</sup> set fire to homes of Baha'is in the Sohag province,<sup>109</sup> demolished the Two Martyrs Church in Cairo and then later interfered with its reconstruction,<sup>110</sup> and "attempted to storm" (and successfully closed) the Mar Mina Church in Imbaba (leaving 15 dead and 242 wounded).<sup>111</sup> In addition to these acts of violence, "[s]ome Islamist militant groups" took advantage of overburdened security forces and began "to impose extra-judicial punishments."<sup>112</sup>

102. 2012 REPORT, *supra* note 86, at 53.

103. See NEW HORIZONS, *supra* note 100, at 100.

104. *EIPR Releases Findings of Field Investigation into Imbaba Events*, EGYPTIAN INITIATIVE FOR PERS. RTS. (May 14, 2011), <http://eipr.org/en/pressrelease/2011/05/14/1166>.

105. See *supra* Part II.A.2.a.

106. See 2012 BUREAU REPORT, *supra* note 21, at 9.

107. Editorial, *Protect Religious Freedom in Egypt*, VOICE OF AM. (Aug. 5, 2012), <http://editorials.voa.gov/content/protect-religious-freedom-in-egypt--165201506/1493362.html>.

108. 2012 REPORT, *supra* note 86, at 54.

109. *Id.* at 59.

110. "The SCAF promised to rebuild the church, but it was not possible to begin reconstruction until religious leaders were brought in to convince local Muslims to permit it . . ." NEW HORIZONS, *supra* note 100, at 101.

111. *Id.*

112. 2012 REPORT, *supra* note 86, at 54.

In sum, during the revolution's immediate aftermath, religious minorities found themselves in much the same position as under the Mubarak regime. Though efforts were made by the SCAF to reduce restrictions on minority religious exercise, many of these efforts proved insufficient. The practical impediments of restrictive state regulations, state facilitation of persecution, and nonstate persecution and acts of violence all combined to leave the exercise abilities of religious minorities still far short of those guaranteed by its governing documents.

### C. Under the Morsi Government

Over a span encompassing November 2011 to June 2012, Egyptians elected a new government<sup>113</sup> consisting of a new president and a parliament charged with commissioning a panel to design Egypt's next constitution. The Islamist-dominated government, the provisions regarding religion and religious exercise in the new Constitution, and the further oppression of and tension with minority religious groups by state and nonstate actors yet again prevented many positive developments in terms of religious exercise. Instead, the status quo—regulations and sectarian violence—remained, and the ratification of a new Constitution laid the foundation for greater restrictions on minority religious exercise.

#### 1. The Morsi Government

The new Egyptian government was elected under the oversight of the SCAF during the beginning months of 2012 and brought with it a wave of new, largely Islamist, leaders.<sup>114</sup> The 498-seat People's Assembly (the lower house of parliament) was elected between November 2011 and January 2012, with the Freedom and Justice Party (affiliated with the Muslim Brotherhood) winning 47% of the seats, and the Al-Nour Party (affiliated with the Salafis) winning 24% of the seats.<sup>115</sup>

In March 2012, the newly elected parliament appointed a 100-member constitutional design panel—the Constituent Assembly—to draft the nation's next constitution.<sup>116</sup> Given the Islamist majority in the lower house of parliament, two-thirds of the panel's members were Islamists, while only 6% of the panel's seats were held by members of a minority religious group (the Copts).<sup>117</sup> The small

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113. Though President Mohamed Morsi was not elected until June 2012, long after the People's Assembly was elected in the late months of 2011 and the early months of 2012, I hereinafter term this government the "Morsi government" or the "Morsi regime" for purposes of reference.

114. Under the Mubarak regime, political parties were forbidden to have any sort of religious affiliation; under the SCAF regime, however, this prohibition was scrapped (or at least not enforced). 2012 REPORT, *supra* note 86, at 54.

115. *Id.* at 51.

116. See Tamim Elyan, *Egyptian MPs Pick Constitution-Setting Assembly*, REUTERS (Mar. 24, 2012, 11:59 PM), available at <http://uk.reuters.com/article/2012/03/24/uk-egypt-constitution-idUKBRE82N0CR20120324>.

117. See *id.*; *Egypt's FJP Denies Power Monopoly*, UNITED PRESS INT'L (Mar. 27, 2012, 10:32 AM), [http://www.upi.com/Top\\_News/Special/2012/03/27/Egypt-FJP-denies-power](http://www.upi.com/Top_News/Special/2012/03/27/Egypt-FJP-denies-power)

number of liberals and minority members on the panel walked out of an early panel meeting in protest, and on April 10, 2012, the Supreme Administrative Court suspended the panel because it was unrepresentative of the population.<sup>118</sup> In early June 2012, parliament appointed a new Constituent Assembly that consisted of fewer members of parliament—meaning fewer guaranteed seats to Islamists—and guaranteed a few seats for appointment by the Coptic Church.<sup>119</sup>

In the months after the appointment of the new panel, however, four significant developments took place regarding the fate of religious minorities. First, the Islamists won the presidency—the Muslim Brotherhood’s Freedom and Justice Party’s Mohamed Morsi was narrowly elected in June 2012—but lost the lower house of parliament, which the Egyptian Supreme Constitutional Court dissolved, citing concerns over the method of election for seats that constitutionally should have been reserved for independent candidates.<sup>120</sup> To date, Egypt continues to function without a lower house of parliament.<sup>121</sup> Second, the judicial branch was subjected to a number of challenges both from President Morsi and from the people of Egypt: in July 2012, Morsi called the parliament back into session in defiance of the SCC (the SCAF and courts prevented enforcement of this decree);<sup>122</sup> in November 2012, Morsi excluded himself from judicial review (large protests and the passage of the constitutional draft ultimately caused Morsi to rescind this decree);<sup>123</sup> and on December 2, 2012, Islamist protestors at the SCC led the court to

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-monopoly/UPI-40251332858733/.

118. *Egypt’s Supreme Administrative Court Suspends Embattled Constituent Assembly*, AHRAM ONLINE (Apr. 10, 2012), <http://english.ahram.org.eg/NewsContent/1/64/38936/Egypt/Politics-/Egypst-Supreme-Administrative-Court-suspends-embat.aspx>; *Egypt Court Suspends Constitutional Assembly*, BBC NEWS (Apr. 10, 2012, 10:16 AM), <http://www.bbc.co.uk/news/world-middle-east-17665048>.

119. *Egypt Parties End Deadlock over Constitutional Panel*, BBC NEWS (June 8, 2012, 2:49 AM), <http://www.bbc.co.uk/news/world-middle-east-18360403>.

120. *See Egypt Supreme Court Calls for Parliament to Be Dissolved*, BBC NEWS (June 14, 2012, 5:33 PM), <http://www.bbc.co.uk/news/world-middle-east-18439530> (quoting Farouk Soltan, President of the SCC). Parliamentary elections were slated to occur between April and June 2013, but were again put on hold by an Egyptian court in February 2013, which held that the bill providing for the election conditions was unconstitutional. *See* Zaid Al-Ali & Nathan J. Brown, *Egypt’s Constitution Swings into Action*, FOREIGN POL’Y (Mar. 27, 2013), [http://mideast.foreignpolicy.com/posts/2013/03/27/egypt\\_s\\_constitution\\_swings\\_into\\_action](http://mideast.foreignpolicy.com/posts/2013/03/27/egypt_s_constitution_swings_into_action). The SCC will be taking up the question at an undetermined date, meaning that Egypt will continue to function without a parliament indefinitely. *See* David D. Kirkpatrick, *Egypt Court Cancels Parliamentary Elections*, N.Y. TIMES, Mar. 7, 2013, at A8, *available at* <http://www.nytimes.com/2013/03/07/world/middleeast/egypt-court-cancels-parliamentary-elections.html>.

121. *See Timeline: Three Years of Egypt’s Political Procedures*, AHRAM ONLINE (Mar. 18, 2014), <http://english.ahram.org.eg/NewsContent/1/64/96993/Egypt/Politics-/TIMELINE-Three-years-of-Egypst-political-procedure.aspx>.

122. Steve Hendrix & Ernesto Londoño, *Egypt’s Morsi Moves to Reinstall Parliament*, WASH. POST, July 9, 2012, at A2, *available at* [http://articles.washingtonpost.com/2012-07-08/world/35488975\\_1\\_morsi-islamists-supreme-constitutional-court](http://articles.washingtonpost.com/2012-07-08/world/35488975_1_morsi-islamists-supreme-constitutional-court).

123. David D. Kirkpatrick & Mayy El Sheikh, *Citing Deadlock, Egypt’s Leader Seizes New Power and Plans Mubarak Retrial*, N.Y. TIMES, Nov. 23, 2012, at A4, *available at* <http://www.nytimes.com/2012/11/23/world/middleeast/egypts-president-morsi-gives-himself-new-powers.html?ref=middleeast>.

suspend operations until the end of the month.<sup>124</sup> Third, the Constituent Assembly approved the new Constitution on November 29, 2012, over the objections of human rights groups and minority members of the Constituent Assembly (for reasons discussed below),<sup>125</sup> and the people of Egypt ratified the document on December 25, 2012.<sup>126</sup> Fourth, the populace grew even angrier: protests against decisions of the government continued regularly, with the heightened violence leading Morsi in one instance to declare a state of emergency in three major cities.<sup>127</sup>

## 2. Developments Concerning Religious Exercise Under the Morsi Government

During the Morsi regime, a number of significant changes occurred. As the *2013 USCIRF Report* discusses, “several positive societal developments [occurred] . . . .”<sup>128</sup> Among these, the report notes, were the following:

- “Christian communities . . . [began] to organize with both opposition groups and representatives from Al-Azhar to counter religious extremism.”<sup>129</sup>
- “[M]any Christian churches [began urging] community members to be active in the democratic transition of a new Egypt.”<sup>130</sup>
- “In February 2013, Christian groups came together to form for the first time ever an Egyptian Council of Churches.”<sup>131</sup>
- “[M]any diverse interlocutors expressed positive views of the moderating role Al-Azhar has played since the January 2011 revolution”—a role that has included “spearhead[ing] initiatives[,] . . . publish[ing] statements

124. Stephanie McCrummen, *Egyptian Judges Suspend Work as Morsi’s Backers Swarm Court*, WASH. POST, Dec. 3, 2012, at A1, available at [http://articles.washingtonpost.com/2012-12-02/world/35586015\\_1\\_morsi-high-court-islamists](http://articles.washingtonpost.com/2012-12-02/world/35586015_1_morsi-high-court-islamists); Ramadan Al Sherbini, *Top Court Resumes Work After Unprecedented Suspension*, GULF NEWS (Dec. 30, 2012, 7:00 PM), <http://gulfnnews.com/news/region/egypt/top-court-resumes-work-after-unprecedented-suspension-1.1125728>.

125. See David D. Kirkpatrick, *Egyptian Islamists Approve Draft Constitution Despite Objections*, N.Y. TIMES, Nov. 30, 2012, at A6, available at <http://www.nytimes.com/2012/11/30/world/middleeast/panel-drafting-egypts-constitution-prepares-quick-vote.html>. The draft was hurriedly passed due to the political pressure created by Morsi’s attempted power grab in late November 2012 and the looming challenge before the SCC to the constitutionality of the Constituent Assembly. *Id.*

126. Abigail Hauslohner & Ingy Hassieb, *Egypt Ratifies Islamist-Backed Constitution*, WASH. POST (Dec. 25, 2012), [http://articles.washingtonpost.com/2012-12-25/world/36016130\\_1\\_islamists-new-charter-opposition-groups](http://articles.washingtonpost.com/2012-12-25/world/36016130_1_islamists-new-charter-opposition-groups).

127. See David D. Kirkpatrick, *Morsi Declares Emergency Rule in 3 Egypt Cities*, N.Y. TIMES, Jan. 28, 2013, at A1, available at <http://www.nytimes.com/2013/01/28/world/middleeast/morsi-declares-emergency-in-3-egypt-cities-as-unrest-spreads.html>.

128. 2013 REPORT, *supra* note 63, at 48.

129. *Id.*

130. *Id.*

131. *Id.*

expressing support for freedom of religion or belief in Egypt,” and engaging in “interfaith dialogue initiatives[] aimed at unifying the various religious communities and countering extreme Islamist views.”<sup>132</sup>

- “[T]he government began to re-open more than 50 existing churches that had been closed, in some cases for years.”<sup>133</sup>

Perhaps the most significant development, however, was the adoption of a new Constitution.<sup>134</sup> A number of that document’s clauses had implications for minority religious exercise, and some of them—if given force and applied even-handedly to all religions in Egypt—could have provided great protections for minority religious exercise. However, such clauses (1) included language that either (a) has existed in Egypt’s previous constitutions yet proven ineffective, or (b) was limited to only recognized religions, and (2) were surrounded by other articles that threatened to create a more hardline, Islamist regime.

The following provisions in the new Constitution constructed a framework allowing for minority religions to exercise their faith:

- Article 31 provided that “[d]ignity is the right of every human being, safeguarded by the State” and that “[i]nsulting or showing contempt toward any human being shall be prohibited.”<sup>135</sup>
- Article 43 provided that “[f]reedom of belief is an inviolable right” and further clarified this provision by stating that “[t]he State shall guarantee the freedom to practice religious rites and to establish places of worship for the divine religions, as regulated by law.”<sup>136</sup>
- Article 3 provided that “[t]he canon principles of Egyptian Christians and Jews are the main source of legislation for their personal status laws, religious affairs, and the selection of their spiritual leaders.”<sup>137</sup>
- Article 8 provided that “[t]he State guarantees the means to achieve justice, equality and freedom, and is committed . . . to ensur[ing] the protection of persons and property . . . within the context of the law.”<sup>138</sup>
- Article 9 provided that “[t]he State shall ensure safety, security and equal opportunities for all citizens without discrimination.”<sup>139</sup>

However, two factors colored the implementation of the above provisions: first, the language of the Articles; and second, the fact that the Constitution expanded Islam’s role as the state’s official religion and the foundation of its legal culture.

Regarding the first, the text of several articles raised the following concerns:

132. *Id.*

133. *Id.*

134. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 29 Nov. 2012.

135. *Id.* art. 31.

136. *Id.* art. 43.

137. *Id.* art. 3.

138. *Id.* art. 8.

139. *Id.* art. 9.

- Article 43's guarantee of public religious exercise (through the establishment of houses of worship) was limited in application to the heavenly religions (accepted branches of Islam, Christianity, and Judaism), thereby excluding followers of other religions from its protections.<sup>140</sup> Furthermore, the Article's protections of religious exercise "[were] limited to 'rites' and places of worship," to the exclusion of other forms of religious expression.<sup>141</sup>
- "[Article 31] [was] a double-edged sword," Ahmed About Enein stated. "Although it state[d] [that] human dignity is a right and that the state and society have to respect it, it also stipulate[d] [that], 'under no circumstance may a citizen be insulted or disrespected.'"<sup>142</sup> This, he continued, "[could have been] interpreted to . . . limit[] freedom of speech or even [have] lead to imprisonment, in the ilk of contempt of religion laws."<sup>143</sup>
- Article 3's grant that adherents of the heavenly religions may be subject to the principles of their own laws was limited to certain areas of the law; further, the Article's grant was only for those few, specific religions.<sup>144</sup> As such, it legally segregated society into religious factions, officially dividing society into religious groups rather than creating one legal code acceptable and applicable to all, thus opening the door for sectarian strife.

Regarding the second, the new Constitution further solidified both Islam's status in the government<sup>145</sup> and the state's role in protecting the morals and values of Egyptians.

- Article 4 endowed the state-supported university in Cairo—Al-Azhar—with authority over matters of Shari'a law, to be consulted by the government in matters of Shari'a interpretation.<sup>146</sup>
- Article 44 prohibited the "insult or abuse of all religious messengers and prophets"<sup>147</sup>—a prohibition for which Egyptian officials interviewed for the 2013 report "were unequivocal in their support . . . stating that there

140. *See id.* art. 37; *see also* Ahmed About Enein, *Analysis of Constitutional Draft—Part 2*, DAILY NEWS EGYPT (Oct. 17, 2012), <http://dailynewsegypt.com/2012/10/17/analysis-of-constitutional-draft/>. According to the 2013 report, "government officials stated that Article 43 guarantees religious freedom for all Egyptian citizens, including Baha'is. However, some officials felt that Baha'is would need to test this freedom in court," because the Constitution does not include reference to their faith. 2013 REPORT, *supra* note 63, at 50.

141. 2013 REPORT, *supra* note 63, at 50.

142. Enein, *supra* note 140.

143. *Id.*

144. *See* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 29 Nov. 2012, art. 3.

145. *See id.* art. 2.

146. *See id.* art. 4.

147. *Id.* art. 44. An earlier version of the Article also protected "the divine being . . . the mothers of the faithful and the rightly guided caliphs." *Egypt: Fix Draft Constitution to Protect Key Rights*, HUM. RTS. WATCH (Oct. 8, 2012), <http://www.hrw.org/news/2012/10/08/egypt-fix-draft-constitution-protect-key-rights>.

are consequences for insulting or injuring the religious feelings of others.”<sup>148</sup>

- Article 2’s language remained the same as in previous constitutions,<sup>149</sup> but Article 219 explained what the “principles of Islamic Sharia” referenced in Article 2 were to include: “general evidence, foundational rules, rules of jurisprudence, and credible sources accepted in Sunni doctrines and by the larger community.”<sup>150</sup>
- Article 10 stated that the “family is the basis of the society and is founded on religion, morality and patriotism”; accordingly, the Article gave the state and society the duty of preserving the “genuine character of the Egyptian family . . . and [] protect[ing] its moral values.”<sup>151</sup>
- Article 11 gave the state the role of “safeguard[ing] ethics, public morality and public order, and foster[ing] a high level of . . . religious . . . values.”<sup>152</sup>

In sum, while a number of positive societal developments regarding religious freedom took place under the Morsi regime, the new Constitution—while recognizing and protecting minority religions—formally expanded the role of Islam in the state and, in turn, the role of the state in society, thus raising many concerns.<sup>153</sup>

### 3. Limitations of Religious Exercise and Abuses Under the Morsi Government

As discussed above, there were several positive developments under the Morsi government. As the U.S. Commission on International Religious Freedom’s *Annual Report for 2013* details, the “newly elected government[] . . . made some improvements related to freedom of religion or belief[,] . . . there was positive social progress between religious communities[,]” and there was “a significant decrease in the number of fatalities and injuries from sectarian violence.”<sup>154</sup> However, state and nonstate restrictions, persecutions, and impediments to religious exercise persisted.

#### a. State Actors

The Morsi government continued to allow and to perpetrate many of the same failures as did the Mubarak regime and the transitional government. The regime actively restricted minority religious exercise by continuing to delay compliance with the SCC’s ruling that granted identity cards to Baha’is<sup>155</sup> and continuing to

148. 2013 REPORT, *supra* note 63, at 50.

149. *See* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 29 Nov. 2012, art. 2.

150. *Id.* art. 219.

151. *Id.* art. 10.

152. *Id.* art. 11.

153. *See, e.g.,* Hauslohner & Hassieb, *supra* note 126.

154. *See* 2013 REPORT, *supra* note 63, at 47.

155. *See id.* For discussion of this issue, see *supra* notes 57–62 and accompanying text. As the 2013 report notes, “Baha’is who are married still cannot get identity cards,” but

make difficult the process of reflecting one's religious conversion on identity documents.<sup>156</sup> The requirement of government approval for construction or repair of religious facilities remained, and significantly, "[n]o churches were approved for new construction or repair in 2012, despite applications being submitted to governors."<sup>157</sup> The regime continued to restrict unrecognized religions—for example, the regime restricted meetings of Jehovah's Witnesses to groups of thirty and in private homes,<sup>158</sup> and publicly declared that Baha'i children "do not have the right to register in government schools . . . [because] [t]he state only recognizes three religions."<sup>159</sup> Further, state "courts continued to prosecute, convict, and imprison Egyptian citizens charged with 'contempt' or 'defamation' of religion."<sup>160</sup> The following prosecutions are exemplary:

- July 2012: A Shi'i teacher "was sentenced to one year in prison . . . for contempt of religion and 'desecration of a place of worship,' although [his] lawyer says he was found guilty solely for praying in a mosque according to Shi'i rituals."<sup>161</sup>
- September 2012: A court affirmed a three-year prison sentence for a Coptic teacher for a Facebook post of "cartoons defaming the Prophet Muhammad."<sup>162</sup>
- November 2012: A court sentenced seven expatriate Copts to death for "harming national unity, insulting and publicly attacking Islam, and spreading false information," allegedly for being "associated with the 'Innocence of Muslims' online film."<sup>163</sup>
- December 2012: A court sentenced atheist Alber Saber to three years in prison for "posting . . . online content that allegedly 'insulted God and cast doubt on the books of the Abrahamic religions' and 'denied the existence of God and his creation of mankind.'"<sup>164</sup>

The Morsi government also maintained the passive posture of former regimes in its response to sectarian violence. Specifically, the government often "failed or was slow to protect religious minorities from violence,"<sup>165</sup> and often "fail[ed] to convict

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"[u]nmarried Baha'is can put a dash on ID cards in the space for religion." 2013 REPORT, *supra* note 63, at 56.

156. See 2013 REPORT, *supra* note 63, at 47, 55 ("During USCIRF's 2013 visit, several interlocutors explained that despite a July 2011 law making it easier to reflect one's religion on ID cards . . . it still is difficult in practice to obtain identity cards.").

157. *Id.* at 54.

158. *Id.* at 56.

159. *Bahais Cannot Enroll in Public Schools, Education Minister Says*, EGYPT INDEP. (Jun. 6, 2013, 8:51 PM), <http://www.egyptindependent.com/news/bahais-cannot-enroll-public-schools-education-minister-says>.

160. 2013 REPORT, *supra* note 63, at 47.

161. *Id.* at 52.

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* at 47. See also *Egypt: Address Recurring Sectarian Violence*, HUM. RTS. WATCH (Apr. 10, 2013), <http://www.hrw.org/news/2013/04/10/egypt-address-recurring-sectarian>

those responsible for the violence<sup>166</sup> or convicted instead only adherents of one religion but not another,<sup>167</sup> thereby “continu[ing] to foster a climate of impunity.”<sup>168</sup> Some Egyptian officials even denied that the violence had anything to do with sectarian divides, claiming that “violence experienced by Copts was not a sectarian problem . . . but one that affects all Egyptians”—a fact that “Egyptian human rights groups and Christian activists refute.”<sup>169</sup>

Most concerning, however, is where the Morsi government exceeded its forbearers: by providing a bolstered constitutional framework for further restricting minority religious exercise. The Articles of the new Constitution<sup>170</sup> “affirm[ed] the [continued] criminalization of ‘defamation of religion.’”<sup>171</sup> They legally divided society along religious lines. They placed “Al-Azhar scholars [in] a consultative role in reviewing religiously-significant legislation.”<sup>172</sup> And, most significantly for religious exercise purposes, the Articles protected only limited forms of religious expression—“rites” and “places of worship”—and this only for recognized religions.<sup>173</sup> Thus, the new Constitution made many of the aforementioned restrictions on religious exercise *constitutional* matters, rather than merely *statutory* or *social* ones as they had been previously, thereby adding further challenges for minority religions to overcome.

#### b. Nonstate Actors

Though the body count dropped “significantly” under the Morsi regime,<sup>174</sup> practical restrictions on minority religious exercise by nonstate actors persisted. Incitements to violence against religious minorities continued, of which the following are illustrative:

- February 2012: An Alexandrian Salafi leader announced on a television program that “Baha’is should be prosecuted for treason because they are apostates and are not entitled to any rights in Egypt.”<sup>175</sup>
- September 2012: After publication of the *Innocence of Muslims* film on the Internet, “Islamist clerics and some Gulf-funded satellite television stations used the film as an opportunity to denounce and demonize Coptic

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-violence.

166. 2013 REPORT, *supra* note 63, at 58.

167. *See id.* at 53–54 (“[I]n 2012, in May, an emergency state security court in Minya sentenced 12 Christians to life in prison. The court also acquitted eight Muslim defendants. The case arose from clashes . . . in April 2011 . . . [that] left two Muslims dead, scores of Christian shops and homes burned, and several . . . wounded.” Note, however, “in December 2012, the verdict was annulled,” and a new trial was commenced.).

168. *Id.* at 53.

169. *Id.*

170. *See supra* Part II.C.2.

171. 2013 REPORT, *supra* note 63, at 50.

172. *Id.*

173. *SEE CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT*, 29 Nov. 2012, art. 43.

174. *See* 2013 REPORT, *supra* note 63, at 53.

175. *Id.*

Christians, including a prominent Salafi cleric who publicly defiled and ripped a Bible.”<sup>176</sup>

Acts of sectarian violence also continued, of which the following three attacks are most noteworthy:

- August 2012: An incident that began as “a dispute between a Christian and Muslim at a dry-cleaning business after the Muslim man’s shirt was accidentally burned,” ended in one death, several injuries, the destruction of several Coptic homes and businesses, and the flight of “nearly all of the Christian families” in the area for fear of reprisals.<sup>177</sup>
- April 2013: One Muslim and five Christians were killed, and buildings and shops were set on fire, in violence in the town of Khosus.<sup>178</sup> Though the cause of that incident is disputed,<sup>179</sup> witnesses reported that, during the violence, the cleric of the local mosque “call[ed] out from the loudspeaker[,] ‘Kill all the infidels,’” and “ask[ed] everyone to take their weapons and attack the church.”<sup>180</sup>
- June 2013: What began as a gathering of twenty-four Shia residents of the town of Abu Musallim in a private home turned into a riotous conflict, with “a crowd of over 1,000 people gather[ing]” outside the house, “hurling stones and Molotov cocktails into the house.”<sup>181</sup> When four of the Shia residents exited the house, “[t]he crowd attacked, beat, stabbed and lynched the four men,” and “[v]ideo footage show[ed] their bloodied lifeless bodies being kicked on the ground and then dragged through the streets.”<sup>182</sup>

In sum, under the Morsi regime, religious minorities found themselves in much the same position as before. Though positive developments occurred and the death toll of sectarian violence dropped, many acts of sectarian violence still occurred. Many of the same restrictions on minority religious exercise, both official and practical, remained. And the enactment of the new Constitution not only threatened to make former restrictions matters of constitutional concern, but also created new impediments to minority religious exercise.

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176. *Id.* at 52.

177. *Id.* at 53.

178. *Egypt: Address Recurring Sectarian Violence*, HUM. RTS. WATCH (Apr. 10, 2013), <http://www.hrw.org/news/2013/04/10/egypt-address-recurring-sectarian-violence>.

179. *See id.* (One news agency stated that “Muslim residents became outraged after people they believed to be Christian children sprayed a swastika onto the wall of a religious institute affiliated to Al Azhar,” while “[s]ome local residents claim that a fight between Christian children playing soccer and a Muslim man and his sister escalated after their families became involved.”).

180. *Id.*

181. *Egypt: Lynching of Shia Follows Months of Hate Speech*, HUM. RTS. WATCH (June 27, 2013), <http://www.hrw.org/news/2013/06/27/egypt-lynching-shia-follows-months-hate-speech>.

182. *Id.*

*D. The June 30 Revolution and Its Immediate Aftermath*

As it would turn out, the Morsi regime proved to be short lived. Over the second half of 2013, the government fell, the military installed a transitional government, and constitutional amendments were proposed. Yet, while the constitutional developments would allay some fears stemming from the 2012 Constitution's original language, many of the same restrictions, persecutions, and acts of sectarian violence would continue.

## 1. The Return to Tahrir

After repeated allegations of ineptitude, as well as opposition concerns over the regime's policies and its creation of an increasingly Islamist government,<sup>183</sup> Egyptians throughout the country rose up in protest on June 30, 2013, to demand Morsi's resignation.<sup>184</sup> Large, pro-Morsi counterprotests ensued,<sup>185</sup> and on that same day, the Egyptian military gave Morsi a forty-eight-hour deadline to "meet the demands of the people"<sup>186</sup> before it would intervene to restore order<sup>187</sup> and impose its own "road map" out of the crisis.<sup>188</sup> Morsi openly defied the military's ultimatum and, with gun battles across the country between pro- and anti-government factions ensuing, set the stage for a dramatic confrontation with the military.<sup>189</sup> On July 3, the military made good on its ultimatum by removing Morsi from power and suspending the Constitution.<sup>190</sup>

The military did much to reshape the political landscape in Egypt, but not without great cost. After removing Morsi, the military installed a senior judge of

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183. See Patrick Kingsley, *Protesters Across Egypt Call for Mohamed Morsi to Go*, GUARDIAN (June 30, 2013, 5:55 PM), <http://www.theguardian.com/world/2013/jun/30/mohamed-morsi-egypt-protests>, in which the leader of one opposition party claimed that Morsi had "hijacked [the] revolution," and in which another protestor stated that though "Morsi got elected in a democratic way, . . . since he took over, everything's been polarised[, and a]ll of a sudden, we see ourselves part of an Islamic regime like Iran."

184. *Id.* As Kingsley notes, for example, approximately 500,000 protestors filled Cairo's Tahrir Square, and 100,000 protestors filled Alexandria's city center. *Id.*

185. See, e.g., Manar Mohsen, *A Day with Pro-Morsi Protestors: "We Are Not Scared of Tomorrow"*, DAILY NEWS EGYPT (June 30, 2013), <http://www.dailynewsegypt.com/2013/06/30/a-day-with-pro-morsi-protestors-we-are-not-scared-of-tomorrow/>.

186. As reported in Salma Abdelaziz, Rza Sayah & Ben Wedeman, *Egypt's Military Gives Morsy Ultimatum*, CNN.COM (July 2, 2013, 10:52 AM), <http://www.cnn.com/2013/07/01/world/meast/egypt-protests/>.

187. *Id.*

188. David D. Kirkpatrick & Kareem Fahim, *Egyptian Military Gives Ultimatum to Morsi, Whose Allies See 'Coup,'* N.Y. TIMES, July 2, 2013, at A1, available at [http://www.nytimes.com/2013/07/02/world/middleeast/egypt-protests.html?\\_r=0](http://www.nytimes.com/2013/07/02/world/middleeast/egypt-protests.html?_r=0).

189. See Martin Chulov & Patrick Kingsley, *Egypt: President Morsi Defiant as Army Deadline Runs Out*, GUARDIAN (July 3, 2013, 4:42 AM), <http://www.theguardian.com/world/2013/jul/03/egypt-morsi-army-deadline-expires>.

190. Abigail Hauslohner, William Booth & Sharaf al-Hourani, *Egyptian Military Ousts Morsi, Suspends Constitution*, WASH. POST (July 3, 2013), [http://articles.washingtonpost.com/2013-07-03/world/40336012\\_1\\_president-mohamed-morsi-wednesday-night-morsi-rally](http://articles.washingtonpost.com/2013-07-03/world/40336012_1_president-mohamed-morsi-wednesday-night-morsi-rally).

the SCC as interim president and declared that while “‘peaceful protests’ could continue, . . . [it] would respond with ‘strength and determination’ to any outbreaks of violence.”<sup>191</sup> Over the following weeks and months the military systematically disbanded,<sup>192</sup> and the transitional government banned outright,<sup>193</sup> the Muslim Brotherhood; violently dispersed pro-Morsi demonstrations;<sup>194</sup> and arrested former-President Morsi<sup>195</sup> and placed him on trial for “inciting the murder of protestors demonstrating outside Cairo’s presidential palace [in] December [2012].”<sup>196</sup>

Despite its bloody crackdown on Islamists and supporters of the former regime, the military once again set Egypt on a path to democracy—albeit a version of democracy in which the military would play a significant role. On July 6, 2013, the military issued a constitutional declaration, which established a process for amending the suspended 2012 Constitution.<sup>197</sup> On January 14 and 15, 2014, Egyptians approved yet another Constitution by an overwhelming margin (98.1% of voters), but turnout was only 38.6% of the electorate as supporters of the Morsi

191. *Id.*

192. Specifically, leaders of the Brotherhood have been detained and imprisoned. *See, e.g.,* Reuters, *Egypt: Muslim Brotherhood Leader Mohammed Badie Reportedly Detained*, *GUARDIAN* (Aug. 19, 2013, 8:22 PM), <http://www.theguardian.com/world/2013/aug/20/egypt-badie-muslim-brotherhood-detained>.

193. Maggie Michael, *Egypt Bans Muslim Brotherhood*, *HUFFINGTON POST* (Sept. 23, 2013, 4:06 PM), [http://www.huffingtonpost.com/2013/09/23/egypt-bans-muslim-brotherhood\\_n\\_3974979.html](http://www.huffingtonpost.com/2013/09/23/egypt-bans-muslim-brotherhood_n_3974979.html).

194. *See, e.g.,* David D. Kirkpatrick & Kareem Fahim, *Killing of Islamists Deepens Crisis in Egypt*, *N.Y. TIMES*, July 9, 2013, at A1, available at <http://www.nytimes.com/2013/07/09/world/middleeast/egypt.html>; David D. Kirkpatrick, *Hundreds of Egyptians Killed in Government Raids, Emergency Declared as Sectarian Violence Spreads*, *N.Y. TIMES*, Aug. 15, 2013, at A1, available at [http://www.nytimes.com/2013/08/15/world/middleeast/egypt.html?pagewanted=1&\\_r=0](http://www.nytimes.com/2013/08/15/world/middleeast/egypt.html?pagewanted=1&_r=0); *Death Toll from Egypt Violence Rises to 638: Health Ministry*, *AHRAM ONLINE* (Aug. 15, 2013), <http://english.ahram.org.eg/NewsContent/1/64/79160/Egypt/Politics-/Death-toll-from-Egypt-violence-rises-to--Health-mi.aspx> (noting that the death toll from one day’s violence was 638, while the injury count from the same day’s violence was 3994).

195. Patrick Kingsley, *Egypt on High Alert as Mohamed Morsi Trial Threatens to Revive Civil Unrest*, *GUARDIAN* (Nov. 3, 2013, 6:25 AM), <http://www.theguardian.com/world/2013/nov/03/egypt-high-alert-mohamed-morsi-trial>.

196. *Id.*

197. CONSTITUTIONAL DECLARATION OF THE ARAB REPUBLIC OF EGYPT, 6 July 2013, arts. 28–30 [hereinafter JULY 2013 CONSTITUTIONAL DECLARATION], translated at <http://egyptelections.carnegieendowment.org/2013/07/15/full-text-of-the-july-2013-egyptian-constitutional-declaration>. Note, the fifty-member committee responsible for drafting constitutional amendments was to be comprised of representatives of “all categories of society and demographic diversities especially parties, intellectuals, workers, peasants, members of trade unions and qualitative unions, national councils, Al Azhar, churches, the Armed Forces, the Police[,] and public figures including ten members from the youth and women at least.” *Id.* art. 29 (emphasis added). Notably, few Islamists were selected to the committee. *See Egypt Referendum on Constitution ‘Set for January,’* *BBC* (Nov. 25, 2013), <http://www.bbc.co.uk/news/world-middle-east-25089456>.

government and Islamist groups boycotted the election.<sup>198</sup> In March 2014, Egyptian's Interim President, Aldy Mansour, announced that presidential elections would be held by mid-summer 2014,<sup>199</sup> with parliamentary elections to follow thereafter.<sup>200</sup> Thus, Egypt entered yet another transitional phase—another chance to lay a foundation for social justice and increased freedoms.

## 2. Developments Concerning Religious Exercise Under the Transitional Government

Under the transitional government, “freedom of belief and the freedom to practice religious rites” were guaranteed in the interim by the July 2013 constitutional declaration.<sup>201</sup> But the most significant, long-lasting, and potentially positive development for religious minorities was the passage of an amended Constitution that rolled back much of the religious language of the document it replaced and, as of this writing, appears to establish a foundation for greater religious exercise.

Though retaining Article 2 and repeating that the “principles of Islamic Sharia are the principal source of legislation,”<sup>202</sup> the amended Constitution removed much of the religious language present in the 2012 Constitution. Specifically, the amended Constitution did the following:

- Removed language in what formerly was Article 4 (and renumbered the amended language as Article 7), which required the government to consult with Al-Azhar on matters of Shari'a interpretation.<sup>203</sup>
- Amended the language of Article 10 to say that “[t]he state protects [the family's] cohesion and stability, and the consolidation of its values.”<sup>204</sup>
- Deleted Article 11, which gave the state the role of “safeguard[ing] ethics, public morality and public order, and foster[ing] a high level of . . . religious . . . values.”<sup>205</sup>

198. See *Egypt Referendum: '98% Back New Constitution,' supra* note 13.

199. See *Egypt's Presidential Elections Commission Issues Regulations for Upcoming Polls*, AHARAM ONLINE (Mar. 17, 2014), <http://english.ahram.org.eg/NewsContent/1/64/96923/Egypt/Politics-/Egypts-Presidential-Elections-Commission-issues-re.aspx>.

200. See Marie-Louise Gumuchian & Yousuf Basil, *Egypt to Have Presidential Elections First*, CNN (Jan. 26, 2014, 2:34 PM), <http://www.cnn.com/2014/01/26/world/africa/egypt-violence/>.

201. JULY 2013 CONSTITUTIONAL DECLARATION, art. 7, *supra* note 197.

202. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, pmb1.

203. Compare CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 7, with CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 30 Nov. 2012, art. 4.

204. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 10. Compare *id.*, with CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 30 Nov. 2012, art. 10 (giving the state and society the duty to preserve the character of the family and protect moral values).

205. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 30 Nov. 2012, art. 11. Compare *id.*, with CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014 (containing no such provision).

- Amended the language of Article 43 (and renumbered it as Article 64) to say that freedom of belief is “absolute.”<sup>206</sup>
- Deleted Article 44, which prohibited the “[i]nsult or abuse of all religious messengers and prophets.”<sup>207</sup>
- Replaced Article 219, which explained what the “principles of Islamic Sharia” were to include, with a sentence in the preamble stating that the rulings of the Supreme Constitutional Court were instead to be the “reference for the interpretation of such principles.”<sup>208</sup>

Additionally, the amended Constitution included a number of new provisions recognizing and seeking to protect minority religious groups. The following provisions are most noteworthy:

- The Preamble notes that the “Constitution . . . holds all of us equal in rights and duties without discrimination of any kind,”<sup>209</sup> and Article 53 states that “[a]ll citizens are equal before the Law . . . in rights, freedoms and general duties, without discrimination based on religion [or] belief,” and that “[d]iscrimination and incitement of hatred is a crime punishable by Law,” and charges the state to “take all necessary measures for eliminating all forms of discrimination” and to create “an independent commission for this purpose.”<sup>210</sup>
- Articles 47 and 50 charge the state to “maintain the Egyptian cultural identity with its diversified branches of civilization,”<sup>211</sup> noting that “Egypt’s civilization and cultural heritage, whether physical or moral, including all diversities and principal milestones—namely Ancient Egyptian, *Coptic*, and Islamic—is a national and human wealth,” and that “[t]he State shall pay special attention to protecting components of cultural pluralism in Egypt.”<sup>212</sup>
- Article 93 states that “[t]he State shall be bound by the international human rights agreements, covenants and conventions ratified by Egypt, and [these] shall have the force of law after publication in accordance with the prescribed conditions.”<sup>213</sup>
- Article 99 states that “[a]ny violation of personal freedom, or the sanctity of the private life of citizens, or any other public rights and freedoms which are guaranteed by the Constitution and the Law is a crime,” grants

206. *Compare* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 64, *with* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 30 Nov. 2012, art. 43.

207. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 30 Nov. 2012, art. 44. *Compare id.*, *with* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014 (containing no such provision).

208. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 30 Nov. 2012, art. 219. *Compare id.*, *with* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, pmb1.

209. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, pmb1.

210. *Id.* art. 53.

211. *Id.* art. 47.

212. *Id.* art. 50 (emphasis added).

213. *Id.* art. 93.

that “[t]he affected party shall have the right to bring a direct criminal action,” provides that “[t]he State shall guarantee fair compensation for the victims of such violations,” and allows the National Council for Human Rights to “file a complaint with the Public Prosecution of any violation of these rights” and to “intervene in the civil lawsuit in favor of the affected party at its request.”<sup>214</sup>

- Article 214 requires that “[t]he law shall specify the independent national councils, including the National Council for Human Rights,” and that “[t]he law shall state the composition, mandates, and guarantees for the independence and neutrality of [its] respective members.” It also grants the council “the right to report to the competent authorities any violations pertaining to [its] field[] of work” and its own “legal personality,” and requires it to be “consulted with respect to the bills and regulations pertaining to [its] affairs and field[] of work.”<sup>215</sup>
- Articles 235 and 244—specifically addressing Christians—require the state in its first legislative term to “issue a law to regulate constructing and renovating churches, in a manner that guarantees the freedom to practice religious rituals for Christians,”<sup>216</sup> and in its first election to “endeavor that . . . Christians . . . be appropriately represented in the first House of Representatives.”<sup>217</sup>
- Article 224 requires that “[t]he state shall be obliged to issue laws executing the provisions of this Constitution.”<sup>218</sup>

While these amended provisions do a number of things to protect religious minorities—ensure equality before the law, make discrimination a crime, create commissions to eliminate discrimination, celebrate and protect cultural diversity, recognize international human rights agreements, provide a criminal cause of action for violation of Constitutional rights, empower a human rights council to intervene on behalf of victims of such violations, guarantee compensation to victims of such violations, provide for the construction of churches, require Christians to be adequately represented in the parliament, and require the state to execute provisions of the Constitution—many of the same problems that religious minorities face remain unaddressed in the Constitution. Religious exercise is limited to the practicing of religious rites and to the establishment of places of worship, and these liberties are only accorded to followers of the three heavenly religions.<sup>219</sup> And the provision directing the state to regulate the construction and renovation of houses of worship is limited to Christian churches only.<sup>220</sup> However, these amended provisions do establish a sturdier framework for the exercise of minority religious rights than did the 2012 Constitution.

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214. *Id.* art. 99.

215. *Id.* art. 214.

216. *Id.* art. 235.

217. *Id.* art. 244.

218. *Id.* art. 224.

219. *See id.* art. 64.

220. *See id.* art. 235.

### 3. Limitations of Religious Exercise and Abuses Under the Transitional Government

Despite the constitutional developments discussed above, state and nonstate restrictions on minority religious exercise continue as before.

#### a. State Actors

Former state restrictions on minority religious exercise—identity card issues, recognition only of certain religions, requirements for permission for the building or repair of houses of worship, etc.<sup>221</sup>—persist. Additionally, and most egregiously, the state has continued its failure to adequately protect against or to effectively address acts of sectarian violence. According to Human Rights Watch, “[i]n the vast majority of the 42 cases” of sectarian violence that they documented throughout July and August 2013, “neither the police nor the military were present at the start or during the attack[s],”<sup>222</sup> despite the fact that, “[f]or weeks, everyone could see these attacks coming.”<sup>223</sup> “Church clergy throughout Upper Egypt,” the report continued, “expressed frustration and desperation that security services did not quickly intervene to stop the widespread attacks.”<sup>224</sup> As one Coptic bishop stated, “[Church officials] spoke to the prime minister, minister of interior, and a military official asking them to intervene, . . . [and they] promised to send protection, but it never arrived.”<sup>225</sup> As a Coptic priest surmised, “The government let us burn, so they could show the world the Brotherhood burning us.”<sup>226</sup>

Yet, the situation remains unchanged. As a police officer in Luxor told Human Rights Watch, security forces have failed to act because they simply do not know what to do: “Put yourself in my position, and ask yourself two questions. First, do you fire live fire[, and on whom]? Who will be killed . . . ? Second, . . . [w]hat do you do if you don’t get an order that will allow you to take more action?”<sup>227</sup> Luxor’s security director, Major Khalid Mamdouh, went so far as to tell Human Rights Watch that “it’s not [the police’s] job to stop killings, we just investigate afterward.”<sup>228</sup> Therefore, despite the crackdown by security forces on political

221. *See supra* Part II.C.3.a. Note that even though Article 235 directs the new government to pass a law regulating the building and renovation of churches—an act which the transitional government could not accomplish to the satisfaction of all parties in 2011, *see supra* notes 91–93 and accompanying text—this provision is limited only to Christian churches and still involves the state’s regulatory hand in the practice of a minority religion. *See* CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 235.

222. *Egypt: Mass Attacks on Churches*, HUM. RTS. WATCH (Aug. 22, 2013), <http://www.hrw.org/news/2013/08/21/egypt-mass-attacks-churches>.

223. *Id.* (quoting Joe Stork, the “acting Middle East director at Human Rights Watch”).

224. *Id.* For a detailed account of the failure of security forces to act, *see id.*

225. *Id.* (quoting Anba Makarios, the Coptic Bishop General of Minya).

226. Laura King, *Attack on Wedding Is Latest Horror for Egypt’s Coptic Christians*, L.A. TIMES (Oct. 21, 2013), <http://articles.latimes.com/2013/oct/21/world/la-fg-egypt-church-shooting-20131022> (quoting Father Maximum Nemr).

227. *Egypt: Sectarian Attacks Amid Political Crisis*, HUM. RTS. WATCH (July 23, 2013), <http://www.hrw.org/news/2013/07/23/egypt-sectarian-attacks-amid-political-crisis>.

228. *Id.*

violence, security forces either remain unwilling to intervene in acts of sectarian violence or, as this officer described, are paralyzed as to how to respond to such violence.

#### b. Nonstate Actors

After the June 30 Revolution, sectarian violence escalated dramatically—particularly violence against Coptic Christians, whom many Islamists blamed for the downfall of the Morsi government.<sup>229</sup> Human Rights Watch reported that, between July 3 and July 23, “at least six attacks on Christians [took] place . . . across Egypt.”<sup>230</sup> In one such attack, Morsi supporters “looted and burned St. George’s Coptic Catholic church and al-Saleh church in the village of Delga,” injuring eight.<sup>231</sup> In another, Morsi supporters “attacked St. Mary’s church, set fire to a security booth outside the church, and attacked a police station there.”<sup>232</sup>

The most widespread violence, however, occurred between August 14 and 21, when “attackers . . . torched and looted scores of churches and Christian property across the country.”<sup>233</sup> In one case in the city of Minya, attackers burned the Anba Moussa church and a Christian orphanage, and painted red and black Xs on shops in the area to distinguish between Muslim- and Christian-owned stores<sup>234</sup>—stores marked as Christian-owned then were attacked.<sup>235</sup> Per several accounts, many of

229. See Jeffrey Fleishman, *Christian-Muslim Animosity Becomes Incendiary Subplot in Egypt*, L.A. TIMES (Aug. 20, 2013), <http://articles.latimes.com/2013/aug/20/world/la-fig-egypt-sectarian-20130820>. It is worth mentioning that “the Coptic pope, Tawadros II, appeared alongside army chief Abdel Fattah Sisi on nationwide television on July 3 to announce that Morsi had been removed from office.” King, *supra* note 226.

230. *Egypt: Sectarian Attacks Amid Political Crisis*, *supra* note 227.

231. *Id.*

232. *Id.*

233. *Egypt: Mass Attacks on Churches*, *supra* note 222. Human Rights Watch compiled the following list of burned, damaged, or attacked churches: Abu Sifin Church; Abu Teeg Bishopric; Adventist Church; Al-Amir Tadros al-Shatbi Church; Al-Amir Tadros Church, Fayum; Al-Amir Tadros Coptic Church; Al-Anba Mousa Church; Al-Malak Church; Al-Mallak Church; Al-Mashyakhya Evangelical Church; al-Qowsiyya Bishopric and Church; Al-Rasuliya Apostolic Church; Al-Rasuliyya Church; Al-Shaheeda Damyana Church; Al-Younaniyya al-Qadeema Church; Baptist Church; Evangelical Church, Asyut; Evangelical Church, Fayum; Evangelical Church, Minya; Evangelical Church, Minya – Bani Mazar; Franciscan Catholic Church and School; Franciscan Church and School, Asyut; Franciscan Church and School, Suez; Good Shepherd Catholic Church and School, Minya; Good Shepherd Catholic Church and School, Suez; Karmet al-Rosul Church; Mar Gergas Coptic Church; Mar Gerges Church; Mar Gerges Church Services Building; Mar Meena Church; Mar Meena Coptic Church; Mar Yohanna Church; Nahdet al-Qadasa Church; Saints Mary and Ibram Coptic Church; Saviour’s Anglican Church; St. George Coptic Church and Diocesan Office; St. George Hadayeq Church; St. Mary Church, Fayum – al-Manala; St. Mary Church, Fayum; St. Mary Church, Giza – Deir Hakim; St. Mary Church, Giza – al-Mansouriya; St. Therese Church. *Id.*

234. Alexander Dziadosz, *Egypt’s Political Strife Puts Christians in Peril*, ASWAT MASRIYA (Aug. 21, 2013, 10:25 AM), <http://en.aswatmasriya.com/analysis/view.aspx?id=91bed416-cdef-4d77-a570-fb250f992685>.

235. See *Egypt: Mass Attacks on Churches*, *supra* note 222.

these attacks were by Islamists directly in response to the June 30 Revolution: for instance, those who burnt down the St. George Coptic Church in Sohag and the Saints Mary and Ibram Church in Delga chanted “Islamic, Islamic” while storming the churches—a chant that, according to Human Rights Watch, is common to “proponents of an Islamic state.”<sup>236</sup> As one man standing guard outside the St. George’s Church in Helwan stated, “The Muslim Brotherhood wants to burn down the country.”<sup>237</sup> He noted, however, the very different posture of his non-Islamist Muslim neighbors: “[t]he Muslims in this neighborhood brought [cookies]” to the guards and “came to protect the church.”<sup>238</sup>

Attacks continued throughout the remainder of 2013, with one notable instance occurring in Cairo in mid-October. At the Church of the Virgin Mary, churchgoers were attending a series of weddings in the church when gunmen opened fire, killing four—one of whom was the eight-year-old niece of one of the brides that evening—and wounding nineteen.<sup>239</sup>

#### *E. Summing up the Situation: The Problems that Remain*

In sum, the situation for religious minorities in Egypt has improved little over the course of the January 25 and June 30 Revolutions. The main restrictions on religious exercise, both official and practical, remain: Baha’is and other non-heavenly religions are still not recognized by the state;<sup>240</sup> proselytization is still forbidden;<sup>241</sup> apostasy (leaving Islam) is still prohibited;<sup>242</sup> religious identity is still required on national ID forms;<sup>243</sup> and minorities still require government permission for building or modifying their houses of worship.<sup>244</sup> The state continues to limit minority religious exercise through the above methods and to facilitate the persecution of minorities through its persistent failure to adequately deal with and prevent antiminority violence,<sup>245</sup> and nonstate actors continue their attacks on minority religious groups.<sup>246</sup>

Adherents of minority religions in Egypt face two challenges in the aftermath of the Arab Spring: first, their government has repeatedly demonstrated a lack of accountability in protecting their property, religious exercise, and lives;<sup>247</sup> and second, they are surrounded by an armed and angry populace that, already prone to deadly acts of sectarian violence,<sup>248</sup> is now more religiously charged than in the

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236. *Id.*

237. Fleishman, *supra* note 229.

238. *Id.*

239. King, *supra* note 226.

240. *See* 2013 REPORT, *supra* note 63, at 47, 55–56.

241. *See* 2012 REPORT, *supra* note 86, at 58.

242. *See id.* at 59.

243. *See, e.g., id.* at 59–60.

244. *See id.* at 58.

245. *See supra* Part II.D.3.a.

246. *See supra* Part II.D.3.b.

247. *See supra* Parts II.A.2.a, II.B.3.a, II.C.3.a.

248. *See supra* Part II.A.2.b.

past, given the prominent role that Islamists have played in the recent political instability.

Therefore, restrictions on minority religious exercise in Egypt could very well increase in the aftermath of the revolution—at the very least, from a practical standpoint in terms of sectarian violence—making the situation of Egypt’s religious minorities worse under the new democracy than they were under the regimes prior to the Arab Spring.

### III. PROTECTING MINORITY RELIGIOUS EXERCISE

In light of this potential, Egypt must act to reverse the tide of restrictions and abuses of religious exercise for its minorities. And the best way it can do so is this: to enshrine religious liberty and free exercise in the nation’s foundational document—its new, amended Constitution—through guaranteed rights and effective enforcement mechanisms that implement such rights against both state and nonstate actors.<sup>249</sup> Many of the new Constitution’s provisions create a foundation upon which Egypt’s new leaders can build structural mechanisms to protect minority religious exercise, and many provisions explicitly protect such minority religions.<sup>250</sup> However, if not acted upon, these provisions will be only aspirational sentiments—mere text, not protections. Accordingly, Egypt should engage in the following steps:

- A. Adopt the SCC’s interpretation of Article 46 of the 1971 Constitution as governing the application of Article 64 of the new Constitution,<sup>251</sup>
- B. Ensure the creation and continuance of institutional structures to incentivize accountability and enforcement of religious freedom guarantees;
- C. Ensure that the Constitution’s horizontal rights provisions protecting freedom of belief and religious practice are enforced;
- D. Ensure the enforcement in domestic courts of international human rights conventions to which it has agreed; and
- E. Remove the restrictive language from constitutional provisions that guarantee religious freedom.

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249. Constitutional provisions that include minority religions in the structure of government could certainly help the situation, but given the overwhelming dominance of Muslims in Egypt (90% of the population), such provisions are not likely to bring about significant change—the same tensions and pressures will remain. *See supra* Part I.A. Ultimately, therefore, effective rights are needed for protection from state and nonstate actors, and these will prove ineffective without a stable government and security force dedicated to the rule of law.

250. *See supra* Part II.D.2.

251. *See supra* note 48 and accompanying text.

*A. Adopt the SCC's Expansive Interpretation of Freedom of Religious Practice*

Egypt should explicitly adopt the SCC's 1996 interpretation of Article 46 of the 1971 Constitution as the governing interpretation of the similar provision in the new constitution—Article 64.<sup>252</sup> In Case No. 8 of Judicial Year 17, the Court determined that the guarantee of “freedom of belief and . . . of practice of religious rights” in then-Article 46 prevented compulsion to “believe in,” to “declare,” to “withdraw from,” or to “favor . . . by way of contempt, defamation or renunciation” any religion.<sup>253</sup> The language of the new Article 64 similarly guarantees freedom of belief and “freedom to practice religious rites”; therefore, it should be interpreted in the same manner.<sup>254</sup> As the preamble of the new Constitution states that the SCC's decisions on matters of Sharia are to be considered *the* official interpretations of such issues, the SCC's 1996 interpretation should thus be enshrined as the official interpretation of this specific provision.

Such an action should provide a constitutional basis (pending effective enforcement) for solving a number of problems for minority religious groups. For one, it would prevent the forced declaration of one's religious affiliation on the national ID card and, thus, the discrimination associated with the government's failure to recognize certain religions, such as the Baha'i faith.<sup>255</sup> For another, it would prevent believers of one religion from being compelled to adhere to another religion in which they do not believe, and it could also be used to protect minorities against anti-apostasy laws.<sup>256</sup>

*B. Ensure that Institutional Structures Are Created and Continue to Enable Effective Enforcement of Rights and to Hold State Actors Accountable*

Egypt must ensure that institutional structures exist to effectuate the religious exercise rights contained in the Constitution, lest the state continue its regulation of, interference with, and persecution of religious minorities, and further tolerate nonstate violence against religious minorities. Specifically, the state must provide religious minorities with effective means of preventing rights abuses by the state—through structural accountability—and with meaningful redress of rights violations from the state or nonstate actors. It should do so in two ways: first, by maintaining the judiciary as an independent branch and altering it to grant religious minorities a presence within it; and second, by creating human rights commissions with duties to investigate allegations of religious exercise violations, to make public reports on their findings, and to prosecute both state and nonstate violators.

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252. *See supra* note 48 and accompanying text.

253. *See supra* MOUSTAFA, note 48, at 166. This case upheld the Egyptian minister of education's ban on the wearing of the *niqab* by female students, holding it constitutional under Articles 2 and 41 of the 1971 Constitution.

254. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 64.

255. *See supra* Parts II.A.2.a, II.B.3.a, II.C.3.a; *see also* 2012 BUREAU REPORT, *supra* note 21, at 6–7.

256. *See supra* Parts II.A.2.a, II.B.3.a, II.C.3.a.

The judicial branch can provide an effective venue for enforcing rights of religious exercise—indeed, the SCC has done so before<sup>257</sup>—and, likely recognizing this, the new Constitution provides private causes of action for “[a]ny violation of personal freedom, or the sanctity of the private life of citizens, or any other public rights and freedoms which are guaranteed by the Constitution and the Law” to be enforced in the courts.<sup>258</sup> However, given the role that the judiciary has played in enforcing restrictions of religious liberty,<sup>259</sup> the judiciary must have two qualities in order to provide an effective forum for the adjudication of such causes of action. First, it must truly be an independent branch, free from majoritarian or dictatorial influence, and given due respect by the other branches.<sup>260</sup> Chapters Three and Four of the Constitution establish it as such<sup>261</sup>—in particular, the SCC remains an “independent judicial body”<sup>262</sup> that is “solely competent to decide on the constitutionality of laws and regulations [and] to interpret legislative provisions”<sup>263</sup>—but these provisions must be adhered to by both the executive and legislative branches if the opinions of the court system are to be truly effective.

The second quality that the judiciary must have is that its members must be chosen in such a way as to include religious minorities. Article 186 now states that the “conditions and procedures for [judicial] appointment[s] . . . shall be regulated by law,”<sup>264</sup> and Article 193 seems to indicate that the SCC is composed of presidential appointees.<sup>265</sup> Further language should be added to these chapters—or, at the very least, to the regulations of the judiciary—that would explicitly include the governing authorities of each religious minority in the nomination process, and would reserve a portion of the SCC’s seats for religious minorities. This would help to ensure the inclusion of minority voices in both the composition of the court and the selection process.

Further, the human rights commissions addressed in the new Constitution—a commission for the elimination of discrimination and a national council on human

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257. See *supra* note 48 and accompanying text; see also Brown, *supra* note 24, at 1083–86.

258. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 99.

259. See *7 Egyptian Christians, Florida Pastor Sentenced to Death for Anti-Islam Film*, FOX NEWS, Nov. 28, 2012, <http://www.foxnews.com/world/2012/11/28/seven-egyptian-christians-sentenced-to-death-for-anti-islam-film/>.

260. Independent judicial branches have long proven effective guardians of individual rights. See, e.g., Neal R. Sonnett, *Chair’s Column*, HUM. RTS., Winter 2009, at 2, 2 (commenting that the United States “depends on an independent and impartial judiciary . . . for the protection of our most precious individual rights and liberties”); Maureen Callahan VanderMay, *The Role of the Judiciary in India’s Constitutional Democracy*, 20 HASTINGS INT’L & COMP. L. REV. 103, 104 (1996) (noting that “[t]he Indian Supreme Court . . . conceives of the Indian Judiciary as . . . the protector of individual liberties against political branch aggression”). Accordingly, they ought feature prominently in a rebuilding nation’s constitution in order to protect individual rights. See M. Cherif Bassiouni, *Postconflict Justice in Iraq*, HUM. RTS., Winter 2006, at 15, 15–16.

261. See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, arts. 184–195.

262. *Id.* art. 191.

263. *Id.* art. 192.

264. *Id.* art. 186.

265. *Id.* art. 193.

rights<sup>266</sup>—must be established and empowered to investigate (on their own or on request by aggrieved parties), report, prosecute, and intervene in cases involving violations of religious exercise rights committed by state or nonstate actors.<sup>267</sup>

These commissions must truly be given the autonomy over their affairs and budgets that Article 214 commands,<sup>268</sup> and they must be comprised of individuals selected with the input of the leadership of the various religious minorities in order to ensure that they remain independent from majoritarian forces. These bodies can provide a special investigative and prosecutorial force aimed at enforcing the country's religious exercise provisions by policing the affairs of the state—helping to ensure effective prevention and redress of impermissible state regulations, activities, and failures to protect religious minorities—and the acts of nonstate actors.<sup>269</sup>

### *C. Ensure that the Constitution's Horizontal Rights Provisions Are Enforced*

Egypt must ensure that the horizontal rights created in its new Constitution—namely, Article 53's right to be free from discrimination<sup>270</sup> and Article 99's right to enjoy the “personal freedom, . . . sanctity of the private life of citizens, [and] any other public rights and freedoms which are guaranteed by the Constitution and the Law”<sup>271</sup>—are enforced in order to both prevent acts of violence and provide effective penalties for such acts committed by nonstate actors against adherents of religious minorities.<sup>272</sup> By providing a Constitutional cause of action for aggrieved religious minorities, horizontally applicable rights provide greater force for religious minorities in demanding justice from the state, and they ought to be used to implement heavy punishments against violators.

266. See *id.* arts. 53, 99, 214. For background information on the origins and original duties of the National Council for Human Rights, see *The Establishment*, NAT'L COUNCIL FOR HUMAN RIGHTS, <http://www.nchregypt.org/index.php/en/about-us/establishment.html>; *Vision & Goals*, NAT'L COUNCIL FOR HUMAN RIGHTS, <http://www.nchregypt.org/index.php/en/about-us/visions-and-goals.html>.

267. A number of other nations have similar commissions, such as Burma, see *Burma Sets Up Human Rights Commission*, BBC NEWS (Sept. 6, 2011, 12:26 PM), <http://www.bbc.co.uk/news/world-asia-pacific-14807362>, Mongolia, see *About the Commission*, NAT'L HUM. RTS. COMMISSION OF MONG., <http://www.mn-nhrc.org/eng/main/1>, and South Korea, see *About the Commission*, NAT'L HUM. RTS. COMMISSION OF KOR., [http://www.humanrights.go.kr/english/about\\_commission/introduction.jsp](http://www.humanrights.go.kr/english/about_commission/introduction.jsp).

268. See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 214.

269. The U.S. Commission on International Religious Freedom has recommended that a body similar to this be created within the Office of the Public Prosecutor. 2012 REPORT, *supra* note 86, at 66.

270. See CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 53.

271. See *id.* art. 99.

272. For an excellent explanation of horizontal rights, see generally Stephen Gardbaum, *The “Horizontal Effect” of Constitutional Rights*, 102 MICH. L. REV. 387 (2003).

*D. Enforce International Human Rights Conventions in Domestic Courts*

Egypt should enforce the international human rights conventions to which it is a signatory in its domestic courts. Indeed, Article 93 of the new Constitution provides that “[t]he State shall be bound by the international human rights agreements, covenants and conventions ratified by Egypt,” and that these “shall have the force of law.”<sup>273</sup> Egypt is a signatory to a number of international human rights conventions guaranteeing rights of religious exercise, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).<sup>274</sup> If these are to have the “force of law,” they must actually be enforced and adjudicated by the judiciary.

Providing for the enforcement of these provisions in domestic courts would further protect religious minorities in the exercise of their religious beliefs by giving them additional enforceable rights that carry with them international overtones. These conventions would open the door for the entry of international legal doctrines regarding religious exercise and represent a way that religious freedom in Egypt could expand to protect minority religions not recognized by Islam and to include religious conduct not tolerated by Islamic law, such as freedom to proselytize and to convert.

*E. Remove Limitations from Current Religious Freedom Provisions*

Egypt should remove the language that restricts the religious exercise rights established by Article 64 of the new Constitution, removing reference both to specific religions and to further “regulat[ion] by law.”<sup>275</sup> Regarding the former, the language limiting that article’s guarantee of the “freedom of practicing religious rituals and establishing worship places for the followers of Abrahamic religious” (meaning Christianity, Islam, and Judaism) should be stricken so that all minority religions in Egypt (Baha’is, Shi’a, etc.), not merely those who meet this favored classification,

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273. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 93.

274. The most relevant provision of the UDHR is Article 18, which states that “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” United Nations Universal Declaration of Human Rights, Art. 18, Dec. 10, 1948.

The most relevant provisions of the ICCPR provides as follows: “the right to freedom of thought, conscience and religion[,] . . . includ[ing] [the] freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching,” United Nations International Covenant on Civil and Political Rights, Art. 18, Sect. 1, Dec. 16, 1966; the right to “manifest one’s religion or beliefs . . . subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others,” *id.* at Art. 18, Sect. 3; the right of religious minorities “in community with the other members of their group, to enjoy their own culture, to profess and practise [sic] their own religion, or to use their own language,” *id.* at Art. 27; the right to be free from coercion impairing “freedom to have or to adopt a religion or belief,” *id.* at Art. 18, Sect. 2.

275. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 64.

might claim this protection as their own.<sup>276</sup> The removal of this phrase would allow Article 64 to be applied as broadly as Egyptian courts will be willing to interpret it—that is, though this language at this time still likely will be viewed through the lens of Islamic teachings (i.e., it will be read to apply only to recognized religions), it could apply to all religions if and when the state is willing to apply it thus.<sup>277</sup>

Regarding the latter, the language at the end of Article 64, subjugating its guarantees to further “regulat[ion] by law,” should be removed so that its guarantees are not subject to restriction, revision, or reinterpretation by mere statute, but are instead elevated to a more truly “absolute” status subject only to the provisions of the Constitution itself.<sup>278</sup> This should accomplish two protections of minority religions: formally, this would elevate from second-tier status the right to freedom of belief, practice, and places of worship, placing this right above the reach of Islamist majorities in parliament, who otherwise could limit it by a simple majority vote; practically, this should solve the problem created by the 1856 requirement that the executive branch approve construction or maintenance of houses of worship, by granting an explicit right to establish places of worship.<sup>279</sup>

#### CONCLUSION

As the foregoing attests, the situation for religious minorities in post-Arab Spring Egypt is a tenuous one. Though the January 25 Revolution, birthed out of a struggle for greater rights and liberties, gave hope for freer religious exercise by minority religions, the same struggles and restrictions remain, and, given the increased religious tensions in the aftermath of the June 30 Revolution, they unfortunately threaten to increase. The oppressors of former days and regimes are gone, but new oppressors cyclically arise in their stead, and restrictions of minority religious exercise continue. With tensions running high, and with two revolutions in the span of three years, Egypt cannot afford to allow these problems to languish. The government must act decisively in the present if its religious minorities are to have a future in the country—a future for which they have given much in the Arab Spring revolutions.

This Note argues that the most serious and meaningful step that Egyptians can take is to create strong constitutional protections and an effective framework for exercising those protections, and it recommends five specific individual rights-based reforms that should be undertaken in order to right the wrongs of the current system. Perhaps, if these are followed, adherents of Egypt’s religious minorities may finally be able to exercise their beliefs more freely, and the revolutions will, for them, have not been in vain.

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276. *Id.*

277. Note, it was the understanding of Egyptian officials interviewed for the 2013 report that Article 43 already guarantees this freedom to unrecognized religions, though they would be required to prove this assertion in court. *See* 2013 REPORT, *supra* note 63, at 50. With the removal of such restrictive language, Article 47 would require Egyptian courts to protect the religious exercise rights of all minorities. The state may recognize and apply Article 64 as such even at this time, given the “cavernous political divide” and accompanying conflicting constitutional interpretations that persist. *See* Al-Ali & Brown, *supra* note 120.

278. CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18 Jan. 2014, art. 64.

279. *See supra* Part I.A.