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### Springtime for Freedom of Religion or Belief: Will Newly Democratic Arab States Guarantee International Human Rights Norms or Perpetuate Their Violation?

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## Chapter 4

# Springtime for Freedom of Religion or Belief: Will Newly Democratic Arab States Guarantee International Human Rights Norms or Perpetuate Their Violation?

Robert C. Blitt

### Introduction

The Arab Spring has generated unprecedented and seismic political and social upheaval across the Arab world. The reasons for the outbreak of widespread and vociferous public protest are myriad, but are generally understood to include long-simmering resentment of government corruption and repression, underwhelming economic development, chronic unemployment and poor respect for human rights, including the treatment of individuals and groups affiliated with political manifestations of Islam.

The purpose of this chapter is to consider one narrow aspect of the Arab Spring, namely, what does this historic moment augur for securing the right to freedom of thought, conscience and religion or belief? Further, how – if at all – have the emerging post-Arab Spring governments differentiated themselves from their predecessors on issues including non-discrimination, equality, freedom of expression and the rights of religious minorities – including Muslims dissenting from state-sanctioned Islam, non-Muslims, NRMs and nonbelievers? In the end, this chapter argues that the revolutions hold the promise of correcting years of discriminatory and unequal treatment. However, such an outcome remains contingent upon overcoming a dangerous historical paradox that often finds formerly persecuted groups morphing into the role of persecutor. The direction emerging regimes tip will be determined by a combination of internal and external factors.

To better grasp the scope of the problem, the next section provides a brief survey of religious freedom conditions in Tunisia, Egypt and Libya in the period leading up to the Arab Spring revolutions.<sup>1</sup> This historical context defines the

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<sup>1</sup> Due to space constraints, this chapter limits itself to a consideration of developments in Tunisia, Egypt and Libya. These states afford a clearer glimpse into emerging political realities because free and fair elections have already transpired there.

challenges new governments will face reversing years of entrenched and systemic discrimination impacting religious freedom. It will also serve as the springboard for exploring the extent to which the Arab Spring's promise of democracy is on track to implement relevant international human rights safeguards. Following this analysis, the chapter considers the function of the international community in facilitating a break away from the threat of a renewed cycle of religious persecution that historically has been responsible for denying countless thousands their freedom and in many cases their very lives.

### **Mubarak, Ben Ali, and Gadhafi: an abysmal legacy of religious repression, discrimination and inequality**

Recognized as the birthplace of three monotheistic faiths, the Middle East/North Africa (MENA) region more recently has come in the eyes of many to represent a principal geographic hub for one side in the purported 'clash of civilizations', and a venue for religious oppression, sectarian conflicts, and revolution. States in the region are predominantly Muslim, with the vast majority having constitutions that declare Islam as a central source for law and/or establish Islam as the official state religion.<sup>2</sup> To what extent the role of Islam may be responsible for colouring conditions relating to respect for freedom of religion or belief<sup>3</sup> is a question that has occupied researchers across various fields including law, history and sociology.<sup>4</sup>

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<sup>2</sup> See Tad Stahnke and Robert Blitt, 'The Religion–state Relationship and the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries', *Georgetown Journal of International Law* 36 (2005): 947–1077. See also Brian J. Grim and Roger Finke, 'Religious Persecution in Cross-National Context: Clashing Civilizations or Regulated Religious Economies?', *American Sociological Review* 72 (2007): 633–58; and International Religious Freedom Data, collected by Brian J. Grim and Roger Finke, Association of Religion Data Archives, 2008, [http://www.thearda.com/Archive/Files/Downloads/IRF2008\\_DL2.asp](http://www.thearda.com/Archive/Files/Downloads/IRF2008_DL2.asp).

<sup>3</sup> Here I specifically refer to the right to freedom of thought, conscience and religion or belief as defined and explicated under the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The UN Human Rights Committee's General Comment No. 22 is also instructive.

<sup>4</sup> See for example, Khaled Abou el Fadl, ed., *Islam and the Challenge of Democracy* (Princeton: Princeton University Press, 2004); Charles K. Rowley and Nathanael Smith, 'Islam's Democracy Paradox: Muslims Claim to Like Democracy, So Why Do they Have so Little?', *Public Choice* 139 (2009): 273–99; Eugene Cotran and Adel Omar Sherif, eds., *Democracy, the Rule of Law and Islam* (London-The Hague-Boston: Kluwer Law International, 1999); Nisrine Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study* (London: British Institute of International and Comparative Law, 2008); and John L. Esposito and John Obert Voll, *Islam and Democracy* (Oxford University Press, 1996).

One useful study of state practice that helps shed light on this complex issue asks a related question; namely, to what extent do variations in religious regulation – composed of *social* and *government* regulation – help explain levels of religious persecution?<sup>5</sup> The data points generated by this survey reveal that a significant majority of predominantly Muslim MENA states consistently place restrictions on foreign missionaries, the dissemination of religious literature and broadcasts, religious conversions, preaching and proselytizing. With respect to new religions, 70 per cent of predominantly Muslim MENA states had established or existing religions that sought to shut out new religions, and all but two states imposed restrictions on certain religious brands. Furthermore, the majority of these states displayed societal attitudes regarding other religious brands ranging from discrimination to open warfare, and the majority of citizens demonstrated intolerance towards ‘non-traditional’ faiths or groups perceived as new religions.<sup>6</sup>

Tunisia, Egypt and Libya specifically shared a dictatorial history where now-deposed rulers had identified their primary political opposition as emanating from Islamist circles and dealt with this opposition in similar, often brutal fashions. In Egypt, the Muslim Brotherhood, almost from the time of its establishment in 1928, oscillated in and out of severe government-sanctioned repression.<sup>7</sup> Essentially outlawed from the political arena since the Nasser era, the movement had only recently begun making ‘authorized’ inroads into Egypt’s tightly controlled political space. Former President Hosni Mubarak viewed the Muslim Brotherhood – ‘generally considered the most moderate and innocuous of Islamist groups’<sup>8</sup> – as ‘inextricably linked with the more violent terrorist organizations in Egypt’.<sup>9</sup> In the 2000 elections, Egypt’s Muslim Brotherhood fielded candidates as independents and secured 17 seats in parliament, despite a government-initiated harassment campaign involving detentions and trials of the organization’s leaders.<sup>10</sup> By 2005, the Brotherhood was able to boost its political representation significantly, coming to represent 20 per cent of the legislature despite ‘widespread government fraud and voter intimidation’.<sup>11</sup>

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<sup>5</sup> Grim and Finke, ‘Religious Persecution’, 654. Note that the authors define the term ‘persecution’ very narrowly, limiting it to instances of killing or forced resettlement. Thus, acts of persecution exclude more ‘routine’ forms of discrimination and inequality that fall short of death or migration, such as denial of legal status, limits on personal freedom, arbitrary arrest and detention, etc.

<sup>6</sup> Data downloaded from the Association of Religion Data Archives.

<sup>7</sup> Mariz Tadros, *The Muslim Brotherhood in Contemporary Egypt: Democracy Redefined or Confined?* (Routledge 2012), 5–6.

<sup>8</sup> Charles Robert Davidson, ‘Reform and Repression in Mubarak’s Egypt’, *The Fletcher Forum of World Affairs Journal* 24 (2000): 75, 85.

<sup>9</sup> *Ibid.*, 85.

<sup>10</sup> David S. Sorenson, ‘Global Pressure Point: The Dynamics of Political Dissent in Egypt’, *The Fletcher Forum of World Affairs Journal* 27 (2003): 207, 216.

<sup>11</sup> Robert S. Leiken and Steven Brooke, ‘The Moderate Muslim Brotherhood’, *The Fletcher Forum of World Affairs Journal* 86 (2007): 113–114. Tadros, *The Muslim Brotherhood*.

In Tunisia, the Islamic movement, led primarily by the organization *en-Nahda* (Ennahda), also found itself on the receiving end of government repression. After seizing power in 1987, President Zine Abidine Ben Ali sought to liberalize and foster economic development in the country. But he soon 'became increasingly repressive', espousing a zero tolerance policy towards Islamic groups.<sup>12</sup> Like President Mubarak, Ben Ali also invoked the spectre of Islamic religious parties serving as 'vehicles for extremism', intolerance, hatred and terrorism.<sup>13</sup> And like Egypt, Tunisia's crackdown on Islamic groups was met with relative silence in the West. While appearing in certain respects to be progressive on women's rights, the Tunisian government restricted the right to manifest religion for the overwhelmingly Muslim population by, among other things, prohibiting the wearing of the hijab as a 'sectarian garment of foreign origin'.<sup>14</sup>

In Colonel Muḥammad Gadhafi's revolutionary Libya, Islam was 'closely monitored and regulated ... to ensure that religious life lacked a political dimension'.<sup>15</sup> The government imposed its official interpretation of Islam on the country by overseeing mosque sermons and the publication of religious literature, and the Sufi Sanusi order remained outlawed due to its close association with Libya's pre-revolution monarchy.<sup>16</sup> Initially, Libya's orthodox Muslims backed Gadhafi's overthrow of King Idris. The Colonel rewarded this support by reinstating religious criminal codes, appointing orthodox Muslim leaders to prominent administrative positions, banning the sale and consumption of alcohol, and shuttering churches and cathedrals.<sup>17</sup> Yet by the late 1970s, Gadhafi – ever more confident in his grasp on power – turned on this community, 'abandon[ing] orthodox Islam [as] a source of legitimacy' by, among other things, urging the masses to 'seize the mosques', branding the religious leadership as a superfluous add-on to true Islam,<sup>18</sup> and calling his Green Book the 'gospel of the new era'.<sup>19</sup>

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<sup>12</sup> David Mednicoff, 'The Importance of Being Quasi-Democratic – The Domestication of International Human Rights in American and Arab Politics', *Victoria University of Wellington Law Review* 38 (2007): 317, 330–31.

<sup>13</sup> US Department of State, 2009 Annual Report on International Religious Freedom: Tunisia.

<sup>14</sup> Ibid.

<sup>15</sup> US Department of State, 2009 Annual Report on International Religious Freedom: Libya.

<sup>16</sup> Ibid.

<sup>17</sup> Lisa Anderson, 'Religion and State in Libya: The Politics of Identity', *Annals of the American Academy of Political and Social Science* 483 (1986): 69–70. Gadhafi's renewed attachment to Islam heralded for many 'the beginning of an Islamic revolution; and until the Iranian revolution, [Gadhafi] held pride of place as the principal ruling spokesman of Islam as a political force' (70).

<sup>18</sup> Ibid., 70.

<sup>19</sup> Ibid., 71.

Ultimately, Libya's Islamists, alongside other regime opponents, came to be 'harshly suppressed'.<sup>20</sup>

In addition to restricting manifestations of political Islam and limiting certain Muslim religious and cultural practices, the triumvirate of Mubarak, Ben Ali and Gadhafi also actively restricted freedom of religion for other minorities, including 'traditional' denominations and NRMs. In Egypt, 'the government harassed [non-Sunni] Muslims who held heterodox views including Quranists, Shi'a and Ahmadiya Muslims',<sup>21</sup> failed to prosecute individuals responsible for acts of violence and incitement of religious hatred toward Coptic Christians and others, and discriminated against Christians and members of the Bahá'í Faith, 'especially in government employment and their ability to build, renovate, and repair places of worship'.<sup>22</sup> The government also maintained tiers of recognition for various religious groups, distinguishing among Muslims, *Ahl al-kitab* or 'people of the book', and others. For example, national identity cards recognized only Islam, Judaism or Christianity as classifications for religious affiliation. Consequently, Bahá'ís and other unrecognized religious groups were 'compelled either to misrepresent themselves or to live without valid identity documents'.<sup>23</sup> Egypt's Law 263 of 1960 stripped Bahá'ís of legal recognition and outlawed the religion's institutions and community structures.<sup>24</sup> Other NRMs fared equally poorly. For example, the government instituted a ban against the Jehovah's Witnesses in 1960 and subjected members to harassment and surveillance despite its 30-year presence in Egypt and prior status as an officially registered group.<sup>25</sup>

In Tunisia, the Ben Ali regime prohibited proselytizing to Muslims, including distribution of religious material in Arabic, and barred domestic inter-marriage between Muslim women and non-Muslim men. The government considered the Bahá'í faith 'a heretical sect of Islam' and permitted its adherents to practice their faith only in private.<sup>26</sup> In Libya, although no religious minority was singled out for harassment provided it avoided political activity, the government restricted places of worship to one per city for each Christian denomination, prohibited proselytism of Muslims, and actively prosecuted alleged offenders.<sup>27</sup> Members of

<sup>20</sup> 'Libya Drops Ban on Religion-based Parties', *Al Jazeera*, 2 May 2012, <http://www.aljazeera.com/news/africa/2012/05/2012522304234970.html>.

<sup>21</sup> US Department of State, 2009 Annual Report on International Religious Freedom: Egypt. Quranists are a small group of Muslims branded unorthodox because they consider the Koran to be the sole authority for Islam and reject other sources of Islamic law. US Department of State, 2010 Annual Report on International Religious Freedom: Egypt, 16.

<sup>22</sup> 2009 Annual Report on International Religious Freedom: Egypt.

<sup>23</sup> 2010 Annual Report on International Religious Freedom: Egypt, 9. Without valid identity cards, individuals 'encounter difficulty registering their children in school, opening bank accounts, and establishing businesses'.

<sup>24</sup> *Ibid.*, 8.

<sup>25</sup> *Ibid.*, 9.

<sup>26</sup> 2010 Annual Report on International Religious Freedom: Tunisia, 2.

<sup>27</sup> 2009 Annual Report on International Religious Freedom: Libya.

other non-Muslim religious groups, including Hindus, Bahá'ís', and Buddhists, were relegated to private observance in their homes.<sup>28</sup> Likewise, Libya's non-Arab ethnic groups, including Berbers (Amazigh), Tuareg and Toubou, which practice a version of Islam that differs from the majority Arab population, were the targets of longstanding governmental and societal discrimination.<sup>29</sup>

From this brief historical snapshot, the stark reality of persecution and discrimination across a wide swath of religious viewpoints becomes evident. Now-deposed autocrats consistently repressed political manifestations of Islam – including those views advocating peaceful regime change – and branded such expressions as being at odds with the state-sanctioned interpretation of Islam. Government and society also subjected to varying forms of intolerance and persecution those Muslims who espoused disfavoured or alternate views on Islam, maintained membership in a minority denomination, or dissented from or did not believe in the majority faith. Other longstanding, ostensibly 'traditional' religions such as Christianity likewise faced fundamental hardships, including the denial of societal acceptance as well as unequal and discriminatory treatment at the hands of government. Finally, so-called NRMs were also subject to discriminatory treatment and obstruction in their religious life.

The deficits outlined above cannot be explained away even when controlling 'empirically for levels of democracy, political rights and civil liberties'.<sup>30</sup> This reality has led some to conclude that strict enforcement of religious homogeneity 'is likely to be prejudicial to the development of free debate in ... democratic politics'.<sup>31</sup> When coupled with indications that public opinion in Muslim-majority countries 'is more pro-democratic than elsewhere, but ... less favourable to freedom, and especially to religious freedom',<sup>32</sup> the nature of the challenge becomes plain: securing the right to freedom of thought, conscience, religion and belief in the post-Arab Spring context is not a simple matter of substituting a tyrant regime for a democratically elected government. Rather, because these challenges may be rooted not in regimes per se, but in entrenched societal opinions about the nature of religion, focus on education and awareness-raising regarding, among other things, the nature of international human rights norms and treaty obligations at the public and governmental levels will prove essential in breaking the cycle of persecution.

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<sup>28</sup> 2010 Annual Report on International Religious Freedom: Libya, 4.

<sup>29</sup> Louis Dupree, 'The Non-Arab Ethnic Groups of Libya', *Middle East Journal* 12 (1958): 33–44. See also Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(c) of the annex to Human Rights Council Resolution 5/1, Libyan Arab Jamahiriya, 15 July 2010.

<sup>30</sup> Charles K. Rowley and Nathanael Smith, 'Islam's Democracy Paradox: Muslims Claim to Like Democracy, So Why Do They Have So Little?', *Public Choice* 139 (2009): 274.

<sup>31</sup> *Ibid.*, 296.

<sup>32</sup> *Ibid.*, 298.

## The Arab Spring: curing or perpetuating the religious freedom deficit?

The removal of Presidents Gadhafi, Ben Ali and Mubarak from power prompted one Islamist legislator to declare, ‘Now the Islamic tide is rising in the Arab world’.<sup>33</sup> Yet, the political landscapes in Egypt, Tunisia and Libya remain fluid, even volatile. Islamic parties must confront the complexity of compromise necessitated by coalition politics and overcome the lingering suspicion and concern held by minority communities and other elements of society. On the issue of religious freedom specifically, these emerging political parties are also faced with an historic choice: perpetuate the classic ‘religious persecution paradox’ cycle whereby the persecuted become the persecutor,<sup>34</sup> or break from this destructive pattern and embrace a new era of respect for human rights norms enshrined under international law. While a definitive conclusion at this stage may be premature, examining the ‘tea leaves’ of recent events, including the statements and actions of relevant political leadership relating to religious freedom, can provide an interim picture of the direction in which regimes may be pointing.

### Tunisia

On the whole, ascendant Islamist political parties have thus far worked diligently to communicate a message of tolerance and moderation to the electorate and international community at large. In this regard, Tunisia, the epicentre of the Arab Spring, is no exception. Ennahda (the Renaissance Party), a long-suppressed Islamist opposition movement, emerged with the largest share of seats in Tunisia’s new constituent assembly.<sup>35</sup> Hamadi Jebali, the country’s new prime minister and Ennahda’s secretary general, has insisted that his party will not convert the country into a theocracy and that the state will remain neutral towards religion: ‘All Tunisian citizens – Muslims, Jews, or Christians – are citizens with equal rights and duties. ... Our understanding is [that] the state shall remain neutral towards religion. ... [It should] neither encourage nor interdict [manifestations of religion]’.<sup>36</sup> When asked specifically whether Ennahda would recognize all

<sup>33</sup> Remarks by Sahbi Atig, Ennahda Party Member, *Islamists in Power: Views from Within – Building New Regimes after the Uprising*, National Constituent Assembly of Tunisia, Carnegie Endowment for International Peace, 5 April 2012, Washington, D.C., 5, <http://carnegieendowment.org/2012/04/05/building-new-regimes-after-uprisings/a6sm>.

<sup>34</sup> W. Cole Durham and Brett G. Scharffs, *Law and Religion: National, International, and Comparative Perspectives* (New York: Aspen Publishers, 2010), 3–4.

<sup>35</sup> ‘Final Tunisian Election Results Announced’, *Al Jazeera*, 14 November 2011, <http://www.aljazeera.com/news/africa/2011/11/20111114171420907168.html>.

<sup>36</sup> ‘Hamadi Jebali: ‘L’essentiel est de respecter les libertés’’, *Le Monde*, 20 October 2011, [http://www.lemonde.fr/tunisie/article/2011/10/18/hamadi-jebali-l-essentiel-est-de-respecter-les-libertes\\_1589959\\_1466522.html](http://www.lemonde.fr/tunisie/article/2011/10/18/hamadi-jebali-l-essentiel-est-de-respecter-les-libertes_1589959_1466522.html).



religions, Jebali asserted, 'Absolutely. ... Islam obliges its adherents to respect all religions and this respect is a foundation of the faith'.<sup>37</sup>

Ennahda also appears poised to reject demands to enshrine Islamic law or sharia as a source of legislation in the country's new constitution. According to one Ennahda legislator, Tunisia's constituent assembly has settled that 'Islam and Arabism will be the main foundations' of the new constitution,<sup>38</sup> retaining a formula endorsed by the previous constitution. Ennahda's long-time leader Rachid Ghannouchi has reiterated this position, stating that the party will forgo seeking entrenchment of sharia as a binding source of law to which all civil legislation must conform.<sup>39</sup>

More generally, the closing statement to Ennahda's recent Congress pledged to maintain the political party as centrist and moderate.<sup>40</sup> Along these lines, Ennahda officials have expressed the view 'that there is no contradiction between Islam and democracy. ... Minority religious groups enjoy their rights as everybody else. We ... respect the individual freedoms and public freedoms ... and the ... rights of minorities'.<sup>41</sup>

Although statements such as these indicate Tunisia's new government will take measures to break with previous state practices restricting freedom of religion or belief, their authoritativeness is undercut in the face of conflicting declarations. For example, at the close of Ennahda's Congress, the party also pledged to 'criminalize any attempt to undermine sacred values',<sup>42</sup> a statement that bodes poorly for freedom of expression generally, but also may have severe implications for manifestations of religious belief deemed at odds with Islam. Prime Minister Jebali reinforced this position when, in response to a question whether publication of images of God or Islam's prophets would be protected under freedom of expression, he stated – without seeking further clarification or elaboration – that this would be 'more a provocation than a matter of freedom of expression'.<sup>43</sup>

Troublingly, these latter statements are more indicative of the reality unfolding in the country today, where a meaningful reduction in subjective and discriminatory prosecutions of expression premised on protecting religious beliefs remains difficult to discern. For example, consider the Tunisian government's decision to prosecute Nabil Karoui, the director of satellite broadcaster Nessma TV, for airing *Persepolis*,

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<sup>37</sup> Ibid.

<sup>38</sup> Remarks by Sahbi Atig, 6–7.

<sup>39</sup> Tarek Amara, 'Tunisia's Ennahda to Oppose Sharia in Constitution', *Reuters*, 26 March 2012, <http://www.reuters.com/article/2012/03/26/us-tunisia-constitution-idUSBRE82P0E820120326>.

<sup>40</sup> Antoine Lambroschini, 'Ennahda Party Vows Moderate Islam in Tunisia', *AFP*, 17 July 2012, <http://news.yahoo.com/ennahda-party-vows-moderate-islam-tunisia-200211510.html>.

<sup>41</sup> Remarks by Sahbi Atig, 6–7.

<sup>42</sup> Lambroschini, 'Ennahda Party'.

<sup>43</sup> Jebali, 'L'essentiel est de respecter'.

an animated film that includes a brief representation of God as imagined from a child's point of view.<sup>44</sup> After suspected 'Salafist activists', firebombed his house,<sup>45</sup> a court found Karoui guilty and fined him \$1,500 for 'disturbing public order and threatening proper morals'.<sup>46</sup> In a related incident, another Tunisian court upheld a seven-year conviction for Jabeur Mejri, a young Tunisian convicted for posting cartoons of the Prophet Mohammad to his Facebook account.<sup>47</sup> The government justified its prosecution on the basis of defending public decency.<sup>48</sup> The gravity of these incidents is only magnified by Ennahda's decision to introduce a bill in the National Assembly seeking to criminalize blasphemy against Abrahamic faiths with prison sentences ranging from two to four years.<sup>49</sup> Disturbingly, this approach is at odds with a UN-supported consensus that opposes criminalizing forms of expression that fall short of incitement to imminent violence<sup>50</sup> and signals a clear rejection of the promised principles of neutrality, freedom and non-coercion as cornerstones for the new Tunisian state.

### *Egypt*

In Egypt, continued interference by the Supreme Command of the Armed Forces (SCAF) and a constitutional court ruling dissolving the elected parliament (where the Brotherhood's Freedom and Justice Party [FJP] maintained 47 per cent of the seats, followed by an alliance of ultraconservative Islamists with about 25 per cent)<sup>51</sup> overshadowed presidential run-off elections between the FJP's Mohammed

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<sup>44</sup> The Franco-Iranian production directed by graphic novelist Marjane Satrapi contemplates the 1979 Islamic revolution and rule of Ayatollah Khomeini through the eyes of a young girl.

<sup>45</sup> 'Tunisia Must Drop Charges against TV Boss over 'Persepolis' Screening', *Amnesty International*, 20 January 2012, <http://www.amnesty.org/fr/node/29264>.

<sup>46</sup> Marc Fisher, 'Tunisian who showed 'Persepolis' on TV fined in free speech case', *Washington Post*, 3 May 2012, [http://www.washingtonpost.com/world/africa/tunisian-who-showed-persepolis-on-tv-fined-in-free-speech-case/2012/05/03/gIQA0GpyT\\_story.html](http://www.washingtonpost.com/world/africa/tunisian-who-showed-persepolis-on-tv-fined-in-free-speech-case/2012/05/03/gIQA0GpyT_story.html). The trial had been postponed several times between November 2011 and April 2012.

<sup>47</sup> Ghazi Beji, Mejri's friend who faced similar charges, fled the country but was similarly convicted and sentenced in absentia. See 'Tunisia Court Upholds Cartoon Blasphemy Conviction', *Associated Press*, 25 June 2012, <http://news.findlaw.com/apnews/b6934e497ef647518bf3fb4029a1790a>.

<sup>48</sup> Zoubeir Souissi and Lin Noueihed, 'Tunisian Loses Appeal over Cartoons of Prophet', *Reuters*, 25 June 2012, <http://af.reuters.com/article/worldNews/idAFBRE85O0QO20120625?sp=true>.

<sup>49</sup> 'Tunisia's Ruling Islamists File Blasphemy Bill', *AFP*, 2 August 2012, <http://news.yahoo.com/tunisas-ruling-islamists-file-blasphemy-bill-234254228.html>.

<sup>50</sup> For more on this issue, see Robert C. Blitt, 'Defamation of Religion: Rumors of Its Death Are Greatly Exaggerated', *Case Western Reserve Law Review* 62 (2011): 347–97.

<sup>51</sup> David D. Kirkpatrick, 'Islamists Win 70% of Seats in the Egyptian Parliament', *New York Times*, 21 January 2012, <http://www.nytimes.com/2012/01/22/world/middleeast/>

Morsi and Ahmed Shafiq, Mubarak's last prime minister. The country's Election Commission ultimately declared Morsi the winner with a narrow 51 per cent of the vote, but left him to confront an entrenched military poised to dominate the security apparatus, retain control over the state's purse strings, and oversee the expected constitutional drafting process.<sup>52</sup>

President Morsi has promised 'no imposition on women to wear the veil' and has assured Coptic Christians they will be 'national partners and have full rights like Muslims. ... They will be represented as advisers in the presidential institution, and maybe a vice president if possible'.<sup>53</sup> These assurances coincide with statements made by various FJP representatives. For example, Abdul Mawgoud Dardery, an FJP parliamentarian from Luxor, affirmed the party's support for lifting restrictions on building churches and other houses of worship.<sup>54</sup> When asked about an individual's right to criticize or doubt Islam, Dardery responded that religion is a human choice, and that Islam does not allow one to impose that choice upon another individual.<sup>55</sup>

On the role of Islam in the future Egyptian constitution, Dardery stressed a distinction between invoking Islamic principles and invoking Islamic rulings. According to him, FJP was opposed to enshrining the latter as a constitutional requirement because such a move would 'make it very difficult for Egyptian people, [would] make their life really difficult. And we're not interested in this'.<sup>56</sup> The FJP, according to Dardery, views the process of drafting a new constitution as belonging to all Egyptians, and not merely to the majority: 'It's un-Islamic to have just the majority write the constitution'.<sup>57</sup> The FJP's Foreign Relations Coordinator, Khaled Al-Qazzaz, has gone so far as to affirm that 'we actually want [the international community] to support us on [the values of democracy, freedom and rule of law]. We want you to help us. We want you to give ideas and actually believe in these values and believe in the right of nations to achieve these values'.<sup>58</sup>

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[muslim-brotherhood-wins-47-of-egypt-assembly-seats.html](http://muslim-brotherhood-wins-47-of-egypt-assembly-seats.html).

<sup>52</sup> 'Egypt Delays Runoff Result as Protests Loom', *Al Jazeera*, 21 June 2012, <http://www.aljazeera.com/news/middleeast/2012/06/201262023501862710.html>.

<sup>53</sup> Ivana Kvesic, 'Egypt's Muslim Brotherhood Candidate Wants Christians to 'Convert, Pay Tribute, or Leave' the Country?', *Christian Post*, 31 May 2012, <http://www.christianpost.com/news/egypts-muslim-brotherhood-candidate-wants-christians-to-convert-pay-tribute-or-leave-the-country-75821/>.

<sup>54</sup> 'Muslim Brotherhood and Egyptian Politics', *Georgetown University*, 4 April 2012, <http://www.c-spanvideo.org/program/MuslimBr>.

<sup>55</sup> Ibid.

<sup>56</sup> Dr Abdul Mawgoud Rageh Dardery, 'Islamists In Power: Views From Within – Building New Regimes After the Uprising', (lecture, Carnegie Endowment for International Peace, Member Freedom and Justice Party, People's Assembly of Egypt, Washington, D.C., 5 April 2012), Washington, D.C., 13, <http://carnegieendowment.org/2012/04/05/building-new-regimes-after-uprisings/a6sm>.

<sup>57</sup> Ibid., 11.

<sup>58</sup> Dardery, 'Islamists in Power'.

While statements like these may have assuaged some Washington policymakers, others maintain that the Brotherhood's 'liberal' discourse remains superficial. This shortcoming stems from the fact that the organization's founding ideology remains intact and continues to espouse a worldview whereby 'the governing authority [of the civil state is] an agent of Islam [and] the Quran remains the supreme constitution'.<sup>59</sup> Moreover, even the Brotherhood's liberal rhetoric is plagued by inconsistency. At a campaign rally before Cairo University students, candidate Morsi proclaimed:

The Koran is our constitution, the Prophet is our leader, jihad is our path and death in the name of Allah is our goal. ... Today, Egypt is close as never before to the triumph of Islam at all the state levels. ... Today we can establish Sharia law because our nation will acquire well-being only with Islam and Sharia. The Muslim Brothers and the Freedom and Justice Party will be the conductors of these goals.<sup>60</sup>

Lingering suspicion and concern over the Muslim Brotherhood's political agenda remains strong among Egypt's minority and secular communities because of these inconsistencies. For example, despite assurances that minority religious rights would be protected,<sup>61</sup> Morsi early on courted the ultraorthodox Salafist movement<sup>62</sup> while the dominant Islamist parties in parliament moved to install their delegates in nearly two-thirds of the constitutional committee's available seats. This move prompted liberal and Coptic Christian members of the committee to walk out of meetings in protest, claiming the body was 'unbalanced' and stacked with an 'overwhelming number of representatives from Islamist groups'.<sup>63</sup> While the

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<sup>59</sup> Hassan Hassan, 'Muslim Brotherhood Still Fails to Offer a 'Civil State' Solution', *The National (UAE)*, 18 June 2012, <http://www.thenational.ae/thenationalconversation/comment/muslim-brotherhood-still-fails-to-offer-a-civil-state-solution>. See also Hamza Hendawi, 'Egypt's Brotherhood Scrambling to Broaden Support', *Associated Press*, 28 May 2012, [http://www.google.com/hostednews/ap/article/ALeqM5gzNYA47e-xN5zVteHShPkFOEE1\\_A?docId=4968227083af4a25854c7b47a13226c2](http://www.google.com/hostednews/ap/article/ALeqM5gzNYA47e-xN5zVteHShPkFOEE1_A?docId=4968227083af4a25854c7b47a13226c2); and William Wan, 'Muslim Brotherhood Officials Aim to Promote Moderate Image in Washington Visit', *Washington Post*, 3 April 2012, [http://www.washingtonpost.com/world/national-security/muslim-brotherhood-officials-aim-to-promote-moderate-image-in-washington-visit/2012/04/03/gIQAps1tS\\_story.html](http://www.washingtonpost.com/world/national-security/muslim-brotherhood-officials-aim-to-promote-moderate-image-in-washington-visit/2012/04/03/gIQAps1tS_story.html).

<sup>60</sup> 'Egypt Presidential Candidate Seeks Constitution Based on Sharia Law', *RIA Novosti*, 13 May 2012, [http://english.ruvr.ru/2012\\_05\\_13/74584752/](http://english.ruvr.ru/2012_05_13/74584752/).

<sup>61</sup> Elena Suponina, 'Mursi Gave us Guarantees that Egypt Would not Become a Theocratic State', interview by Ayman Nur, *The Voice of Russia*, 2 July 2012, [http://english.ruvr.ru/2012\\_07\\_02/80020988/](http://english.ruvr.ru/2012_07_02/80020988/).

<sup>62</sup> Tom Perry, 'Egypt's Morsy Goes from Prisoner to President', *Chicago Tribune*, 24 June 2012, [http://articles.chicagotribune.com/2012-06-24/news/sns-rt-us-egypt-election-morsybre85n0dj-20120624\\_1\\_ahmed-shafik-fear-of-judgment-day-brotherhood-leaders](http://articles.chicagotribune.com/2012-06-24/news/sns-rt-us-egypt-election-morsybre85n0dj-20120624_1_ahmed-shafik-fear-of-judgment-day-brotherhood-leaders).

<sup>63</sup> Wan, 'Muslim Brotherhood Officials Aim'.

ultimate fate of the constitutional committee remains in limbo,<sup>64</sup> Salafist members have forced human rights supporters out of the committee<sup>65</sup> and have threatened to abandon the process altogether if the constitutional provision establishing sharia as a source of legislation is not strengthened.<sup>66</sup> For their part, Coptic groups have called for protests against the proposed constitutional changes.<sup>67</sup> Related to this, in a series of surprise moves in August 2012, Morsi reversed the SCAF's executive and legislative power grab from several months prior. The net effect of this action has laid the groundwork for a strengthened executive office controlled by the Muslim Brotherhood that, among other things, notably retains exclusive power to appoint a new constitution-drafting committee if the existing body 'is prevented from doing its duties'.<sup>68</sup>

On balance, the transitional period has been decidedly unkind to Egypt, and particularly its religious minorities. In a damning 2012 report, the US Commission on International Religious Freedom (USCIRF) renewed its 2011 recommendation

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<sup>64</sup> Following the committee's suspension by court order in April for failing to adequately represent Egyptian society, parliament struck a reconstituted committee in June. This second committee remains the subject of judicial challenge. See 'Egypt to Have Second Go at Constitution Assembly', *Reuters*, 9 June 2012, <http://www.reuters.com/article/2012/06/09/us-egypt-parliament-constitution-idUSBRE85806320120609>; and Bradley Hope, 'Salafists Threaten Walkout over Sharia Law Clause in Egypt's Constitution', *The National*, 27 July 2012, <http://www.thenational.ae/news/world/africa/salafists-threaten-walkout-over-sharia-law-clause-in-egypts-constitution>.

<sup>65</sup> Upon resigning, Manal Al-Taibi asserted that 'liberal members of the assembly are being harassed by Islamists to approve drafting several religious articles in a way that goes against liberties and human rights and the democratic ideals of the January 25 Revolution'. See Gamal Essam El-Din, 'Fierce Debates Plague Final Drafts of Egypt's Constitution', *Ahram Online*, 20 August 2012, <http://english.ahram.org.eg/NewsContent/1/64/50821/Egypt/Politics-/Fierce-debates-plague-final-drafts-of-Egyptys-const.aspx>.

<sup>66</sup> Bradley Hope, 'Salafists Threaten Walkout Over Sharia Law Clause in Egypt's Constitution', *The National (UAE)*, 27 July 2012, <http://www.thenational.ae/news/world/africa/salafists-threaten-walkout-over-sharia-law-clause-in-egypts-constitution>; and Gamal Essam El-Din, 'Fierce Debates Plague Final Drafts of Egypt's Constitution', *Ahram Online*, 20 August 2012, <http://english.ahram.org.eg/NewsContent/1/64/50821/Egypt/Politics-/Fierce-debates-plague-final-drafts-of-Egyptys-const.aspx>.

<sup>67</sup> Ekram Ibrahim, 'Coptic Group Calls for Protest Against Proposed Constitutional Changes', *Al Ahram*, 25 July 2012, <http://english.ahram.org.eg/NewsContent/1/64/48699/Egypt/Politics-/Coptic-group-calls-for-protest-against-proposed-co.aspx>.

<sup>68</sup> 'English Text of President Morsi's New Egypt Constitutional Declaration', *Ahram Online*, 12 August 2012, <http://english.ahram.org.eg/News/50248.aspx>. See also Matt Bradley, 'Egypt's New Leaders Target Judges' Power', *Wall Street Journal*, 17 August 2012, <http://online.wsj.com/article/SB10000872396390444233104577595262292055968.html>; and David Hearst, 'Mohamed Morsi is Changing the Balance of Power in Egypt', *The Guardian*, 13 August 2012, <http://www.guardian.co.uk/commentisfree/2012/aug/13/mohamed-morsi-benefit-of-doubt>.

that Egypt be listed as a ‘country of particular concern’,<sup>69</sup> characterizing conditions as having turned from hope to dismay:

Human rights conditions, particularly religious freedom abuses, worsened dramatically under military rule. Authorities continued to prosecute and sentence citizens charged with blasphemy and allowed official media to incite violence against religious minority members, while failing to protect them or to convict responsible parties. Law enforcement and the courts fostered a climate of impunity in the face of repeated attacks against Coptic Christians and their churches. Rather than defending these minorities, military and security forces turned their guns on them ...<sup>70</sup>

With respect to enforcing blasphemy laws, there have been several high-profile cases underscoring a tendency towards perpetuating Mubarak’s constraints on free expression. In one incident, billionaire Egyptian Coptic Naguib Sawiris tweeted a caricature of Mickey Mouse with a beard and Minnie Mouse in what was interpreted to be conservative Islamic garb.<sup>71</sup> This tweet landed Sawiris in court on two separate charges of defaming Islam.<sup>72</sup> While the court ultimately rejected the indictments on technical grounds, it failed to dismiss the legitimacy of a criminal offense grounded in protecting select religious beliefs from perceived insult.<sup>73</sup> Other defendants have been less fortunate. For example, a juvenile court in Assiut sentenced a 17-year-old Christian student, Gamal Abdou Massoud, to a three-year jail term ‘after he insulted Islam and published and distributed pictures that insulted Islam and its Prophet’.<sup>74</sup> An appeals court affirmed the decision in

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<sup>69</sup> Under the International Religious Freedom Act (IRFA), a ‘country of particular concern’ (CPC) designation is triggered where a government is identified as having engaged in or tolerated systematic, ongoing, and egregious violations of religious freedom. When the state department designates a country a CPC, IRFA requires the president to take one or more specified actions or to invoke a waiver where circumstances warrant.

<sup>70</sup> USCIRF, Annual Report 2012, 1. Commissioner al-Hibri dissented from the decision to recommend Egypt for CPC status.

<sup>71</sup> Mr Morsi branded the tweet an insult to Islam and led a boycott of Sawiris’ cellphone company in response, even after Sawiris retracted the message and apologized. See David D. Kirkpatrick, ‘In Egypt Race, Battle Is Joined on Islam’s Role’, *New York Times*, 23 April 2012, [https://www.nytimes.com/2012/04/24/world/middleeast/in-egypt-morsi-escalates-battle-over-islams-role.html?\\_r=1&pagewanted=all](https://www.nytimes.com/2012/04/24/world/middleeast/in-egypt-morsi-escalates-battle-over-islams-role.html?_r=1&pagewanted=all).

<sup>72</sup> ‘Egypt Businessman Naguib Sawiris Faces Blasphemy Trial’, *BBC News*, 9 January 2012, <http://www.bbc.co.uk/news/world-africa-16473759>.

<sup>73</sup> ‘Egypt Court Dismisses Sawiris Insulting Islam Case’, *BBC News*, 28 February 2012, <http://www.bbc.co.uk/news/world-middle-east-17192283>; and ‘Court Dismisses Islam Insult Case Against Tycoon Sawiris’, *Egypt Independent*, 3 March 2012, <http://www.egyptindependent.com/news/court-dismisses-islam-insult-case-against-tycoon-sawiris>.

<sup>74</sup> ‘Egypt Sends Christian Student to Jail for Insulting Islam’, *Reuters*, 4 April 2012, <http://af.reuters.com/article/topNews/idAFJJOE83309420120404>.

May 2012.<sup>75</sup> Notably, during this period, the FJP-dominated parliament took no steps to amend, suspend, or abolish Mubarak-era legislation restricting freedom of religion and associated rights, including Article 98(f) of Egypt's notorious penal code, which operates as a de facto prohibition on blasphemy by criminalizing 'disparaging or showing contempt for any divinely-revealed religion'.<sup>76</sup>

Other developments that in isolation may seem trivial suddenly loom ominously for the future of religious freedom and women's rights when considered collectively. When asked by a TV interviewer to clarify what Islamist rule might mean for the presence of bikinis on Egypt's beaches, Morsi described the matter as only 'very marginal, very superficial and affecting a very limited number of places'.<sup>77</sup> Yet Morsi has previously 'argued for barring women and non-Muslims from Egypt's presidency on the basis of Islamic law'<sup>78</sup> and also has voiced support for overturning Egypt's ban on female genital mutilation, declaring the matter 'a private issue between mothers and daughters ... that families, not the state, should decide'.<sup>79</sup> Related to this, reports also have emerged of self-appointed gangs policing their communities unimpeded for what they deem inappropriate religious behaviour.<sup>80</sup> Finally, other ostensibly authoritative post-revolution human rights statements, such as the one issued by the august Al-Azhar University, continue to express a hamstrung view of religious freedom, limited in application to so-called 'heavenly revealed' religions.<sup>81</sup>

Perhaps most telling of the FJP's intention regarding the future of human rights in Egypt is the party's failure to endorse a set of measures proposed by the human

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<sup>75</sup> 'Teen's Sentence for Defaming Islam Upheld', *UPI*, 30 May 2012, [http://www.upi.com/Top\\_News/World-News/2012/05/30/Teens-sentence-for-defaming-Islam-upheld/UPI-54911338388775/](http://www.upi.com/Top_News/World-News/2012/05/30/Teens-sentence-for-defaming-Islam-upheld/UPI-54911338388775/). Consider also the case of septuagenarian comic actor Adel Imam, who lost his appeal contesting a three-month jail term for 'defaming Islam' in several of his films. See also 'Adel Imam is Sentenced to Jail over Islam Insult', *BBC News*, 2 February 2012, <http://www.bbc.co.uk/news/entertainment-arts-16858553>.

<sup>76</sup> Egyptian Penal Code, 1937, Article 98(f).

<sup>77</sup> Shaimaa Fayed, 'Don't Destroy Beach Tourism, Egypt's New Leader Told', *Reuters*, 18 July 2012, <http://www.reuters.com/article/2012/07/18/uk-egypt-tourism-idUSLNE86G01M20120718>.

<sup>78</sup> Kirkpatrick, 'In Egypt Race'.

<sup>79</sup> Abeer Allam, 'Egypt: A Toxic Mix of Tradition and Religion', *Financial Times*, 7 July 2012. In May, the FJP was 'accused of launching a medical campaign for FGM in the southern governorate of Minya. The party denied the report, but human rights groups filed a complaint to the attorney-general and governor of Minya to stop the campaign'.

<sup>80</sup> Nick Meo, 'US Secretary of State Hillary Clinton Meets Egypt's Muslim Brotherhood President Mohammed Morsi in Historic First', *The Telegraph*, 14 July 2012, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/9400749/US-Secretary-of-State-Hillary-Clinton-meets-Egypt-Muslim-Brotherhood-president-Mohammed-Morsi-in-historic-first.html>. These groups reportedly harass unveiled women as well as individuals who purchase alcohol.

<sup>81</sup> USCIRF Annual Report 2012, 62.

rights NGO Amnesty International (AI). In advance of parliamentary elections, AI asked 54 Egyptian political parties to sign a 'human rights manifesto', signalling their support for genuine human rights reform.<sup>82</sup> The FJP was one of only three parties that failed to respond substantively – ignoring meeting requests and providing no feedback on the manifesto – despite 'considerable efforts by Amnesty International to seek its views'.<sup>83</sup> From this vantage point, what Egypt's FJP has refused to say appears more telling than what has been proffered in various Western media outlets as evidence of its moderation.

### *Libya*

Even before the fall of Tripoli, the National Transitional Council's (NTC) support for a democratic Libya appeared mixed from a rights perspective. As part of its 'aspirations for a modern, free and united state', the NTC called for respecting 'international humanitarian law and human rights declarations'.<sup>84</sup> But it failed to expressly endorse religious freedom for Libya's citizens.<sup>85</sup> The NTC's Constitutional Declaration for the Transitional Stage also struck a discouraging precedent. Article 1 of this document provides that 'Islam is the Religion of the State and the principal source of legislation is Islamic Jurisprudence (Sharia)'.<sup>86</sup> Although the maintenance of an established state religion is not per se incompatible with international human rights law, the text fails to elaborate on key questions including whose interpretation of sharia shall govern during the transitional period, to whom sharia shall be applied, or what will occur in the event of potential conflicts between sharia and human rights guarantees. The constitutional declaration itself provides only that the state 'shall guarantee for non-Moslems the freedom of practicing religious rituals',<sup>87</sup> a formulation which

<sup>82</sup> '10 Steps For Human Rights: Amnesty International's Human Rights Manifesto for Egypt', *Amnesty International*, October 2011, <http://www.amnesty.org/en/library/asset/MDE12/046/2011/en/78828d97-ab01-4a77-bd74-f3098647ded9/mde120462011en.pdf>.

<sup>83</sup> 'Egypt: Parties Pledge to End State of Emergency, Many Stop Short of Committing to Women's Rights', *Amnesty International*, 24 January 2012, <http://www.amnesty.org/en/news/egypt-parties-pledge-end-state-emergency-many-stop-short-committing-women-s-rights-2012-01-24>.

<sup>84</sup> Preamble, 'A Vision of a Democratic Libya', The Libyan Interim National Council, [www.ntclibya.org/english/libya/](http://www.ntclibya.org/english/libya/).

<sup>85</sup> *Ibid.*, Article 7(d).

<sup>86</sup> Article 1, The Transitional National Council of Libya, 'Draft Constitutional Charter for the Transitional Stage', *Cline Center for Democracy*, 3 August 2011, [http://portal.clinecenter.illinois.edu/REPOSITORYCACHE/114/w1R3bTIKEIG95H3MH5nvrSxchm9QLb8T6EK87RZQ9pfnC4py47DaBn9jLA7421FN3d70VnOYueW7t67gWXEs3XiVJJxM8n18U9Wi8vAoO7\\_24166.pdf](http://portal.clinecenter.illinois.edu/REPOSITORYCACHE/114/w1R3bTIKEIG95H3MH5nvrSxchm9QLb8T6EK87RZQ9pfnC4py47DaBn9jLA7421FN3d70VnOYueW7t67gWXEs3XiVJJxM8n18U9Wi8vAoO7_24166.pdf).

<sup>87</sup> Article 1, The Transitional Nat'l Council of Libya. The final version of the Constitutional Declaration omits a guarantee of 'respect for [non-Muslim] systems of personal status'. See Article 1, The Transitional Nat'l Council of Libya, <http://pomed>.



suggests a restrictive understanding of the international right to manifest freedom of religion or belief and, moreover, on its face denies protections for non-believers and Muslims who may dissent from the state's official interpretation of Islam.<sup>88</sup> In light of this approach, the formulation of Article 7, which provides that 'Human rights and ... basic freedoms shall be respected by the State' and 'commit[s] the state] to join the international and regional declarations and charters which protect such rights and freedoms',<sup>89</sup> is, while promising, wholly inadequate.

In October 2011, during his first address to the Libyan people in celebration of 'liberation' day, former Gadhafi justice minister and NTC chairman Mustafa Abdul Jalil declared that sharia would serve as the basis of the country's new constitution and that any laws to the contrary would be rescinded: 'We as a Muslim nation have taken Islamic sharia as the source of legislation, therefore any law that contradicts the principles of Islam is legally nullified.'<sup>90</sup> The NTC maintained this position throughout the transitional period, including during the run up to parliamentary elections, recommending that Libya's incoming elected parliament 'make sharia the main source of legislation. ... And this should not be subject to a referendum'.<sup>91</sup> This emphatic position conflicted with the NTC's own Constitutional Declaration, which stipulates that Libya's new constitution 'shall be referred to the people for a plebiscite'.<sup>92</sup>

Not surprisingly, Libya's Muslim Brotherhood has affirmed the NTC's consistent endorsement of establishing sharia as the principal source of legislation. According to the Brotherhood's Mohamed Gaair, Libya is distinct from Egypt and Tunisia insofar as 'there is no large polarization between the Islamists and the liberals ... Shariah is now a demand for all Libyans. It's not restricted to a particular group of the Libyans'.<sup>93</sup> To translate this vision into reality, the

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org/wordpress/wp-content/uploads/2011/08/Libya-Draft-Constitutional-Charter-for-the-Transitional-Stage.pdf.

<sup>88</sup> Human Rights Committee, General Comment No. 22. See especially paras. 2 and 4.

<sup>89</sup> Article 1, The Transitional Nat'l Council of Libya, 3 August 2011.

<sup>90</sup> 'Libyan Protesters Storm Government Headquarters in Benghazi', *Al Arabiya*, 21 January 2012, <http://english.alarabiya.net/articles/2012/01/21/189534.html>. See also Tasha Kheiriddin, 'Arab Spring Leads to Sharia Autumn', *National Post*, 26 October 2011, <http://fullcomment.nationalpost.com/2011/10/26/tasha-kheiriddin-arab-spring-leads-to-shariah-autumn>; and Elizabeth Tenety, 'Sharia law for Libya?', *Washington Post*, 24 October 2011, [http://www.washingtonpost.com/blogs/under-god/post/sharia-law-for-libya/2011/10/24/gIQATDrhCM\\_blog.html](http://www.washingtonpost.com/blogs/under-god/post/sharia-law-for-libya/2011/10/24/gIQATDrhCM_blog.html).

<sup>91</sup> Imed Lamloom, 'Sharia Should be 'Main' Source of Libya Legislation: NTC', *AFP*, 5 July 2012, <http://www.google.com/hostednews/afp/article/ALeqM5jX7Q1meMIZyHeccNoSuRZyq6Y3qw?docId=CNG.b918f47fa06e0e3e9fdee19bf4e2ae76.511>. See also 'NTC: Libya Doesn't Need Referendum to Adopt Sharia Law', *Middle East Online*, 5 July 2012, <http://www.middle-east-online.com/english/?id=53221>.

<sup>92</sup> Article 30, The Transitional Nat'l Council of Libya, 'Draft Constitutional Charter for the Transitional Stage', 3 August 2011.

<sup>93</sup> 'Islamists in Power'.

organization established the Justice and Construction Party (JCP),<sup>94</sup> which, according to many observers, was expected to dominate elections for the General National Congress and thereby gain significant input into the task of drafting a new constitution.<sup>95</sup> But in a surprise upset, the JCP lost to the National Forces Alliance (NFA)<sup>96</sup> – a coalition of over 50 political parties headed by Mahmoud Jibril<sup>97</sup> – prompting widespread speculation that the country was tilting away from Islam in favour of liberalism.<sup>98</sup> Voters casting ballots against the JCP expressed the sentiment that the party offered little to distinguish itself in a crowded field: ‘In Libya, we are Muslims. [The JCP] can’t take away my identity and claim that it’s only theirs.’<sup>99</sup> Indeed, on the topic of Islam’s role in Libya’s political future, most party platforms were of one mind, including the NFA. Despite being widely touted as a liberal alternative to the JCP,<sup>100</sup> the NFA has echoed many identical positions, including a pledge to establish Islamic law as a main source of legislation under the constitution.<sup>101</sup>

As parliament takes shape, actual implementation of human rights protections remains uncertain. One of the National Congress’ first acts was to elect Mohammed

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<sup>94</sup> Omar Ashour, ‘Libya’s Muslim Brotherhood Faces the Future’, *Foreign Policy*, 9 March 2012, [http://mideast.foreignpolicy.com/posts/2012/03/09/libya\\_s\\_muslim\\_brotherhood\\_faces\\_the\\_future](http://mideast.foreignpolicy.com/posts/2012/03/09/libya_s_muslim_brotherhood_faces_the_future). The party is sometimes referred to as the Justice and Development Party (JDP). Associated Press, ‘Muslim Brotherhood Forms Political Party in Libya’, *USA Today*, 3 March 2012, <http://www.usatoday.com/news/world/story/2012-03-03/Muslim-Brotherhood-party-Libya/53348332/1>.

<sup>95</sup> ‘Libya Bans Religious Political Parties’, *BBC News*, 25 April 2012, <http://www.bbc.co.uk/news/world-africa-17844280>.

<sup>96</sup> Voters in the July election cast ballots for 80 political party representatives and 120 independent candidates. The MB won only 17 of those 80 seats.

<sup>97</sup> Because of his position in the interim government, Mr Jibril himself was barred from running as a candidate.

<sup>98</sup> Associated Press, ‘Libya Election Results Put Liberal Alliance First’, *USA Today*, 17 July 2012, <http://www.usatoday.com/news/world/story/2012-07-17/libya-election-results/56282270/1>.

<sup>99</sup> Omar Ashour, ‘Libyan Election Another Arab Spring Paradox’, *Japan Times*, 23 July 2012, <http://www.japantimes.co.jp/text/ea20120723a5.html>.

<sup>100</sup> See for example, Margaret Coker, ‘Libya’s Liberals Seem to Have Edge Over Islamists in Vote’, *Wall Street Journal*, 8 July 2012, <http://online.wsj.com/article/SB10001424052702303292204577514842797430140.html>, See also Esam Mohamed and Maggie Michael, ‘Libya Liberal Alliance Cleans up Election, Leaving Islamists Far Behind’, *Toronto Star*, 17 July 2012, <http://www.thestar.com/news/world/article/1227936--libya-liberal-alliance-cleans-up-election-leaving-islamists-far-behind>; and Jomana Karadsheh, ‘Liberal Coalition Makes Strides in Historic Libyan Election’, *CNN*, 18 July 2012, <http://www.cnn.com/2012/07/17/world/africa/libya-election/index.html>.

<sup>101</sup> According to one expert, ‘What we will see is a lot of Islamist sensibility. But I think it will be much more of a nationalist movement here’. See Nancy A. Youssef, ‘Muslim Brotherhood Runs out of Steam in Libya’, *Miami Herald*, 11 July 2012, [http://www.miamiherald.com/2012/07/11/2890698\\_p2/muslim-brotherhood-runs-out-of.html](http://www.miamiherald.com/2012/07/11/2890698_p2/muslim-brotherhood-runs-out-of.html).

el-Megarif as president. Megarif, a long-time Gadhafi opponent, had lived in exile as a fugitive since the 1980s and is 'seen as close to Islamist parties'.<sup>102</sup> Moreover, developments on the ground signal that support for genuine religious freedom in Libya remains tenuous at best. In one act of vandalism apparently directed against non-Muslims, armed men smashed the graves of British and Italian soldiers killed during the Second World War.<sup>103</sup> Video of the desecration showed one man 'pulling from the ground a headstone bearing a Star of David' and a different man uprooting another headstone exclaiming, 'This is a grave of a Christian.' The NTC apologized for the episode, stating the 'action is not in keeping with Islam'.<sup>104</sup>

In another alarming incident, David Gerbi, a Libyan-born Jew who had travelled from Italy to join the rebellion against Gadhafi, generated intense hostility following his effort to re-consecrate the abandoned Dar al-Bishi synagogue in Tripoli's walled Old City.<sup>105</sup> Gerbi hastily cut short his stay in fear for his life when, shortly after entering the dilapidated synagogue, protests erupted in Tripoli and Benghazi. Protesters, bearing placards reading 'There is no place for the Jews in Libya', and 'We don't have a place for Zionism', demanded Gerbi be deported. Others reportedly attempted to storm Gerbi's hotel. Rather than applaud efforts to clean accumulated trash out of an historical religious site and restore a part of Libya's heritage, or plead for a new era of religious tolerance, the government issued a police summons against Gerbi, alleging unauthorized entry into an archaeological site.<sup>106</sup> An NTC spokesman denied that Gerbi had been granted permission by the transitional government to enter the synagogue: 'It's an illegal act because he has not [received] permission from anybody. ... I think it's a very sensitive issue at a very critical time. You are inciting something by not going through the proper channels.'<sup>107</sup> Following diplomatic interventions, Gerbi boarded a military plane bound for Rome 'to ease the tension'.<sup>108</sup> In Gerbi's words, the incident was a missed opportunity for the NTC and other Libyan leaders to 'demonstrate their

<sup>102</sup> Esam Mohamed, 'Mohammed el-Megarif, Former Gaddafi Foe, Elected Interim President of Libya', *Huffington Post*, 9 August 2012, [http://www.huffingtonpost.com/2012/08/09/mohammed-el-megarif-interim-president-libya\\_n\\_1762796.html](http://www.huffingtonpost.com/2012/08/09/mohammed-el-megarif-interim-president-libya_n_1762796.html).

<sup>103</sup> Oren Kessler, 'Libyans Desecrate British, Italian, Jewish Graves', *Jerusalem Post*, 4 March 2011, <http://www.jpost.com/International/Article.aspx?id=260393>.

<sup>104</sup> Kessler, 'Libyans Desecrate British'.

<sup>105</sup> Gil Shefler, 'Talks to Return Jewish Assets in Libya Set for 2013', *Jerusalem Post*, 15 June 2012, <http://www.jpost.com/JewishWorld/JewishNews/Article.aspx?id=273947>.

<sup>106</sup> Lisa Palmieri-Billig, 'Following Calls for Deportation, Gerbi to Return to Rome', *Jerusalem Post*, 10 October 2011, <http://www.jpost.com/MiddleEast/Article.aspx?id=241109>.

<sup>107</sup> Lourdes Garcia-Navarro, 'Hostile Crowd Forces Libyan Jew Out of Synagogue', *NPR*, 3 October 2011, <http://www.npr.org/2011/10/03/141014576/hostile-crowd-forces-libyan-jew-out-of-synagogue>.

<sup>108</sup> Palmieri-Billig, 'Following Calls for Deportation'.

seriousness about democracy and human rights by breaking with Libya's past and welcoming back Jews and other minorities'.<sup>109</sup>

Such expressions of religious discrimination have not been limited to endorsement of anti-Semitism. Libya's Sufi communities across the country have suffered the desecration of graves belonging to their saints and sages and the destruction of mosques and religious schools, with little evidence the government is taking measures to condemn the violence or apprehend the attackers.<sup>110</sup> In a bizarre demonstration of its commitment to religious freedom, Libya's new government permitted Salafist extremists to proceed unimpeded with the demolition of a Sufi mosque in the centre of Tripoli in broad daylight. According to a government official, authorities attempted to stop the armed group from bulldozing the Al Sha'ab mosque, but retreated 'after a small clash' and opted instead 'to seal off the area while the demolition took place to prevent any violence from spreading'.<sup>111</sup>

Women's rights are similarly implicated in the emerging pattern of discrimination. At the historic handover ceremony transferring NTC authority to the new national assembly, audience members directed shouts of 'Cover your head! Cover your head!' at the event's host, Sarah Elmesallati, and one conservative legislator from Misrata walked out in protest because Elmesallati refused to wear a hijab. As his final act as leader of the NTC, Chairman Jalil insisted that Elmesallati exit the stage and be replaced by a male host for the rest of the ceremony.<sup>112</sup>

## Conclusion

No one can predict the direction post-Arab Spring regimes will take on the road to delivering on the promise of democracy. What is clear, however, is the need for an outcome that respects human rights, including freedom of religion or belief. According to one human rights Non Governmental Organization (NGO): 'The huge changes taking place across the Middle East and North Africa, while increasing hopes for democratization, represent for both religious and ethnic minorities perhaps the most dangerous episode since the violent break-up of the

<sup>109</sup> David Gerbi, 'Next Year in Tripoli', *Foreign Policy*, 22 March 2012, [http://www.foreignpolicy.com/articles/2012/03/22/the\\_last\\_jews\\_of\\_libya](http://www.foreignpolicy.com/articles/2012/03/22/the_last_jews_of_libya).

<sup>110</sup> Tom Heneghan, 'Freed from Gaddafi, Libyan Sufis Face Violent Islamists', *Reuters*, 1 February 2012, <http://www.reuters.com/article/2012/02/01/us-libya-sufis-idUSTRE8101LA20120201>; Hadi Fornaji, 'Massive Damage to Major Sufi Shrine Follows Fatal Zliten Clashes', *Libya Herald*, 24 August 2012, <http://www.libyaherald.com/?p=13135>; and Hadi Fornaji, 'Another Sufi Mosque Attacked', *Libya Herald*, 25 August 2012, <http://www.libyaherald.com/?p=13209>.

<sup>111</sup> Reuters, 'Libyan Islamists Raze Sufi Sites in Bold Attacks', *New York Times*, 25 August 2012, <http://www.nytimes.com/2012/08/26/world/africa/islamists-in-libya-brazenly-attack-sufi-sites.html>.

<sup>112</sup> George Grant, 'Jalil in Headscarf Controversy as First Row Erupts at National Congress', *Libya Herald*, 9 August 2012, <http://www.libyaherald.com/?p=12444>.

Soviet Union and the former Yugoslavia'.<sup>113</sup> Available evidence suggests that these emerging governments are aware of international scrutiny and accordingly are willing – at least verbally – to endorse international human rights standards. However, in practice, other indicators point to a potentially divergent and decidedly more troubling outcome.

To be certain, genuine and unqualified validation of international norms on the part of new governments – in the form of constitutional safeguards and appropriate legislative and judicial follow up – would signal a sweeping gesture capable of discarding the underwhelming track record of previous regimes and breaking the cycle of state-sanctioned religious persecution. However, the international community also has a critical role to play while remaining cognizant of the need to balance respect for state sovereignty and international human rights norms. Concerned states must move beyond previous 'soft' engagement and implement a more assertive policy designed to educate and advocate at all levels on behalf of domestic human rights safeguards in post-Arab Spring countries using all feasible and relevant options. Ironically, the extent to which domestic and international actors may be able to gauge success in this undertaking is encapsulated in a simple test derived, coincidentally, from a chapter in Egyptian president Morsi's life. As a student, Morsi moved to the United States to complete his PhD. Some time thereafter, his wife Naglaa Ali Mahmoud travelled from Cairo to join him in Los Angeles where she began volunteering at the University of Southern California's Muslim Student House. Her responsibilities included 'translating sermons for women interested in converting to Islam'.<sup>114</sup> Morsi and other post-Arab Spring leaders must be asked: Will a non-Muslim in the new Egypt, Libya, or Tunisia share the same freedom? If the answer is no, continued unqualified support of these governments will serve only to establish donor states as witting accomplices in the denial of human rights and the perpetuation of religious persecution, discrimination and inequality. In the name of the victims of past repression, casualties of the Arab Spring, and those aspiring to freedom, the international community must assert itself as a proactive force in ensuring successful delivery of the promise of democracy.

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<sup>113</sup> 'Minorities Face Attack as Revolutions Sour in Middle East and North Africa', Assyrian International News Agency (AINA), 24 May 2012, <http://www.aina.org/news/20120524131848.htm>. Syria, Libya, Egypt and Yemen are among the most significant risers in Minority Rights Group International's (MRIG) global ranking of minority communities most at threat of mass killing.

<sup>114</sup> Mavy El Sheikh and David D. Kirkpatrick, 'Egypt's Everywoman Finds Her Place Is in the Presidential Palace', *New York Times*, 27 June 2012, <http://www.nytimes.com/2012/06/28/world/middleeast/naglaa-ali-mahmoud-an-egyptian-everywoman-in-the-presidential-palace.html>.