

Egypt's new constitution and religious minorities' rights

Prospects of improvement?

SUMMARY

The longstanding issue of discrimination against religious minorities has worsened in the aftermath of the Arab Spring, even more so since the ousting of President Mohammed Morsi in July 2013. The Copts, by far the largest minority representing 6-9% of the population, have faced violent retaliation from Muslim Brotherhood (MB) supporters, who accuse Christians of being behind the coup. This is taking place in a general climate of impunity, fuelled by insufficient reactions by the security forces which fail to tackle sectarian violence.

In this tense situation, the new constitution, approved by referendum on 14-15 January 2014, has been welcomed by the majority of Copts as offering them better protection than the previous charter, adopted under Muslim Brotherhood rule. Indeed some highly criticised provisions, such as the article on blasphemy or the broad definition of Sharia principles (although still the main source of law) were eliminated. Furthermore the Copts managed to have included in the new charter the promise of a law on church construction and renovation, to be adopted by the new legislature. But Islam remains the state religion. This, coupled with the weak implementation of existing provisions protecting minorities, including a lack of punishment of perpetrators of sectarian violence, leaves room for further discriminatory practices and sectarian unrest. Moreover, smaller religious minorities do not benefit from the existing protection which covers only Coptic Christians and Jews (of which there are only some 70 in the country in any case).



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Religious minorities in Egypt

A longstanding problem

Egypt's religious minorities, around 10% of the total population, have suffered for decades from generalised discrimination, violence and restrictions on religious freedom. This was reflected in the country's legal framework, with the 1971 Constitution establishing Islam, together with Sharia, as the main basis of law.

The Copts, by far the largest religious minority¹ (estimated at between 6 and 9% of the population), have constantly been marginalised, especially in their access to high-level political, military, and public-sector posts.² In the national assembly, for example, Copts won between 3.7% and 1.4% of seats in recent elections.³

One of the characteristic forms of sectarian violence in Egypt – church-burning – has been seen repeatedly since 1970. According to a January 2014 [report](#) of the NGO Open Doors, in 2013 Egypt (ranked 22nd on the worldwide persecution list) had the "record" for the number of churches destroyed (an increase from 69 in [2012](#) to 492 in 2013) and for violent persecution events (increased from 143 in 2012 to 167 in 2013). According to the same report, 83 assassinations of Christians were reported in the press in 2013, compared to 19 in 2012.

New circumstances

Increasingly difficult since the Arab Spring, the situation of minorities worsened further after the July 2013 military removal of President Mohammed Morsi. Indeed Muslim Brotherhood (MB) supporters often blamed Copts for having supported, or even for initiating, the coup in order to exclude them from power. But analysts stress that the increased attacks were also fuelled by security forces' indifference. Police failure to protect minorities is a longstanding factor which, together with reluctance to prosecute and punish such crimes, instils a climate of impunity encouraging sectarian violence.⁴

Constitutional revision in a troubled political context

Constitutional revision as part of the post-coup road map

The post-coup political [road map](#) and its first legal step, the July 2013 [constitutional declaration](#), included the revision of the constitution, adopted under President Morsi and then suspended under the subsequent military-backed rule, the organisation of legislative and presidential elections, as well as the establishment of the commission of national reconciliation and drawing up a code of ethics for the media.⁵

Commentators point out that implementation of the road map is a tool to legitimise and institutionalise the return to power of what is called "deep state"⁶ administration – military, security and judiciary – more than a genuine agenda for democratic transition. Indeed developments in secondary legislation, such as the (anti-)protest [law](#) of November 2013, the December 2013 [declaration](#) of MB a terrorist organisation, closing off any possibility of reconciliation, as well as draft bills on restricting NGO funding options and on counter-terrorism confirm this interpretation. So too do the main features of the new constitution.⁷

Constitutional process

The process was undertaken in two phases:

- The legal/judicial committee of experts, composed of six judges and four

constitutional law professors, formed by presidential decree, drafted a series of amendments to the 2012 constitution, and finished its work on 18 August 2013.

- The draft was submitted to the [committee of 50](#), which significantly amended it, and then presented it to the interim president on 3 December 2013. This body was composed of officials, politicians and representatives of different sectors of society, as well as public figures appointed by the Council of Ministers. The main [criticism](#) of the committee's work focused on the secrecy of proceedings and under-representation of Islamic political groups. Four Copts were on the committee (one each from the Coptic Orthodox Church, the Coptic Evangelical Church and the Coptic Catholic church, with the fourth Copt being one of the "public figures" nominated by the Council of Ministers).

Referendum

In the referendum of 14-15 January, voters [approved](#) the constitution with a 98% vote in favour on a turnout of 38%. In comparison, the previous constitution was approved in a December 2012 referendum by 64% of voters, on a turnout of just 33%. The 2014 vote took place in what [commentators](#) call "repressive circumstances", with no real space for a ["no" campaign](#). Almost 800 international [observers](#) and more than 80 000 domestic observers were deployed throughout the country to monitor the process. Some commentators feared that this international presence would lend legitimacy to an "undemocratic process" in a deeply problematic context: recurrent violent unrest, escalating repression of secular opposition, and a constitution based on a dubious drafting process.⁸ The Egyptian Organisation for Human Rights [claimed](#) several events had disturbed the electoral process, such as violent clashes with MB supporters, attempts to improperly influence voters and suspected mass movement of voters on buses carrying patriotic slogans. It is [reported](#) that at least nine people were killed, and more than 444 arrested, during the two referendum days.

New constitution: main features

New constitution based on the old one

The [2013 constitution](#) has been drafted on the basis of the [2012 charter](#), itself based on the 1971 constitution. This approach was [criticised](#) in particular by the Coptic Church, whose representatives, in July 2013, asked the interim government to prepare a new constitution from scratch.

[Commentators](#) deplore that the new constitution is reactive, in the sense that it is built on reactions to recent experiences, and lacks a proper broad, long-term vision for Egypt. Just like the 2012 constitution, the 2013 one aims mostly to preserve and extend the power of different actors in the political system.

Although the general architecture of the political system will not change in principle, some important modifications shift power back in favour of the main institutions of the "deep state".⁹

Main innovations in political balance

Most [commentators](#) see the new constitution reinforcing the [military](#) and judiciary. Indeed several innovations introduce greater autonomy of those two branches and re-consolidate their powers.

The constitution sees the army not as part of the executive, but as a branch to itself. Article 234 requires military approval of the defence minister for the next two

presidential terms. The defence minister must be a member of the armed forces. The army budget, once adopted, remains exempt from any external scrutiny. The new constitution continues to give broad jurisdiction to military courts, even if it restricts them to certain vaguely defined cases. On this point Major-General Medhat Radwan Gazi, chief of military justice, has [confirmed](#) that disputes between civilians and the operators of military-owned businesses could be settled by military courts, which would significantly extend their jurisdiction, taking into account the huge and diversified economic assets of the Egyptian army.

All judicial bodies have secured themselves more autonomy and less external scrutiny from other political actors. The main judicial bodies (Article 185) have their own budgets which, once adopted, are incorporated as a single figure in the state budget. They must also be consulted on laws concerning them.

The president of the Supreme Constitutional Court and his deputies are to be selected by "the general assembly of the court", or in other words, by the judges of the court themselves ([Article 193](#)).

Some [fear](#) the tyranny of the courts, acting apart from the legislative and executive branches.

As for parliament, its role in government formation has to some extent been weakened: Article 146 states that if the two-stage (in 2012, three-stage) process of government formation fails in parliament, it is to be dissolved. Furthermore the new constitution gives to the president the right to choose the ministers of justice, interior and defence, without specifying the need for parliament approval. The parliament has however gained, along with the impeachment procedure, the right to withdraw its confidence from the president and call a new presidential election.

Human rights provisions

[Observers](#) point out that, on paper, the new constitution brings several major improvements in the field of human-rights protection:

- Clear language on the issue of discrimination and violence against women,
- More rights for children and persons with disabilities,
- An extended list of socio-economic rights, and
- Reference to the main international instruments of human-rights protection ratified by Egypt, which are given the force of law (Article 93).

However, they deplore that the draft constitution falls short of international human-rights standards and does not provide any convincing mechanism for the enforcement of those rights, nor effective protection against abuses by the executive branches of government. It is also [claimed](#) that the new charter leaves too many possibilities for arbitrary intervention by the state.

Provisions relevant for religious minorities

The new constitution takes out many of the religious references that were in the Islamic [2012 charter](#). The new constitution bans, in its Article 74, the establishment of political parties based on religion, such as the Muslim Brotherhood. The previous Article 44 on blasphemy (forbidding insults of religious prophets), which limited freedom of expression in the previous charter, is also removed.¹⁰

The Egyptian penal code [criminalises](#) "ridiculing or insulting a heavenly religion (Sunni Islam, Christianity and Judaism) or those following it, or damaging national unity and social harmony." This article is the basis of numerous blasphemy cases, but is also used to persecute converts from Islam to Christianity on the grounds that they disparage Islam. In contrast, conversion to Islam is not punishable.

But [analysts](#) stress that the new text offers only weak protection for religious minorities, and does not fundamentally alter the relationship between Islam and the State. Indeed although religious freedom has become an "absolute" rather than a "protected" right, both charters leave the implementation of those rights to be defined by national law, which has historically offered scant protection against religious discrimination. The constitution provides to the so-called "revealed religions" – Islam, Christianity and Judaism – the right to establish places of worship (Article 64). Article 235 includes a provision foreseeing the adoption, in the next legislative term, of a law on church construction and restoration, called for by Copts for years. Concerning political representation, Article 244 guarantees to "youth, Christians, persons with disability and expatriate Egyptians" appropriate representation in the House of Representatives, again, in a manner to be defined by the law.

Islam remains the state religion, and Sharia the principle source of legislation (Article 2) although the definition of principles is no longer in the text. Article 3 indicates however, as in the 2012 version, that the "principles of law of Egyptian Christians and Jews are the main source regulating their personal status, religious affairs and selection of spiritual leaders". Other religious minorities are not granted those rights.

During the revision process it is [reported](#) that Christians' representatives were close to leaving the committee of 50, showing how hard were the negotiations, behind closed doors. One of the points [supported](#) (and won) by Copts was the removal from the constitution of the definition of the Sharia principles that left room for a broad scope of interpretation. The promise included in the Constitution of a law on church renovation is also seen as a victory. The Evangelical and Catholic Copts' representatives [were](#) in favour of enlarging the scope of Article 3 to all "non-Muslims", not just Christians and Jews, which would reduce discrimination towards other religious groups. Some leftist Copt groups, as well as [Coptic Solidarity](#) have expressed reservations on Article 2, establishing Islam as the state religion, although the Orthodox Coptic Church had shown a more open stand on this point during the revision process.

Prospects

Impact of the new constitution

Some analysts stress that, despite some improvement in the protection of human rights, the new constitution privileges Islam and Islamic traditions in a way that may endanger the realisation of those rights.¹¹

Copts have taken a more optimistic stand. Having been strongly opposed to the previous Islamic version of the charter, the Copts [have](#) welcomed the new constitution as promising better protection to the minorities. Religious representatives had [called](#) on Copts to vote in the 14-15 January referendum. According to the [Copts United](#) online journal, Egypt's new constitution provides better protection for fundamental freedoms and human and minority rights. However, several longstanding Coptic demands have still not been met: making the main Christian feasts national holidays, the inclusion of the history of Christianity and Egyptian Christianity in textbooks, and the promulgation

of a unified law regulating the building of churches and mosques (the new Article 231 promises such a law but only for churches, which leaves space for discrimination).

Implementation: a longstanding issue

Taking into account that lack of legal implementation and a weak police response are among the main causes of violence and discrimination of religious minorities in Egypt, it is unlikely that any improvement in the legal framework will bring changes to the situation on the ground. Moreover, the non-reconciliation stance adopted by Egypt's new rulers will exacerbate tensions in society and thus hostility towards minorities. [Reportedly](#) the Muslim Brotherhood's Freedom and Justice Party claims that most of the people voting in the referendum were Christians, fuelling the claim that Christians were responsible for Morsi's removal, and thus the risk of retaliation.

To eliminate discrimination against minorities in Egypt, long-term actions are needed at both educational and political levels. The aim would be to stop the segregation of youth from different religious backgrounds and formulate a political alternative to the logic of confrontation which currently prevails.¹²

EU position

Concerning the referendum, the EU High Representative Catherine Ashton declared in her [statement](#) of 11 January 2014 that the constitutional process could "offer a chance for a new political dialogue and interaction leading to democratic elections". In a [statement](#) of 19 January 2014, Ashton recognised the clear endorsement of the draft constitution and welcomed the improvements in the field of human-rights protection which it includes. On several occasions, the EU High Representative has issued statements condemning violence, in particular against Coptic Christians: the most recent concerned an [attack](#) during a Coptic wedding in Cairo in October 2013.

In more general terms, the EU's Foreign Affairs Council, in its [conclusions of 21 August 2013](#), condemned "all acts of violence", and called upon all parties to engage in "real and inclusive dialogue" in order to "return to the path of democracy". It also urged the Egyptian authorities to end the state of emergency, and announced the suspension of all export licences to Egypt covering goods that could be used for internal repression. Concerning religious minorities, the Council recalled that the EU defends freedom of religion or belief in all circumstances, and condemns any attack against any place of worship, and against any person because of their religion or beliefs.

In the [Council conclusions](#) of 22 October 2013 on the Court of Auditors' special report 4/2013 concerning EU [cooperation with Egypt](#) in the field of governance (2007-12) the Council "commends the EU's continuous efforts to establish and maintain a dialogue and cooperation on difficult issues of governance, democracy and human rights, including rights for women and minorities".

On 12 September 2013, the European Parliament adopted a [resolution](#) on the political and security situation in post-Morsi Egypt. It expressed its support for the process of constitutional drafting, stressing the need to guarantee fundamental rights and freedoms, including religious freedom. MEPs have also condemned the violence against Copts and expressed their concern about the authorities' inability to protect them. The [resolution](#) on the European Neighbourhood Policy of 23 October 2013 continues on this line, adding that EU support should concentrate on respect for human rights and fundamental freedoms (particularly women's rights, minority rights and freedom of

belief), as well as the development of institutional capacities (judicial and security reforms, the development of all democratic political parties and NGOs), and improvement of the business environment. The EP's position is that the EU should maintain current aid channelled to NGOs and civil society.

Further reading

[Comparing Egypt's constitutions](#) / Carnegie Endowment for International Peace, 6 December 2013.

[No change in sight: The situation of religious minorities in post-Mubarak Egypt](#) / Mohieddin MM, Report, Minority Rights Group International, December 2013.

Endnotes

¹ Minority groups include Copts, estimated at 4.7-7.1 million (6-9%) (Source: ICG – lower estimate, CIA Yearbook – higher); Nubians 200 000 (0.25%) (source: Ethnologue 1996); Baha'i 1 500-2 000 (source: US State Department 2012, International Religious Freedom Report); and Jews, fewer than 70 (source: US State Department 2012, International Religious Freedom Report), from [World Directory of Minorities and Indigenous people](#) (November 2013).

² [Operational Guidance Note](#), Egypt/ Home Office, 19 December 2013, p. 9.

³ [No change in sight: The situation of religious minorities in post-Mubarak Egypt](#)/ Mohieddin MM, Report, Minority Rights Group International, December 2013.

⁴ [Violence against Copts in Egypt](#)/ Brownlee J, Carnegie Endowment for Democracy, November 2013, p. 13.

⁵ [An anticlimactic referendum in Egypt](#)/ Brown NJ, 27 December 2013.

⁶ [Egypt's "deep state" claws back freedoms](#)/ Financial Times, 20 June 2012.

⁷ [Egypt's unsustainable crackdown](#)/ Dworkin A, Michou H, European Council on Foreign Relations, January 2014; Mrs Lincoln's Egyptian Constitution, Brown NJ, 20 August 2013.

⁸ [Legitimising an undemocratic process in Egypt](#)/ Dunne M, January 2014.

⁹ [Egypt: return of the deep state](#)/ Woertz E, Open Democracy, 20 January 2014.

¹⁰ [An eye on Egypt's amended constitution: Identity articles and the Nour Party](#)/ Messieh N, September 2013, Atlantic Council.

¹¹ [Egypt: Draft Constitution \(version of December 2013\)](#)/ Article 19, January 2014.

¹² [The Copts, the nation and the revolution](#)/ Guirguis L, Centre for Democracy, Development and the Rule of Law, July 2013.

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