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# The Role of Religion in Constitutions Emerging from Arab Spring Revolutions

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# The Role of Religion in Constitutions Emerging from Arab Spring Revolutions

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Evelyn Mary Aswad

Of the four Arab Spring countries that toppled dictators in 2011, only two have adopted new constitutions: Egypt and Tunisia. While these constitutions contain numerous interesting features, a particularly useful lens for analyzing these social contracts is the evolving role of religion. Understanding the constitutional treatment of religion may help shed light on some frequently asked questions: Were the Arab Spring revolutions about seeking adherence to more conservative interpretations of Islamic law after the reign of strongmen with ties to the West? Were these revolutions expressions of longing for universal human rights regardless of religious affiliations? What role will religion ultimately play in the legal regimes of these countries?

Examining the evolving treatment of religion in these constitutions displays that, while there may have been a common cause for toppling dictators, various constituencies lacked common ground on what the "day after" would look like on issues of religion. Though Western governments praised these new constitutions for protecting human rights, this essay maintains that the key provisions involving religion reveal significant human rights problems.<sup>1</sup> This essay argues that such issues must be acknowledged and that the inter-

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national community should encourage these countries to interpret their constitutions consistently with their international obligations. Both Egypt and

tion and lavish lifestyles existed among Egypt's elites, about 40 percent of the society lived on less than two dollars per day.<sup>5</sup> While liberals and the Muslim

## Various constituencies lacked common ground on what the "day after" would look like on issues of religion.

Tunisia have extensive international obligations as parties to the International Covenant on Civil and Political Rights (ICCPR), which prohibits religious discrimination in the provision of treaty rights and guarantees equal protection of the law.<sup>2</sup> The pact also provides for freedom of expression and religious freedom (which includes the freedom to adopt or change one's faith or belief—as well as the freedom to manifest religion or belief in worship, observance, practice, and teaching—subject only to narrowly tailored limitations).

**Egypt.** As the Arab region's most populous nation (with population estimates ranging from 81–100 million), Egypt commanded the world's attention in February 2011 when President Hosni Mubarak left office after eighteen days of mass protests, ending his thirty-year reign as Egypt's third president since 1952 and "tasking" the military (which had refused to use force against protesters) with the state's affairs.<sup>3</sup> Like his two predecessors, Mubarak came from the military, which was his power base and played many political and economic roles, and his autocratic rule was secured by an oppressive security apparatus.<sup>4</sup> Though rampant corrup-

tion and lavish lifestyles existed among Egypt's elites, about 40 percent of the society lived on less than two dollars per day.<sup>5</sup> While liberals and the Muslim

Brotherhood (banned under Mubarak) had worked to topple Mubarak, they would encounter difficulties afterwards.<sup>6</sup> Since 2011, Egyptians have been subject to three constitutions. The Muslim Brotherhood's Mohammed Morsi was elected president in 2011, and a new constitution was adopted in a December 2012 referendum. Professor Ann Lesch of the American University in Cairo notes that during this period, political discussions were "dominated by Islamist politicians, with liberal and Christian citizens marginalized and alienated."<sup>7</sup> When the military removed Morsi from office following mass protests in 2013, a new drafting process culminated in the adoption of the current constitution in a January 2014 referendum. Unlike the earlier discussions that sidelined liberals and Christians, these talks were marked by a suppression of the Brotherhood.<sup>8</sup> Overall, scholars have found that the process reflected polarization among opposing groups, rather than dialogue and consensus building.<sup>9</sup>

Given a track record of mistreatment against, among others, Egypt's Christian minority, persons of non-Abrahamic faiths, and atheists, many in the international community viewed the constitution's treatment of religious

issues as crucial to democratic development. This segment seeks to illuminate what changed, what did not, and what is problematic with respect to key provisions involving religion in Egypt's constitution.

### **Egypt's Pre-Arab Spring Constitution.**

While many articles involving religion were altered with the adoption of the 2012 constitution and again in the 2014 constitution, one provision proved in effect untouchable: Article 2. It provides that Islam is the religion of the state (Egypt is 90 percent Muslim, predominantly Sunni, and the rest of the population is primarily Christian, mostly Coptic Orthodox) and that the principles of *Sharia* are the principal source of legislation.<sup>10</sup> The Supreme Constitutional Court (SCC) interpreted this article as authorization to conduct an Islamic judicial review of Egyptian laws. Given the extensive research by Professors Clark Lombardi and Nathan Brown, there is significant literature arguing that the SCC engaged in comparatively progressive interpretations under Article 2 that permitted various legal reforms to occur while infrequently overturning laws as "un-Islamic."<sup>11</sup> The professors argue the SCC "interpreted Islamic law *de novo* using its own distinctive, somewhat idiosyncratic, version of modernist reasoning."<sup>12</sup>

The SCC developed a test under Article 2 that required a law: (1) be consistent with authentic, clear, and universal rules of *Sharia* (the SCC found that few rules met this high standard), and (2) promote the goals of *Sharia*.<sup>13</sup> Using this test, the SCC struck down challenges to a variety of laws alleged to

be "un-Islamic" in violation of Article 2, including laws banning the veil in school.<sup>14</sup> Such SCC jurisprudence was not popular in quarters that believed the laws did violate *Sharia* principles, raising concerns that the SCC was not utilizing an appropriate methodology.<sup>15</sup>

Other articles in Egypt's pre-Arab Spring constitution also addressed religion. For example, Article 46 guaranteed freedom of belief and the freedom of practice of religious rites, but was silent on other aspects of religious freedom. Article 40 prohibited discrimination based on, among other things, religion, but Article 5 banned any political activity or political party based on religion. This thereby barred the Muslim Brotherhood from playing an active role in politics. Interestingly, the Article 1 "identity clause" stated Egypt was a democratic state based on citizenship and that it was part of the "Arab Nation;" it did not mention religion.

### **Egypt's 2012 Constitution.**

Egypt's revised constitution removed the ban on religious political parties and included a number of new provisions involving religion.<sup>16</sup> For instance, the Article 1 identity clause stated that the Egyptian people were part of the "Islamic nations" and no longer provided that the state was based on citizenship. Moreover, while Article 2 remained the same, two new provisions would greatly impact it. First, Article 4 provided an explicit consultative role for Al-Azhar (Egypt's premier center of Islamic learning) on *Sharia* issues. Second, Article 219 was added, defining how the principles of *Sharia* were to be discerned in a manner that seemed to

"tie Egypt's constitution to traditional Islamic jurisprudence," in contrast to the more progressive SCC methods.<sup>17</sup>

Additional new articles involving religion included Article 3, which mentioned Christians and Jews, and which provided that their own religious laws apply to their personal status (e.g., family law) and religious affairs. By specifying members of Judaism and Christianity, and given Article 2's focus on Islam, this new Article 3 seemed to enshrine the view that adherents of other religions or adherents of no religion were not recognized or entitled to equal protections. Religious freedom was purportedly guaranteed in Article 43 but was explicitly limited to "divine religions" (which was used in this context to encompass Judaism, Christianity, and Islam). Furthermore, Article 43 only guaranteed the freedom to practice rites and establish places of worship, and was silent with respect to other aspects of religious freedom such as professing or changing one's faith. It also made all guarantees subject to future laws, essentially undermining any constitutional protections. While Article 81 specified that no laws may constrain the origin or essence of any rights, such text is ambiguous, easily misused, and departs significantly from existing ICCPR safeguards on limiting rights that could easily have been referenced.<sup>18</sup>

Though some constitutional provisions favored only members of "divine religions," Article 33 provided that all citizens were equal before the law. However, unlike the prior constitution, it did not explicitly list any particular grounds of impermissible discrimination such as religion, thereby creating

a risk of weakening of this protection. Another article that attracted significant international attention was Article 44, which banned blasphemy by prohibiting the defamation of all religious messengers and prophets. The U.S. government and others criticized Egypt for essentially elevating its existing ban on blasphemy to its constitution and for the high number of blasphemy prosecutions under Morsi's regime.<sup>19</sup>

### **Egypt's 2014 Constitution.**

The European Union announced that Egypt's 2014 constitution enshrined "fundamental rights and freedoms" and noted that all laws would need to comply with the new constitution.<sup>20</sup> This was an overly-rosy assessment given the complexities of the 2014 constitution: some provisions revert to features from the Mubarak era, other provisions reflect 2012 text, while still others are completely new and could prove helpful in protecting human rights.<sup>21</sup>

While Article 2 (providing that Islam is the religion of the state and that the principles of *Sharia* serve as the principal source of legislation) remained unchanged, several other provisions impacting it changed significantly. In many ways, such changes take the constitution back to the Mubarak era in terms of Article 2, the SCC's role, and the SCC's precedents. For example, Article 219, which seemed to require conservative Islamic jurisprudence and methodologies when applying Article 2, was dropped altogether. Moreover, a new preambular paragraph reaffirms the SCC precedents as the relevant jurisprudence for interpreting Article 2. In addition, Al-Azhar's "consultation" role was removed (though it is

mentioned as the main authority for religious sciences and Islamic affairs). Another return to the Mubarak era is Article 74, which bans religious political parties.

Other articles reflect phrasing that is somewhere on the spectrum between the Mubarak and Morsi constitutions. For example, the Article 1 identity clause returns to the Mubarak-era affirmation that the republic is based on citizenship, but it also specifies that Egypt is part of the "Muslim world." While the new Article 50 affirms Egypt's diverse cultural heritage, Article 3 retains the 2012 distinction for "divinely revealed religions," again describing the treatment of personal and religious affairs for only Christians and Jews.

Other articles inherited some problematic features from the Morsi-era constitution. For example, Article 64 continues to limit freedom of religion to followers of "revealed religions," limits this right to the extent of the "law," and describes the scope of the right so narrowly that it focuses solely on rituals and places of worship.<sup>22</sup> Article 92 also continues with an improved, but still ambiguous and easily misused, "general limitations clause" on all rights.

Conversely, the Morsi-era blasphemy ban was dropped (though Article 53 criminalizes "incitement to hate," which is another broad and ambiguous phrase at odds with human rights law protections for freedom of expression).<sup>23</sup> In addition, Article 53 returns to an equal protection clause that is reminiscent of the Mubarak-era constitution specifying that all citizens are equal before the law and sets forth a number of prohibited grounds for dis-

crimination, including religion.

Perhaps the most interesting 2014 additions regard the treatment of international commitments and obligations. For example, a new preambular paragraph states the constitution "is in line with the Universal Declaration of Human Rights (UDHR), which we took part in the drafting of and approved." This is an extraordinary statement of ownership of the UDHR as opposed to often-heard claims that human rights should be disregarded as Western concepts. Furthermore, this paragraph could be used to argue that any textual ambiguities or other problems must be resolved in favor of interpretations that are consistent with the UDHR, as that is the stated overarching intent of the document. Moreover, Article 93 states that Egypt is committed to international human rights treaties it has ratified and that these treaties have the force of law. This article may prove to be an important "catch all" hook for interpreting constitutional protections for fundamental freedoms, including religious freedom, in line with treaty obligations (though Article 151 provides that no treaty can be concluded that is contrary to the constitution).

On balance, compared to the pre-Arab Spring constitution, Egypt's current constitution seems to take a step backward on issues of religious freedom. For example, the constitution recognizes this freedom only for members of the "divine religions." It remains to be seen whether constitutional practice and interpretations can effectively reverse this by relying upon the non-discrimination, the UDHR, and international human rights treaty provisions to protect persons of all



faiths or beliefs. Hopefully, the UDHR and treaty clauses can also be used to temper two other new features: the ambiguous and easily misused general limitations clause and the fact that Article 64 ties the constitutional scope of religious freedom to future laws.

**Tunisia.** Within weeks of the self-immolation of a young vendor protesting injustice and corruption that sparked widespread and popular uprisings and given the military's refusal

Ali, Tunisia already had a reputation as a progressive country with significant achievements in women's rights. When its first democratically elected leader came from the Islamist party *Ennahda*, the international community followed with interest, *inter alia*, the role religion would play in the constitution.

While Islamists, secularists, and others debated topics similar to those discussed in Egypt, Tunisia ultimately resolved these tensions through compromises (rather than intervention by

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## Egypt's current constitution seems to take a step backward on issues of religious freedom.

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to support him, President Zine Abidine Ben Ali escaped from Tunisia on 14 January 2011, ending his 23-year reign as Tunisia's second president since 1957.<sup>24</sup> Unlike Egypt, Tunisia's population was small (approximately 10.5 million), primarily urban, and generally better off than Egyptians.<sup>25</sup> As was the case with Mubarak, Ben Ali maintained his power through an oppressive security apparatus, banned Islamist parties, and was responsible for immense corruption.<sup>26</sup> Though Ben Ali had served in the military, Tunisia's military (unlike Egypt) was not an all-powerful force and would play a much lower-key role in the transition politics.<sup>27</sup>

About three years after Ben Ali's departure, Tunisia adopted its new constitution. Unlike Egypt, which relied on a popular referendum, the elected Tunisian National Constituent Assembly approved the text of the new constitution. Before toppling Ben

its military).<sup>28</sup> At the conclusion of the process, the U.S. State Department pronounced that the 2014 constitution "respects and guarantees the rights of all Tunisians."<sup>29</sup> This section seeks to illuminate the legal landscape regarding what changed, what did not, and what is problematic about key provisions involving religion in Tunisia's constitutions.

### Tunisia's Pre-Arab Spring Constitution.

Though Tunisia is 98 percent Sunni Muslim, Tunisia's constitution under Ben Ali contained only a handful of references to religion.<sup>30</sup> For example, while the preamble noted the people's will to remain faithful to Islamic teachings, *Sharia* was not established as "the" source of law (or mentioned at all). The constitution provided that Islam was Tunisia's religion, but banned religious parties, similar to Mubarak's constitution. It also required the president be Muslim.



Regarding religious freedom, the constitution's protections encompassed some contradictions. For example, Article 5 stated Tunisia guaranteed human rights in their "universal" meaning, but then only protected "the free exercise of religious beliefs, under reserve that it does not disturb the public order." Moreover, Article 7, a general provision regarding all rights, stated citizens could exercise rights "as

this explicit criminalization of blasphemy, though references to protecting religion remained in drafts.<sup>35</sup> In the final phase of the process, one Assembly member accused—or at least was understood as accusing—another member of apostasy (*takfir*), resulting in demands to prohibit accusations of *takfir*, which can expose the accused to violence.<sup>36</sup> This high profile event triggered changes to Article 6, which now provides that

## Tunisia's post-Arab Spring constitution risks taking the country in **a regressive direction.**

specified by law" and did not encompass internationally recognized safeguards when limiting rights. Article 6, however, provided that all citizens are equal before the law, without listing any bases of impermissible discrimination.

### **Tunisia's 2014 Constitution.**

Various debates involving religion occurred during the drafting process, two of which are highlighted here.<sup>31</sup> The first involved the role *Sharia* would play in the constitution. Some *Ennahda* members proposed a provision designating *Sharia* a source of legislation.<sup>32</sup> Secularists and others opposed this as improperly Islamizing the legal regime. After significant discussions within the party and with others about the provision's utility, *Ennahda* announced it would not seek a *Sharia* reference.<sup>33</sup>

Another debate involved a blasphemy ban, which *Ennahda* members initially proposed as a criminal prohibition applying to Abrahamic faiths.<sup>34</sup> After debates within the party and with others, *Ennahda* withdrew the demand for

the State is the "guardian of religion," protects "the sacred" and prohibits "any offenses thereto," and prohibits *takfir* (as well as incitement to hatred). Civil society groups criticized this article as vague and easily misused to stifle freedoms of speech and religion, including by prohibiting blasphemy.<sup>37</sup>

The 2014 constitution contains other provisions involving religion. For example, Article 1 continues to state Tunisia's religion is Islam, but Article 2 and the fourth preambular paragraph make clear that Tunisia is a civil state. The constitution provides Articles 1 and 2 cannot be amended. Other clauses highlighting Islam include preambular paragraph 3, which notes Tunisia is committed to Islamic teachings and reform based on Islamic identity, and the fifth paragraph, stating the desire to consolidate affiliation to the "Muslim nation" and towards complementarity with Muslim peoples. Unlike Egypt, Tunisia removed the ban on religious parties in its 2014 Constitution.

In terms of religious freedom, Arti-

cle 6 states Tunisia guarantees freedom of conscience and the free exercise of religious practices, but is silent on certain other aspects of religious freedom. Moreover, Article 49, the clause allowing for limitations on rights, is narrower than its predecessor. All citizens are equal before the law in Article 21 (again without listing prohibited bases for discrimination), but Article 74 limits the presidency to Muslims.

Compared to its pre-Arab Spring constitution, Tunisia's new constitution risks taking the country in a regressive direction because of the new provision involving issues of blasphemy and *takfir*. Its religious freedom provisions remain too narrow, though at least the general limitations clause on rights has improved (but continues to apply to rights that cannot be limited under the ICCPR). Much will depend on how constitutional practice and interpretations evolve with respect to such provisions.

**Some Concluding Observations.** Given very different histories, pre-Arab Spring constitutions, and post-revolution political struggles, it may not be surprising that Egypt and Tunisia adopted constitutions that treat religion quite differently on key points.

against the sacred and *takfir* (Egypt no, Tunisia yes), barring religious parties (Egypt yes, Tunisia no), and reserving the presidency for Muslims (Egypt no, Tunisia yes). And yet on other matters of religion, the constitutions share some measure of similarity: Islam as the religion of both countries, references to Islamic heritage, prohibitions on discrimination, and provisions for some (but incomplete) protection for religious freedom.<sup>38</sup>

Comparing this constitutional landscape of provisions involving religion with the ICCPR, shortfalls are evident. Without discussing all the problems, it is worthy of note that Egypt's new constitutional provisions that privilege "divine religions" while excluding others is a regressive development inconsistent with ICCPR obligations prohibiting religious discrimination. In addition, its narrow protections for religious freedom (which are further jeopardized by being subjected to future laws and an ambiguous "catch all" limitations clause that applies to all rights) are not consistent with the ICCPR's broad religious freedom protections. Tunisia's constitutional provision calling on the state to "protect the sacred" and "prohibit offenses thereto" seems to encompass blasphemy bans that are

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**Sweeping shortfalls** under diplomatic rugs is not a strategy for promoting the long-term democratic development of these countries.

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In particular, they differ in: designating *Sharia* principles as the principal source of legislation (Egypt yes, Tunisia no), explicitly banning offenses

not only inconsistent with ICCPR protections for speech and religious freedom but also with the international community's recent consensus

to tackle religious intolerance through practical, time-proven steps (like hate crimes laws and inter-faith dialogues) rather than blasphemy bans.<sup>39</sup> Egypt's and Tunisia's new ambiguous constitutional bans on "incitement to hatred" may similarly be invoked to violate rights. While having a state religion is not prohibited by the ICCPR, discrimination based on religion—such as Tunisia's provision that only Muslims can be president—is inconsistent with the treaty.

Given constituencies with different views on the role of religion, and given the product of contentious negotiations is often ambiguous and contradictory text, constitutional shortfalls in such transitions are perhaps inevitable. That said, it is imperative that the international community acknowledge and proactively address these issues (through training programs, diplo-

matic engagement, etc.). This would enhance the likelihood that future Egyptian and Tunisian constitutional practice and jurisprudence will evolve in line with ICCPR obligations. The protection of core liberties and the treatment of citizens as equals before the law are key pillars of the rule of law. These religious freedom problems may indicate larger rule of law issues that could emerge from the constitutions. Sweeping shortfalls under diplomatic rugs is not a strategy for promoting the long-term democratic development of these countries, or other countries with similar constitutional problems. While appropriate constitutional provisions are not a guarantee that human rights will be protected in practice, the absence of such provisions is a good indicator that some fundamental freedoms may be in jeopardy.

NOTES

1 This essay does not discuss all constitutional provisions that are relevant to issues of religion or that are inconsistent with the international human rights obligations of Egypt and Tunisia. Given space limitations, it also does not discuss implementation issues arising under each of the various constitutions.

2 Egypt became a party to the ICCPR in 1982 and Tunisia did so in 1969. See [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en) (date accessed: 24 August 2014).

3 James L. Gelvin, *The Arab Uprisings: What Everyone Needs to Know* (Oxford: Oxford University Press, 2012) 34, 47.

4 Ibid. at 37-39; 61-62. Also Ann M. Lesch, "Troubled Political Transitions: Tunisia, Egypt, and Libya," *Middle East Policy* 21, no. 1 (Spring 2014): 65.

5 Gelvin, 34, 40-41; Lesch, 66.

6 Gelvin, 52-53.

7 Lesch, 68.

8 Ibid.

9 See, e.g., *ibid.*

10 This essay uses a translation of Egypt's pre-Arab Spring Constitution that can be found here: <http://www.constitutionnet.org/files/Egypt%20Constitution.pdf> (date accessed: 30 October 2014).

11 See, e.g., Clark Lombardi and Nathan Brown, "Do Constitutions Requiring Adherence to Shari'a Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law," *American University International Law Review* 21, no. 3 (2006): 379-435.

12 Nathan Brown and Clark Lombardi, "Islam in Egypt's New Constitution," Internet, <http://carnegieendowment.org/2012/12/13/islam-in-egypt-s-new-constitution/etph> (date accessed: 30 October 2014).

13 See Lombardi and Brown, 418.

14 Ibid., 426.

15 See Brown and Lombardi.

16 This essay uses a translation of the 2012 Constitution that can be found here: <http://www.constitutionnet.org/vl/item/new-constitution-arab-republic-egypt-approved-30-nov-2012> (date accessed: 30 October 2014).

17 See Brown and Lombardi.

18 Under the ICCPR, some rights may not be limited (e.g., freedom from torture) and other rights may be limited but only in very narrowly specified circumstances (e.g., freedom to manifest one's religion).

19 See, e.g., U.S. Department of State, "Country Reports on Human Rights Practices for 2012: Egypt (2013)," Internet, <http://www.state.gov/documents/organization/204569.pdf> (date accessed: 30 October 2014). Also U.S. Department of State, "International Religious Freedom Report for 2012: Egypt (2013)," Internet, <http://www.state.gov/documents/organization/208598.pdf> (date accessed: 30 October 2014).

20 European Union, "Statement by EU High Representative Catherine Ashton on the Constitutional Referendum in Egypt," Internet, [http://eeas.europa.eu/statements/docs/2014/140119\\_02\\_en.pdf](http://eeas.europa.eu/statements/docs/2014/140119_02_en.pdf) (date accessed: 30 October 2014).

21 This essay uses a translation of the 2014 Constitution that can be found here: <http://www.atlanticcouncil.org/blogs/egyptsource/english-translation-of-egypt-s-2013-draft-constitution> (date accessed: 30 October 2014).

22 However, new Article 235 does require the passage of a law to organize building and renovating of churches, which many viewed as a welcome addition given the challenges the Christian community has faced.

23 NGOs have expressed concerns about the blasphemy prosecutions, which have continued after the adoption of the most recent constitution. See, e.g., Egyptian Initiative for Personal Rights, "After Luxor Appellate Misdemeanor Court Gives Teacher Six Months for Defamation of Religion," Internet, <http://eipr.org/en/pressrelease/2014/06/19/2127> (date accessed: 30 October 2014).

24 Lesch, 62.

25 Gelvin, 34.

26 Ibid., 39-41; 57-58. Also Lesch, 64.

27 Lesch, 67.

28 Ibid., 68.

29 U.S. Department of State, "Ratification of the New Tunisian Constitution," Internet, <http://www.state.gov/r/pa/prs/ps/2014/01/220658.htm> (date accessed: 30 October 2014).

30 This essay uses the following English translation of the Ben Ali era constitution: William S. Hein & Co., trans., Law No. 59-57 (June 1, 1959) (Tunisia) (HeinOnline World Constitutions Illustrated library 2010).

31 This essay uses the English translation of the current constitution that can be found here: <http://www.constitutionnet.org/vl/item/tunisia-constitution-2014> (date accessed: 30 October 2014).

32 Duncan Pickard, "The Current Status of Constitution Making in Tunisia," Internet, <http://carnegieendowment.org/2012/04/19/current-status-of-constitution-making-in-tunisia/ahIs> (date accessed: 30 October 2014).

33 Ibid. Also Monica Marks, "Convince, Coerce or Compromise? Ennahda's Approach to Tunisia's Constitution," *Brookings Doha Center Analysis Paper* (February 2014), Internet, <http://www.brookings.edu/research/papers/2014/02/10-ennahda-tunisia-constitution-marks> (date accessed: 30 October 2014) : 20-22.

34 Marks, 24.

35 Ibid., 24-26. Also Amna Guellali, "The Problem with Tunisia's New Constitution," Internet, <http://www.hrw.org/news/2014/02/03/problem-tunisia-s-new-constitution> (date accessed: 30 October 2014).

36 See e.g., Guellali, "Carter Center Welcomes

**NOTES**

Human Rights Provisions in Tunisia's Constitution; Calls for Immediate Steps to Implement," at footnote 44, Internet, <http://www.cartercenter.org/resources/pdfs/news/pr/tunisia-full-statement-041014.pdf> (date accessed: 30 October 2014).

37 Guellali, Carter Center.

38 Egypt's constitution provides that Islam is the religion of the state whereas Tunisia's formulation—"its religion is Islam"—is considered by some to contain some measure of ambiguity about whether Islam is the state religion. See, e.g., Carter Center, 14; Marks, footnote 63, but the U.S. Department of State seems to have interpreted this language in the past as meaning Tunisia has a state religion. See U.S. Department of State, "2013 International Religious Freedom Report," Internet, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm#wrapper> (date accessed: 30 October 2014). Indeed, in Tunisia's 2007 periodic report to the UN Human Rights Committee, it self-described this phrasing—"its religion

is Islam"—in the Ben Ali-era constitution to mean "Islam is the State religion in Tunisia. However, the State is not religious since it is organized in accordance with the Constitution..." International Covenant on Civil and Political Rights Human Rights Committee, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant Fifth Periodic Report: Tunisia," para 241 (25 April 2007), Internet, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTUN%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fTUN%2f5&Lang=en) (date accessed: 30 October 2014).

39 For more on the consensus on UN Human Rights Council Resolution 16/18, see Elizabeth Cassidy, "Fighting Religious Hatred While Protecting Free Speech," Internet, <http://journal.georgetown.edu/fighting-religious-hatred-while-protecting-free-speech-by-elizabeth-cassidy/> (date accessed: 30 October 2014).