



# A Tyranny of the Majority? Islamists' Ambivalence about Human Rights

MOATAZ EL FEGIERY

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# A Tyranny of the Majority? Islamists' Ambivalence about Human Rights

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» Arab revolutions have not yet managed to lead to democracies that are genuinely tolerant of individual human rights. Islamists took power at the ballot boxes in Tunisia and Egypt, but their ambivalent approach to human rights reinforces cultural relativism and subverts universal human rights. This paper focuses on the Muslim Brotherhood (MB) and its Freedom and Justice Party (FJP), the Salafist al-Nour Party in Egypt and the al-Nahda party in Tunisia. It analyses the positions of these Islamist parties on international human rights in programmatic theory and political practice.<sup>1</sup>

Over the past 20 months, Islamists in Egypt and Tunisia have engaged actively in transitional processes and have achieved political power. FJP and al-Nahda are currently the largest political parties in Egypt and Tunisia. Al-Nour became the second largest political bloc in the first parliamentary elections after the Egyptian revolution.

In their programmes, statements and literature, Islamists have been keen to show that their beliefs are not incompatible with international human rights. However, the evidence shows that, in fact, international human rights will be endangered under these parties' ambivalent conception of rights. Islamists vary in their opinions on specific rights, from hardline to reformist attitudes. But they have failed to develop a coherent and consistent approach to human rights. Islamists have not abandoned the objective of establishing Islamic states and a public order based on *Shari'ah* (Islamic law). They reject the 'civil' or secular state that is neutral towards all religions and based on citizenship and equality before the law. In their current zeal to support Islamist governments, Western policymakers should not forget the longstanding struggle of Muslim liberals and Arab human rights defenders in the cause of universal human rights. If elections can be held without safeguards for individual human rights, the rule of law and the separation of powers, new majoritarian tyrannies could rise up in which the rights of minorities are sidelined. This was not the aspiration of Arab revolutionaries.

A number of key questions are relevant in assessing the human rights record of the Islamist parties. What is the status of human rights in Islamic law and traditional thought? Before their election, what commitments did Islamist parties make on key human rights? To what degree are their visions of fundamental human rights in line with international human rights standards? How have Islamist parties in government performed on human rights? And finally, what does Islamists' ambivalence towards human rights mean for the immediate future of Arab societies, and for their relations with their international partners?

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1. For the purpose of this study, I will identify theoretical and practical positions using official platforms, pamphlets, statements, parliamentary records and intellectual contributions of the main ideologues and scholars of the three parties, Freedom and Justice Party, al-Nahda and al-Nour. In talking about al-Nahda, I will make use of the writings of Rached Al-Ghannouchi, the president of al-Nahda. He was recently re-elected as the president of the movement and his book on public liberties in the Islamic state is acknowledged by al-Nahda as one of its official documents.

# Islamism, Human Rights and Islamic Reformation

»» Islamism or political Islam refers to ‘the reassertion of Islam in both public and private life’.<sup>2</sup> The Islamist movements and parties considered here are those political organisations that ‘mobilise and agitate in the political sphere while deploying signs and symbols from Islamic traditions’.<sup>3</sup> Islamist movements are diverse in their strategies and interpretations of Islamic legal traditions. These differences can be attributed to the different historical and organisational evolution of these movements, as well as to the changing socio-political contexts in which they operate.<sup>4</sup> Bassam Tibi differentiates between violent jihadist Islamists and institutional Islamists. The former use violence to achieve their political objectives. The latter pursue their goals through non-violent means and engage in formal political processes and institutions.<sup>5</sup>

Institutional Islamists are influential political actors in the Middle East and North Africa (MENA) today. They gained the largest number of seats in the parliamentary elections in Tunisia, Egypt and Morocco in 2011 and 2012. The Syrian Muslim Brotherhood is also a key player in the Syrian opposition. The Muslim Brotherhood’s candidate, Mohammed Morsi, recently became Egypt’s first civilian elected president. In Libya, Islamists have failed to achieve the same electoral success as their peers in Tunisia and Egypt, but they are still very influential actors.

The increasing political clout of Islamist parties across the region has stirred up serious domestic and external concerns over the depth of their practical commitment to international human rights standards. Long before the Arab revolutions, many observers were suspicious of Islamists’ commitment to human rights and liberal democracy. People wondered to what degree implementation would live up to the discourse if these parties achieved power.<sup>6</sup> These concerns were bolstered by previous experiences of Islamic governance and the application of *Shari’ah* law, in, for example, Iran, Pakistan, Sudan, Northern Nigeria and Afghanistan.<sup>7</sup> Given the popularity of Islamist parties in many Muslim states, other analysts advocated the integration of peaceful Islamists into political processes as a tool of de-radicalisation and moderation.<sup>8</sup>

2. M. Monshipouri, *Islamism, Secularism and Human Rights in the Middle East* (Colorado: Lynne Rienner Publishers, 1998), p.2
3. S. Ismail, *Rethinking Islamist Politics: Culture, the State and Islamism* (New York: I.B Tauris, 2006), p.2.
4. M. Ayoub, *The Many Faces of Political Islam: Religion and Politics in the Muslim World* (Ann Arbor: The University of Michigan Press, 2008), pp. 14-17.
5. B. Tibi, *Islam and Islamism* (New York: Yale University Press, 2010), p.10.
6. See S. Huntington, *The Clash of Civilizations and the Remaking of World Order* (London: Simon and Schuster UK Ltd, 2002), pp.192-198; B. Lewis, ‘Freedom and Justice in the Modern Middle East’, *Foreign Affairs*, 36(2002), pp. 48-50; B. Tibi, ‘Why They Can’t Be Democratic’, *Journal of Democracy*, 19(3) (2008), pp. 43-48.
7. See A.E. Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder, CO: Westview Press, 2004) Fourth edition, pp. 36-46; P. Marshall, ‘Introduction: The Rise of Extreme Shari’a’, in P. Marshall (ed.) *Radical Islam’s Rules: the Worldwide Spread of Extreme Shari’a Law* (Lanham: Roman and Littlefield Publishers, 2005), pp. 1-17.
8. K. Kausch, ‘Plus Ca Change: Europe’s Engagement with Moderate Islamists’, FRIDE’s Working Paper 75, 2009, available at [www.fride.org/publications/563/europe-s-engagement-with-moderate-islamists](http://www.fride.org/publications/563/europe-s-engagement-with-moderate-islamists) (Accessed 15 February 2012); K. Roth, ‘Time to Abandon the Autocrats and Embrace Rights: the International Response to the Arab Spring’, in *Human Rights Watch World Report 2012* (Washington: Human Rights Watch, 2012), pp. 1-21. In the introduction of the 2012 world report of the Human Rights Watch, Kenneth Roth, the executive director of the organisation, states that ‘Islamic movements are hardly monolithic or implacably opposed to rights. Yet rather than engage with them to demand respect for rights, Western governments have often treated them as untouchable.’



Before the revolutions, Islamist parties were outlawed in Egypt and Tunisia. However, they remained active in the political opposition to varying degrees. In Egypt after 1984, Mubarak intermittently tolerated the political participation of the Muslim Brotherhood. MB members were represented in the parliament of 1984 and 1987 as independent members of parliament, and they also dominated the professional syndicates and student unions. The group was subjected to a security crackdown during the 1990s. In 2000 and 2005, the MB emerged as a powerful oppositional bloc in the parliament. In Tunisia, al-Nahda, which was known before 1989 as al-Itijah al-Islami, was a major political player during 1980s. It was systematically banned and repressed in Tunisia after 1989. Many of the top leaders of al-Nahda lived in exile. After the fall of Mubarak and Ben Ali, the Muslim Brotherhood and al-Nahda have flourished in the political scenes of their respective countries.

Other Islamist actors have emerged as well. In Egypt, Salafists, as well as former violent jihadist movements such as Gama'a al-Islamiya, have formed political parties. After decades of staying away from formal politics, Salafists decided to make use of the free political space in the post-Mubarak era and to participate in politics. The main social base of the al-Nour party is the Salafist Call Association in Alexandria, a major organisational umbrella group for Salafists in Egypt.<sup>9</sup> Tunisian Salafists have also become visible in public life, but unlike their Egyptian counterparts, they have not yet participated in post-revolution elections. On 30 March 2012, the first Tunisian Salafist parties were established, with a view to contesting the parliamentary elections scheduled for the spring of 2013.<sup>10</sup>

Any future introduction of Islamic law as interpreted by Islamists will risk undermining international human rights standards in Tunisia and Egypt. A recent comparative study of the incorporation of Islamic law in the legal systems of Muslim states revealed that 'a number of violations are directly related to norms and practices based in Islamic legal traditions'.<sup>11</sup> Liberal Muslims maintain that international human rights law and modern constitutionalism cannot be put into practice unless Muslim scholars engage in drastic reformation of traditional Islamic law. The Sudanese scholar Abdullahi An-Na'im argues that there is nothing divine in Islamic law. Its methods or content have been a product of human interpretation of Islamic sacred sources, and hence, Muslims can review it in the course of history in light of changes.<sup>12</sup> Moreover, many Muslim scholars have rejected the idea of using *Shari'ah* as the state law. For instance, the Egyptian judge Muhammad Sa'îd Al-'Ashmâwî argues that *Shari'ah* in the *Qur'an* means the way of God or of Islam, but that the term was changed by Muslim jurists in the second century of Islam to apply mostly to legal matters.<sup>13</sup>

An-Na'im contends that the secular state is necessary in Islam. He explains that Islamists overlook the significant differences between the modern nation state and the pre-modern Islamic community. Islamic law in history was by and large interpreted

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9. U. Abdul Latif, 'Salafists and Politics in Egypt', *Arab Center for Research and Policy Studies*, 2012, available at <http://english.dohainstitute.org/release/508a64a4-3f6e-4958-8e1b-e0c9d6288d67>, p. 11.  
10. The Reform Front Party was officially established on 30 March 2012. See S. Ajmi, 'Reform Front Party: Tunisia's First Salafist Party', *Tunisia Live*, 11 May 2012, available at <http://www.tunisia-live.net/2012/05/11/reform-front-party-tunisia-first-salafist-party/>.  
11. J. Otto, 'Towards Comparative Conclusions', in J. Otto (ed.), *Sharia Incorporated. A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010), pp. 618.  
12. See A. An-Na'im, *Towards an Islamic Reformation: Civil Liberties, Human Rights and International Law* (Syracuse, NY: Syracuse University Press, 1996).  
13. E.W. Shepard, 'Muhammad Saïd al-Ashmawi and the Application of Shari'a in Egypt', *International Journal of Middle East Studies*, 28 (1) (1996), p. 43.

and applied by independent Muslim jurists and judges, away from the central authority. Early Muslims committed themselves voluntarily to *Shari'ah* in accordance with their convictions, without any need for coercion. According to An-Na'im, any law applied by the central authority will always be secular. It cannot be described as wholly Islamic, because Muslims will always disagree on the exact interpretations of *Shari'ah*.<sup>14</sup>

Respect for international human rights norms through creating inclusive, equal citizenship will be essential to guarantee the peaceful co-existence of multiple religious, ethnic and cultural communities in Arab societies. So, it is mistaken to consider advocacy for international human rights an imposition of alien values on Muslims. Muslims do not all hold one monolithic view on the place they assign to religion in the public domain. And many Muslim scholars and human rights actors increasingly support international human rights norms, Islamic reformation and a secular state.<sup>15</sup>

## Ideological Underpinnings

» Examining the ideological and programmatic deliberations of the Muslim Brotherhood, Al-Nour party and Al-Nahda can provide insight into these groups' theoretical commitments to human rights. It can also shed some light on the way in which they aim to build the relationship between religion and the state.

Some issues appear both particularly important and extremely contentious in debates on Islamists' commitment to human rights and democracy. These include the role and nature of the state; the definition of human rights; tensions between *Shari'ah* and pluralism; gender equality; the limits of religious freedom; the rights of non-Muslim citizens; and the degree of restrictions on the freedom of expression.

### The civil state

Islamists have argued that their conception of *Shari'ah* as state law is reconcilable with a constitutional democratic state. Many have pointed out that they seek to establish not a religious state but a 'civil state with an Islamic reference'. At the same time, the distinction made by many Islamists between a theocratic state and an Islamic civil state fails to address the fears expressed by non-Muslims, liberals and the human rights community.

14. A. An-Na'im, 'The Compatibility Dialectic: Meditating the Legitimate Coexistence of Islamic Law and State Law', *The Modern Law Review* 73 (1) (2010).

15. See A.E. Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder, CO: Westview Press, 2004) Fourth edition; see also the analysis of the work of some liberal reformers in W. Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī usūl Al-Fiqh* (Cambridge: Cambridge University Press, 1997), pp. 207-254.

Both the Muslim Brotherhood and Al-Nahda consider themselves to be part of a centrist, 'moderate' Islamism. Tunisia's Al-Nahda underlines in its platform the movement's enlightened understanding of Islam. It has expressed its readiness to let its doctrine benefit from modern human and civilizational achievements through *ijtihad* (independent juristic reasoning).<sup>16</sup> FJP and Al-Nahda say that a very few rulings in *Shari'ah* are fixed, in that their meaning and authenticity are governed by specific Islamic texts. These rulings, they argue, are not amenable to change. But other rulings are derived through *ijtihad*, guided by the general rules and objectives of *Shari'ah*.<sup>17</sup>

This approach to *Shari'ah* leaves open a wide space for human reasoning, but it does not provide a sufficient basis for Islamic law reform. Many of the so-called fixed rulings in the *Qur'an* and *Sunna* are not compatible with basic human rights such as gender equality, the rights of non-Muslims and the prohibition of cruel punishment. Moreover, this approach leaves too many loopholes for arbitrary subjectivity, since its outcomes will be contingent upon the attitudes and values of the bodies who are given the task of interpreting *Shari'ah* as state law.

Like the FJP and Al-Nahda, the Salafist Al-Nour Party shares the view that Islam offers comprehensive guidance across the political, economic, social and cultural spheres, and so believes in the supremacy of *Shari'ah*.<sup>18</sup> Generally, Salafism refers to the Islamist trend that aims to purify Islamic belief and practices through the return to Islamic origins as embodied by the Prophet and his companions. This definition can be applied to many Islamists, including Muslim reformers in the nineteenth century, as well as the Muslim Brotherhood. Since the 1970s, the Muslim Brotherhood has been exposed to increasing Salafist influence. Many leaders of the Muslim Brotherhood are also part of Salafist associations in Egypt.<sup>19</sup> However, today, the term Salafism is usually used to refer to Islamists influenced by Saudi Arabian Wahabism, who are characterised by their emphasis on strict and literal interpretations of the *Qur'an* and *Sunna*.<sup>20</sup>

The MB states that it aims to establish a 'civil state with an Islamic reference'.<sup>21</sup> Under this model, the MB says, unlike in theocracies in Medieval Europe, no special privileges are given to clergy in the name of God. The source of power is the people, and democratic institutions are entrusted with the protection of the teachings of Islam.<sup>22</sup> The constitution is based on the principles of *Shari'ah*. The function of *shura* (consultation) is performed through an elected parliament whose decisions are binding on the ruler. The parliament legislates in accordance with the principles of *Shari'ah*, and the Supreme Constitutional Court oversees the compatibility of laws with these principles.<sup>23</sup>

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16. *Parnāmij Ḥarakat al-Nahdah* (2011), available at <http://www.365p.info/livre/index.html>, p.3.

17. *Hizb al-Hurriyyah wa al-'Adallah, Parnāmij al-Hizb* (2011), p.28. See also Al-Nahdah Movement, *al-Rū'iyyah al-Fikriyyah wa al-Manhaj al-ūsūlī* (2011), available at <http://www.ennahdha.tn/تقرير-النهضة>.

18. See *Parnāmij Hizb al-Nour* (2011), available at: [http://www.alnourparty.org/page/program\\_headers](http://www.alnourparty.org/page/program_headers).

19. See H. Tammām, *Tassaluf al-Ikhwān* (Alexandria: Bibliotheca Alexandrina, 2010); J. Brown, 'Salafists and Sufis in Egypt'. *Carnegie Endowment for International Peace* (2011), available at: [http://carnegieendowment.org/files/salafis\\_sufis.pdf](http://carnegieendowment.org/files/salafis_sufis.pdf), p.5.

20. G. Denoëux, (2011) 'The Forgotten Swamp: Navigating Political Islam', in Volpi, F., (ed.) *Political Islam: a Critical Reader*. New York: Routledge. pp. 59-60.

21. 'I Al-'Iryān, *al-Ikhwān al-Muslimin wa Al-dawlah al-Madanyah* (Cairo: Markaz al-'ilām al-arabi, 2011).

22. *Ibid.*, pp. 30-31.

23. *Ibid.*, pp. 44-45.

Al-Nour party generally agrees with the FJP on the structure and nature of the ‘Islamic version’ of democracy ruled by *Shari‘ah*. But it rejects the term ‘civil state’, fearing that this idea could undermine the application of Islamic law.<sup>24</sup> Like the FJP, al-Nour rejects both the theocratic and the secular state. It affirms its belief in an Islamic, modern, constitutional state where representative democracy is practiced in accordance with *Shari‘ah*. This state, according to al-Nour, would be based on the separation of powers, the independence of the judiciary, and the respect of rights and public liberties.<sup>25</sup>

The concept of a civil state with an Islamic reference contains dangers for the future of human rights and constitutionalism. Fundamental human rights such as freedom of religion could be exposed to serious violations in the name of *Shari‘ah*, unless strong constitutional and legal safeguards are provided in the constitution to protect citizens from potential arbitrary interpretations of Islamic law. But including a constitutional clause on Islamic law determines the scope of other articles. Further, giving a privileged status in the constitutional and legal process to one specific religion undermines the state’s neutrality towards the religious beliefs of its people. It serves to alienate those who profess other religions, since laws would be made according to the religious rationale of the dominant religion. And under the constitution, the law-making process would necessarily lack legal certainty and transparency. The interpretation of *Shari‘ah* would be left up to the parliament and judiciary, which would probably lead to religious competition between different actors about whose interpretation is ‘more Islamic’.

Islamists assert that in their model of an Islamic state, no one would monopolise the interpretation of *Shari‘ah* and that *ijtihad* is open to all Muslims. But, as stated, they say that there are fixed rulings in *Shari‘ah* that cannot be open to change. This view is widely held in Egypt, even by well-respected institutions such as the Supreme Constitutional Court and al-Azhar. While there is no definite list of these fixed rulings, a Muslim jurist who practices *ijtihad* in any of these areas can be declared apostate, as he or she would be considered by other Islamists to be denying an Islamic fact. So, under the model of the Islamic state advocated by these Islamist groups, one specific understanding of Islam would be institutionalised and adopted by the state as authentic. In consequence, any religious belief that differs from the mainstream of *ijtihad* and *Shari‘ah* would be denounced as heresy.

Al-Nahda has avoided explicit reference to *Shari‘ah* as the state law in its platform. It maintains only that Islam is the official religion of the state. It considers Islam to be its supreme reference and says that its programme is in its entirety committed to Islamic values. Contrary to their Islamist peers, Al-Nahda and its leaders have been openly using the term ‘secularism’, with some refinement. Al-Nahda’s leader, Rachid al-Ghannouchi, has argued that Islam is reconcilable with ‘procedural secularism’, under which constitutional safeguards on religious freedom and freedom of expression can be set to ensure the state’s neutrality towards religions. Since the state refrains from intervening in the religious way of life of its citizens, the coercive apparatus of

24. Hizb al-Nour: *Narfuḍal-Dawlah al-Madaniyyah*, available at <http://www.youm7.com/News.asp?NewsID=567760>.

25. Parnāmij Hizb al-Nour (2011), available at: [http://www.alnourparty.org/page/program\\_headers](http://www.alnourparty.org/page/program_headers).

the state would not be used to impose religious habits or practices.<sup>26</sup> In the sphere of politics, according to al-Ghannouchi, 'the state is Islamic insofar that it assures its actions are in accordance with Islam's values without being subjected to the tutelage of any religious institution.' The parliament conducts peaceful management of diverse interpretations of Islam.<sup>27</sup>

But al-Ghannouchi theory aims to maintain two irreconcilable ideas: the religious neutrality of the state and Islam as the supreme source of law. In the words of An-Na'im, 'the rationale and purpose of public policy or legislation is based on the sort of reasoning that the generality of citizens can accept or reject, which cannot happen when such matters are demanded as categorical religious mandate'.<sup>28</sup>

Al-Nahda has different political priorities during the transitional period than do its counterparts in Egypt. The official party platform does not call for the application of *Shari'ah*. And al-Ghannouchi has stated that his party is not concerned at this stage with implementing *Shari'ah* or including it in the constitution. Despite pressure from Tunisian Salafists and hardliners among Al-Nahda's ranks, Al-Nahda agreed to liberal demands that *Shari'ah* not be mentioned in the new constitution. Instead, it contented itself with keeping Islam in the constitution as the official religion of the state.<sup>29</sup> This represented a significant move in reducing tensions between secularists and Islamists.

Al-Ghannouchi says that his movement's priority is to consolidate freedom and democratic transition in Tunisia, which he claims is in any case a central part of *Shari'ah*.<sup>30</sup> However, on different occasions, Al-Nahda leaders have stated that reference to Islam as the official religion of the state allows the party to adopt Islamic laws and nullifies any laws that are not consistent with *Shari'ah*.<sup>31</sup> And al-Nahda's longer-term aspiration to implement the rule of *Shari'ah* has not been fully abandoned. The issue has been set aside to be addressed at a later stage, when the movement is better established socially and politically.

### The concept of human rights

All three parties acknowledge the value of human rights and international human rights treaties. The protection of human rights as a basic function of the Islamic state has been repeatedly addressed in the literature of the Muslim Brotherhood and Al-Nahda over the last three decades.<sup>32</sup> Al-Nour has also shown openness towards

26. R. Al-Ghannouchi, 'Secularism and Relations between Religion and the State from the Perspective of al-Nahdah Party', a lecture organised by the Centre for the Study of Islam and Democracy, 2 March 2012. The video of the lecture is available at [http://www.ustream.tv/recorded/20827717?utm\\_source=Transcript+of+Rached+Ghannouchi%27s+lecture+on+Secularism+++March+2%2C+2012&utm\\_campaign=Tunisia+Democracy+Rached+Ghannouchi+Transition+Center+for+the+Study+of+Islam+and+Democracy+%28CSID%29&utm\\_medium=email](http://www.ustream.tv/recorded/20827717?utm_source=Transcript+of+Rached+Ghannouchi%27s+lecture+on+Secularism+++March+2%2C+2012&utm_campaign=Tunisia+Democracy+Rached+Ghannouchi+Transition+Center+for+the+Study+of+Islam+and+Democracy+%28CSID%29&utm_medium=email). The full transcript is available in English at <http://blog.sami-aldeeb.com/2012/03/09/full-transcript-of-rached-ghannouchis-lecture-on-secularism-march-2-2012/>.

27. Ibid.

28. A. An-Na'im, 'The Compatibility Dialectic: Mediating the Legitimate Coexistence of Islamic Law and State Law', *The Modern Law Review*, 73 (1) (2010), p. 3.

29. K. Fahim, 'Tunisia Says Constitution Will Not Cite Islamic Law', *New York Times*, 28 March 2012, available at <http://www.nytimes.com/2012/03/27/world/africa/tunisia-says-constitution-will-not-cite-islamic-law.html>.

30. Al-Assad Ben Ahmad, 'We Fought for Freedom, Not Sharia Law', *Al-Ahram Weekly*, 5 April 2012, available at <http://weekly.ahram.org.eg/2012/1092/re4.htm>.

31. See interview with al-Ghannouchi, 'Mijalat Al-Mujtama', 7 April 2012, available at <http://magmj.com/index.jsp?inc=5&id=9419&pid=2456&version=137>.

32. M. Al-Ghazzali, *Huqūq al-Insan Bayn Ta'ālym al-Islam wa 'Ilān al-ūmm al-Mutahidah*. 4th edn. (Cairo: Nahdat Misr, 2005); Al-Ikhwan al-Muslimun, 'Bayān Li al-Nāss', in 'A Al-Shamākh, *Dalīlak Ila Jama'ah al-Ikhwan al-Muslimun* (Cairo: Iqra', 2011) pp. 315-320; M.M. El-Hodaiby, *The Principles of Politics in Islam* (Cairo: Islamic INC, 1997); R. Al-Ghannouchi, *Al-Hurriyyat al-'Ammah Fi al-Dawlah al-Islamiyyah part 1 and 2* (2011).

international human rights norms.<sup>33</sup> The rights proposed and advocated by Islamists intersect with international human rights norms, with some important conceptual differences. These differences give rise to tensions, especially in the areas of gender equality, the rights of non-Muslims, freedom of expression, political pluralism, religious freedom, and the prohibition of inhumane and cruel punishment.

Islamists' theocentric foundation of human rights is in conflict with the secular foundations of universal human rights. It is understood from Article 1 of the Universal Declaration of Human Rights (UDHR) that each individual in the world can claim human rights by appealing to human reason and conscience. Religion can form a conceptual basis for human rights. But the existence of various interpretations of certain religious doctrines appears to many Islamists to be irreconcilable with the universal claim made by international human rights norms.

FJP says that it is committed to international human rights, provided they are not inconsistent with *Shari'ah*.<sup>34</sup> The electoral platform of President Morsi mentioned the protection of human rights as stipulated in *Shari'ah* and fundamental religious values.<sup>35</sup> Al-Nour says that public liberties and fundamental rights should be protected in accordance with Islamic *Shari'ah* and the foundational values of the nation (*thawabit al-ummah*).<sup>36</sup>

In many Arab countries, vague references to *Shari'ah* and the respect of religious values have often been misused by secular governments and Islamists to erode the guarantees that international human rights law provides. Of the three parties assessed, only Al-Nahda does not subject human rights to the limitations of *Shari'ah*. It states in its platform that 'international human rights treaties are generally consistent with the objectives and values of Islam'.<sup>37</sup> However, on other occasions, al-Ghannouchi and other party representatives have expressed their support for the reservations on the CEDAW<sup>38</sup> previously expressed by the Tunisian state.<sup>39</sup>

### ***Shari'ah* and political pluralism**

Before the 2011 uprisings, Islamist movements such the MB and Al-Nahda focused largely on political rights. Working in a repressive environment for decades, Islamists could only survive and engage in the political system by demanding their political rights. The revolutions that toppled the autocratic regimes in Tunisia and Egypt changed this situation, with important implications for Islamists' discourse on pluralism.

33. In an Amnesty International survey on the positions of Egyptian political parties on international human rights, 'al Nour Party agreed to all pledges with the exception of the abolition of the death penalty and protection of women's rights'. See Amnesty International, 'Egypt: Survey of Political Parties' Views Reveals 'Disturbing' Opposition to Women's Rights', 2011, available at [http://www.amnesty.org.uk/news\\_details.asp?NewsID=19911](http://www.amnesty.org.uk/news_details.asp?NewsID=19911), accessed 23 August 2012.

34. Hizb al-Hurriyyah Wa al-'Adallah, *Parnāmij al-Hizb* (2011), p. 29.

35. Hizb al-Hurriyyah Wa al-'Adallah, *al-Parnāmij al-Ri'āsī li Mohammad Morsi* (2012), p.8.

36. See *Parnāmij Hizb al-Nour* (2011), available at [http://www.alnourparty.org/page/program\\_headers](http://www.alnourparty.org/page/program_headers).

37. *Parnāmij Harakat al-Nahdah* (2011), available at <http://www.365p.info/livre/index.html>, p.7.

38. The Convention on the Elimination of all Forms of Discrimination against Women.

39. See interview with al-Ghannouchi, *Mijalat Al-Mujtama'*, 7 April 2012, available at <http://magmj.com/index.jsp?inc=5&id=9419&pid=2456&version=137>.

Today, Islamists argue that political pluralism in modern democracies is similar to the pluralism in schools of Islamic law. The MB and al-Nour party state that political pluralism in the Islamic state exists within the supremacy of *Shari'ah*.<sup>40</sup> This means that any party or association that differs from their version of Islamic orthodoxy could be subjected to restrictions or dissolution, since *Shari'ah* constitutes the public order of the Islamic state and neither Muslims nor non-Muslims can challenge it. Al-Nahda and its chief thinker, al-Ghannouchi, have asserted that secular and atheist parties and associations can exist in an Islamic state.<sup>41</sup> But in practice, this assertion seems dubious, since Al-Nahda aims to criminalise certain forms of expression in the name of the protection of religious sanctities. This argument could easily be turned into a tool to silence secular and liberal Muslim voices.

### Gender equality

The most controversial area in the debate on Islamism and human rights is the rights of women. In general, neither the Muslim Brotherhood, al-Nour nor al-Nahda believe in the concept of gender equality as stipulated in international human rights treaties. Members and leaders of the MB have usually been critical of the concept of gender equality as stipulated in the CEDAW, arguing that international women's rights corrupt Islamic social values and morals.<sup>42</sup> Instead, Islamists advocate the concept of complementary roles for men and women.<sup>43</sup> This means in reality that not all the rights enjoyed by men are provided to women. This understanding influences the discriminatory positions held by many Islamists on marriage, divorce and the political rights of women.

The three parties agree on some legal aspects of the relationship between men and women in Islamic law. These include the responsibility of men to provide for their wives financially, according to the doctrine of *Qawammah*, in exchange for advantages for men in the family institution. They also agree that women should inherit half of the share of inheritance allocated to their male siblings. And they think that the marriage of Muslim women to non-Muslim men should be prohibited. These legal opinions are common among scholars of Islamic law, since they are directly derived from clear stipulations in the *Qur'an* and *Sunna*. Therefore, even reformist Islamists such as al-Ghannouchi have not departed from these views.

There are remarkable differences between the three parties in the understanding of many other aspects of women's rights. Al-Nahda, for example, is much more progressive than Egyptian Islamists on many controversial areas of women's rights. On polygamy, al-Nahda does not oppose restricting the practice of polygamy but it takes the view that the abolition of polygamy should not be the norm.<sup>44</sup> Most Egyptian Islamists, by contrast, maintain that polygamy is permissible in Islam and

40. 'I. Al-'Iryān, *al-Ikhwan al-Muslimun wa Al-dawlah al-Madanyah* (Cairo: Markaz al-'ilām al-arabi, 2011); *Parnāmij Hizb al-Nour* (2011), available at: [http://www.alnourparty.org/page/program\\_headers](http://www.alnourparty.org/page/program_headers).

41. R. Al-Ghannouchi, *Al-Hurriyyat al-'Ammah Fī al-Dawlah al-Islamiyyah part 2* (2011), pp. 147-150.

42. See interview with Makarim al-Dirī, 11 August 2012, available at <http://ikhwanonline.com/ramadan/Pageview.aspx?ID=2333&SectionID=9>.

43. Al-Ikhwan al-Muslimun 'Wathīqat al-Mar'ah wa al-Shūrah', in 'A Al-Shamākh, *Dalīlak Ila Jama'ah al-Ikhwan al-Muslimun* (Cairo: Iqra', 2011), p. 307. The same meaning is also clear in the programme of FJP, Hizb al-Hurriyyah wa al-'Adallah, *Parnāmij al-Hizb* (2011), pp. 112-113 and p. 31; *Parnāmij Hizb al-Nour* (2011), available at [http://www.alnourparty.org/page/program\\_social](http://www.alnourparty.org/page/program_social); and R. Al-Ghannouchi, *Al-Hurriyyat al-'Ammah Fī al-Dawlah al-Islamiyyah part 1* (2011), p. 90.

44. R. Al-Ghannouchi, *Al-Mar'ah bayn al-Qur'an wa Waq' al-Muslimīn*, 3rd edn. (London: Maghreb Center for Research and Translation, 2000), p.98 and p. 104.

cannot be subjected to legal restrictions, as long as men are committed to a just and fair treatment of their wives.<sup>45</sup>

On the political rights of women, the Muslim Brotherhood has maintained that *Shari'ah* allows women to run in parliamentary elections and to occupy any public post aside from the presidency of the state.<sup>46</sup> Before 2011, Egyptian Salafists were of the view that women should not be allowed to run for parliament.<sup>47</sup> Leading scholars of Salafism reviewed this position after the revolution and the establishment of Al-Nour. However, it is clear from a legal opinion by leading Salafist Yasser al-Borhami that Salafists have adopted this position to conform to the Egyptian electoral law that required all parties to nominate at least one female candidate in their electoral lists. Al-Borhami says that the nomination of women to the parliamentary elections is in principle not permitted. But, he goes on, this position can be changed to prevent the moral damage and corruption that could be caused by nominating secular people who refuse the rule of *Shari'ah*.<sup>48</sup> During the parliamentary elections of 2011, al-Nour Party did not publish the photos of their female candidates in the electoral lists, instead replacing them with flowers or photos of the candidates' husbands. Al-Nahda's al-Ghannouchi, by contrast, stated in his book on public liberties in the Islamic state that Islam does not prohibit women from being nominated for all public posts including the judiciary and the presidency.<sup>49</sup>

## Religious freedom

The political platforms of all three Islamist parties state that freedom of religion is a key right in Islam. However, Islamists conceive of religious freedom differently than international human rights law. The mainstream opinion in the Muslim Brotherhood and al-Nour in Egypt is that conversion from Islam is prohibited and can be subject to the death penalty.<sup>50</sup> Converts from Islam can be deprived of their rights in marriage, inheritance and custody of children. Some Egyptian jurists such as al-Qaradawi and al-'Awa have argued that the punishment of apostasy is a discretionary punishment and that it is not part of the fixed punishments in Islam. But many Islamists think that apostasy is a serious crime that should be punished in the Islamic state. The MB and the Salafists contend that Islam is the system of belief in the Islamic state and that apostasy represents a rebellion against this system.<sup>51</sup> During an electoral debate, presidential candidate Mohamed Morsi was asked about his position on apostasy. He stated that people can change their religion in private but that they are not allowed to display their conversion from Islam in public.<sup>52</sup>

45. The Muslim Brotherhood and other Egyptian Islamists have traditionally opposed the restriction of polygamy in the amendments to the family law in 1979. See S. Al-Bahnasāwī, *Qawānīn al-'Ussrah Bayn 'Ajz al-Nissa' wa -Ḍa'f al-'Ulamā'* (Kuwait: Dār al-Qalam, 1984) pp. 144-146; S. Al-Bahnasāwī, *Hurriyyat al-Ra'i: al-Waqi' wa al-Ḍawabit* (Al-Manṣūrah: Dār al-Wafa', 2003) p. 115.

46. Al-Ikhwan al-Muslimun, 'Wathīqat al-Mar'ah wa al-Shūrah', in 'A Al-Shamākh, *Dalīlak Ila Jama'ah al-Ikhwan al-Muslimun* (Cairo: Iqra', 2011), p. 310.

47. Y. Al-Borhami, 'Fatwa Tarashuḥ al-Mara'h li Majlis al-Sha'b', 2010, available at <http://www.salafvoice.com/article.php?a=4821>.

48. Y. Al-Borhami, 'Ḥukm Musharakat al-Mar'ah fi al-Majalis al-Niyabiyah', 2011, available at <http://www.salafvoice.com/article.php?a=5710>.

49. R. Al-Ghannouchi, *Al-Mar'ah bayn al-Qur'an wa Waq' al-Muslimīn*. 3rd edn. (London: Maghreb Center for Research and Translation, 2000), pp. 115-128.

50. See the legal opinion (fatwa) published on the official web site of the Department of *Da'wa* at the Muslim Brotherhood on 27 March 2012, available at: <http://www.manaratweb.com/e-print.php?id=1608>. Similar fatwas have previously been published and are available on the web site. See also the opinion of the leading Salafist scholar Yasser al-Borhamī on apostasy in Islam, 12 May 2012, available at [http://www.youtube.com/watch?v=IL3AhugZ\\_5E](http://www.youtube.com/watch?v=IL3AhugZ_5E).

51. *Ibid.*

52. See the electoral debate 'Maw'id M'a al-Ra'īs', al-Nahar TV 18 May 2012, available at <http://www.youtube.com/watch?v=7ReJfZuKONK>.



Al-Nahda's al-Ghannouchi, by contrast, says that religious freedom is absolutely protected in Islam, including apostasy.<sup>53</sup> But he too fails to address the consequences of apostasy on the civil status of apostates. Without ending the civil punishment of apostates, allowing conversion is a hollow concession.

### The rights of non-Muslim citizens

The majority of Egyptians are Sunni Muslims. Christians are the largest religious minority. Other religious communities include Baha'is, Jews, Shi'a, Ahmadiyahs, Quranists and Jehovah's Witnesses. Religious minorities have lately become deeply concerned about their future rights under Islamist rule.<sup>54</sup> Over the last two decades, the Muslim Brotherhood has on numerous occasions stressed its respect for the principle of citizenship and equality between all Egyptians. But the rights of religious minorities in Muslim Brotherhood thinking remain problematic.

The MB's Reform Initiative of 2004 stated that 'religious freedom is guaranteed for the recognized monotheistic religions' (that is, Christians and Jews, also often referred to as the 'people of the book').<sup>55</sup> A similar restriction can be found in the FJP's platform, which talks about the state's duty to protect only the monotheistic religions.<sup>56</sup> MB leaders have stated that non-Muslim citizens who are not people of the book have the right to live in Egypt, but are not allowed to publicly express their religious beliefs or to build their own places of worship.<sup>57</sup> The platform of al-Nour names Christianity as the only non-Muslim minority in Egypt whose religious freedom is protected.<sup>58</sup> In contrast, al-Nahda's al-Ghannouchi has supported the opinion of many Muslim jurists that other religions than the people of the book should be protected in the Islamic state.<sup>59</sup>

The FJP and Al-Nour party state in their platforms that non-Muslims should apply their own religious regulations in their family and religious affairs. But they agree that in all other areas, state laws, that is, Islamic law, should be applied equally to Muslims and non-Muslims. Similarly, al-Nahda's chief ideologue al-Ghannouchi also says that all Islamic regulations related to public order should be applicable to Muslims and non-Muslims alike.<sup>60</sup> Non-Muslims in Egypt have expressed their refusal to be governed by Islamic law, particularly with reference to Islamic corporal penalties (*hudud*).

On political rights for non-Muslims, the official documents published by the FJP and the MB after the revolution avoid discussing the right of non-Muslims to be nominated for the presidency. By contrast, in the draft political platform of 2007, the MB unequivocally

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53. R. Al-Ghannouchi *Al-Hurriyyat al-'Ammah Fī al-Dawlah al-Islamiyyah part 1* (2011), pp. 72-77.

54. See O. Halawa, 'Egyptian Religious Minorities Fear Rise of Islamists', *Egyptian Independent*, 3 June 2011, available at <http://www.egyptindependent.com/node/462243>, accessed 20 March 2012.

55. Al-Ikhwan al-Muslimun, 'Mubadarat al-Ikhwan Lil-Islāh', in 'A. Al-Shamākh, *Dalīlak 'Ila Jama'ah al-Ikhwan al-Muslimun*. (Cairo: Iqra', 2004) p. 324.

56. Hizb al-Hurriyyah wa al-'Adallah, *Parnāmij al-Hizb* (2011), p. 154.

57. See R. Scott, *The Challenge of Political Islam: Non-Muslims and the Egyptian State* (California: Stanford University Press, 2010); M. Tadros, *The Muslim Brotherhood in Contemporary Egypt* (London: Routledge, 2012).

58. See Parnāmij Hizb al-Nour (2011), available at [http://www.alnourparty.org/page/program\\_headers](http://www.alnourparty.org/page/program_headers).

59. R. Al-Ghannouchi, *Huquq al-Muwaṭṭanah*. 3rd edn. (Virginia: Al-Ma'had al-'Alāmī li al-Fikr al-Islami, 1993) pp. 56-57.

60. *Ibid.*, p. 105

excluded non-Muslims from running for the positions of president and prime minister. These positions of ‘grand leadership’ (*willayah ‘uzmah*), they said, must be occupied by male Muslims.<sup>61</sup> Following the revolution, MB leaders stated that the group would not nominate non-Muslim or female candidates to the presidency, but that they did not object if other parties did.<sup>62</sup> In the ideological literature of the Muslim Brotherhood, it is explicitly stipulated that non-Muslims and women are excluded from positions of ‘grand leadership’.<sup>63</sup> In Tunisia, al-Ghannouchi states that the Muslim faith is a requirement for the presidency. But he says that in some exceptional cases, such as the preservation of national unity in multi-religious societies, this requirement may be lifted.<sup>64</sup> The leaders of al-Nour have made it clear that non-Muslims will not be allowed to occupy positions of grand leadership in the Islamic state. For them, this also includes the position of vice president.<sup>65</sup>

### Freedom of Expression

The definition of the scope of freedom of expression and its relation to religion and morality is problematic in Islamist agendas. The programmes of the FJP and al-Nour are full of vague and broad formulations that allow limitations on freedom of expression. For example, the FJP says it is committed to ‘freedom of expression provided that it respects the fundamental values of the society’.<sup>66</sup> The FJP also establishes a direct connection between freedom of artistic creativity and respect for the morals, values and traditions of society.<sup>67</sup> The party platform includes a special section on media reform, where it says that the ‘press is free and it is not subject to any form of censorship except the censorship of the professional conscience, the values of the society and the law’. It adds that ‘the freedom to publish newspapers, magazines or any other printed or electronic outlets is guaranteed without any legal or administrative obstacles, as long as the outlet respects the constitution and the law as well as the public morals’.<sup>68</sup> Similarly, the party programme ensures the right to establish private TV channels and radio stations, provided that they respect the values of the society and public morals, and emphasises that media must respect the monotheistic religions.<sup>69</sup> These references to the values of society and respect for religions leave the door wide open for arbitrary interference in the media on religious grounds. Moreover, the FJP fails to define what kinds of restrictions can be imposed by the law, and on what grounds. The programme does not include a commitment to amend the penal code to abolish the prison sentences for journalists that have been a serious concern in Egypt for decades. In Egypt, state-owned media were frequently used by the Mubarak regime for repressive purposes. The FJP’s platform therefore vows to restructure the ownership of the state-owned printed and broadcast media to ensure their independence.

Freedom of expression on the Internet might also be subject to restrictions. The FJP aims to establish a specialised council for new media, tasked with drawing up guidelines

61. Al-Ikhwan al-Muslimun, ‘Parnāmiy Hizb al-Ikhwan’, *Al-Mawsū‘ah al-Tarikhīyyah al-Rasmiyyah li al-Ikhwan*, 2007, available at <http://bit.ly/e2jXBE>, accessed 15 May 2012.

62. M. Tadros, *The Muslim Brotherhood in Contemporary Egypt* (London: Routledge, 2012).

63. M. Ghuzlān, *al-Islam Huwa al-Ḥal* (Cairo: Dār al-Tawzī‘ wa al-Nashr al-Islamiyyah, 2006).

64. R. Al-Ghannouchi, *Al-Hurriyyat al-‘Ammah Fī al-Dawlah al-Islamiyyah part 1* (2011), pp. 235-241.

65. See statements of Yasser al-Borhamī, 4 July 2012, available at <http://www.youm7.com/News.asp?NewsID=7227508>.

66. Hizb al-Hurriyyah wa al-‘Adallah, *Parnāmiy al-Hizb* (2011), p. 31.

67. *Ibid.*, p. 140.

68. *Ibid.*, pp. 153-158.

69. *Ibid.*, p. 154.

for electronic media so that their work is guided by ‘the spirit of Islam and the values and morals of the Egyptian civilisational project’.<sup>70</sup> While the exact tasks of this council are not clearly defined, the proposal raises concerns that restrictions might be imposed on the use of the Internet. The FJP also pledged to adopt a new law on offences on the Internet related to intellectual property rights, piracy and the protection of public morals. This kind of law is common in many other states. But the vague reference to the protection of public morals could be used to restrict and block certain websites.

Al-Nour has stated that freedom of expression and media freedoms should be consistent with *Shari'ah*, the fundamental values of society and the maintenance of public order. The party points out that the government and its institutions, including the ministry of information, should promote Islamic identity and culture. This position does not reflect religious and cultural pluralism in Egyptian society. And it raises concerns that a Salafist-led government could systematically use the state media as a tool to boost Islamic religious education and promote Islamic values. In addition, the Salafist party's programme does not mention freedom for artistic creativity.<sup>71</sup>

Al-Nahda states in its programme that freedom of expression is guaranteed, without naming any explicit restrictions. It also asserts that ‘freedom of artistic creativity is protected and the state should make the laws to guarantee its practice’. On media, the programme generally refers to ‘the development of media in order to enrich the cultural scene’. But it fails to explain exactly how public and private media are to be reformed.<sup>72</sup>

In summary, the theoretical positions of all three groups on key human rights issues are extremely worrying. While al-Nahda adopts more progressive positions in many instances, it remains ambiguous in others. And the visions of both the Muslim Brotherhood and al-Nour are flagrantly restrictive on several fundamental international human rights.

## Islamists' human rights record in power

»» Twenty months into the beginning of a new political era in Tunisia and Egypt, the experiences of al-Nahda, the MB/FJP and al-Nour in political office in parliament and/or government warrant a look at their practical record in terms of human rights. This can help to shed light on the degree to which the positions outlined above have been implemented in political practice.

70. Ibid., p. 157.

71. Parnāmij Hizb al-Nour (2011), available at: [http://www.alnourparty.org/page/program\\_headers](http://www.alnourparty.org/page/program_headers).

72. Parnāmij Hāarakat al-Nahdah (2011), available at: <http://www.365p.info/livre/index.html>.

After achieving power, Egyptian Islamists have been far more taken up with securing an important place in the emerging regime than with working with other political forces to consolidate the transition to democracy. Even more worryingly, many of their actions have raised doubts about their genuine commitment to democracy and the rule of law. Although al-Nahda showed a liberal and consensus-driven mindset throughout the transition in Tunisia, its recent political behaviour and its stance on certain human rights are cause for concern.

With the majority of seats in the parliament, Egyptian Islamists have dominated the Constituent Assembly.<sup>73</sup> They have refused to develop a set of supra-constitutional principles on human rights, citizenship and democratic governance. FJP and al-Nour firmly maintain that the elected parliament should have exclusive powers to appoint and write the constitution. They have refused to give international human rights a privileged status in the constitution, arguing these rights reflect ‘Western values’.<sup>74</sup>

President Morsi has succeeded in asserting his power over the military.<sup>75</sup> But no reforms have yet been undertaken to avoid the politicisation of the army. The Muslim Brotherhood has dominated state-owned media and used Mubarak’s press law to silence journalists. Moreover, President Morsi has confronted the Supreme Constitutional Court (SCC) and circumvented its judgment on the dissolution of the parliament. Egyptian Islamists are not comfortable with the secular attitudes of the SCC. One of the stated objectives of President Morsi and the Muslim Brotherhood has been, in the name of reforming the judiciary, to stifle the powers of the SCC.<sup>76</sup> The SCC does need reforms to ensure its full independence. But these reforms must not serve as a pretext to weaken the court.

President Morsi has also broken his electoral promise to restructure the membership of the constituent assembly to reflect Egypt’s social diversity. And he failed to deliver on his promise of an inclusive cabinet. Islamists’ imprint on public institutions was obvious in the formation of the National Council for Human Rights. Some members on the council are known for their hostility to human rights.<sup>77</sup> And one of them was previously involved in a flagrant incitement to hatred and violence against Muslim Shiites.<sup>78</sup>

The reference to Islamic *Shari’ah* in the constitution has been a non-negotiable issue for the Muslim Brotherhood and al-Nour. Salafist members of the constituent assembly have attempted to strengthen the reference to Islamic law in the new constitution. They have proposed replacing the ‘principles’ of *Shari’ah* with the ‘rulings’ of *Shari’ah*, or referring to Islamic *Shari’ah* without any further clarification. Other members of the constituent assembly, including the Muslim Brotherhood, have opposed this proposal and insisted on keeping the language used in the Egyptian constitution of 1971.

73. See M. Ottoway, ‘The Death of the Constituent Assembly’, Carnegie Endowment for International Peace, 2012, available at <http://carnegieendowment.org/2012/06/13/egypt-death-of-constituent-assembly/brzn>.

74. See ‘A Statement by the Freedom and Justice Party’, 6 September 2011, available at: [http://www.hurryh.com/ar\\_print.aspx?print\\_ID=2308](http://www.hurryh.com/ar_print.aspx?print_ID=2308).

75. See M. El Feghery, ‘Crunch Time for Egypt’s Civil-Military Relations’, FRIDE Policy Brief, 14 August 2012, available at <http://www.fride.org/publication/1054/crunch-time-for-egypt-s-civil-military-relations>.

76. See the statement of the leftist al-Tagammuh Party on 8 August 2012, available at <http://www.elwatannews.com/news/details/35934>.

77. See ‘Political Groups, Figures Concerned over Politicised Human Rights Council’, *Ahram Online*, available at <http://english.ahram.org.eg/NewsContent/1/64/52100/Egypt/Politics-/Political-groups,-figures-concerned-over-politicis.aspx>, accessed 6 May 2012.

78. See the statement of Şafwat Hegazi, a leading Islamist who is a close ally of the Muslim Brotherhood, available at [http://www.youtube.com/watch?v=j\\_3m10LZ4mU](http://www.youtube.com/watch?v=j_3m10LZ4mU), accessed 6 May 2012.

Salafists have proposed that al-Azhar become the authority that interprets the principles of Islamic *Shari'ah*. The Muslim Brotherhood and many other members of the constituent assembly have supported this proposal. The idea of giving authority to Muslim scholars for the interpretation of Islamic law was mentioned in the draft political platform of the Muslim Brotherhood in 2007. But it was omitted in the 2011 programme of the Freedom and Justice Party. The Muslim Brotherhood has stated several times in the past that the Supreme Constitutional Court is the competent body to interpret Islamic law. So, their change of heart on this issue was a concession to the demands of the Salafists. This proposal has provoked outrage from a wide range of liberals and human rights activists. They consider this move a bold step towards theocracy, where unaccountable religious scholars intervene in the work of the elected bodies.<sup>79</sup>

Tunisia's al-Nahda has tended in the early months of the transition to try to reach a political compromise with secular parties, even when the concessions involved came at the expense of important elements of the party's ideological underpinnings. It confirmed its willingness to share power with other Tunisian political forces and to devise an inclusive and participatory constitution. It also declared its respect for the rights of women as enshrined in family law. One major step was al-Nahda's agreement with other political forces to leave the first section of the constitution referring to Islam as the official religion of the state without citing *Shari'ah* as the main source of legislation. This move did not entail an abandonment of its Islamist agenda. Rather, it reflects a new organisational and political reality that is different from the situation of Islamists in Egypt.

Al-Nahda has chosen to defer controversial political issues likely to divide Tunisian political society so as to successfully steer the country through the fragile political transition. Unlike their counterparts in Egypt, Tunisian Islamists have been confronted with a strong secular opposition and feminist movement. These actors pressure the Islamist movement and its political leadership to emphasise their reformist understanding of Islamic law. Al-Nahda has not rejected the doctrine of supremacy of *Shari'ah* and the traditional methods of Islamic law. But it has exhausted the ability of these methods to develop many of its comparatively progressive views on human rights. There are still tensions between its Islamist agenda and international human rights norms. But compared with the thought and practice of Islamists in Egypt, al-Nahda has so far introduced a relatively soft version of Islamism. Political leaders of al-Nahda have engaged in dialogue with secular Tunisian political forces and reached an agreement with them on many sensitive issues.<sup>80</sup> Nevertheless, this consensus has been recently threatened amid accusations by its political partners that al-Nahda is attempting to dominate the public service, as well as restricting media freedom and gender equality.<sup>81</sup> Moreover, the Party has been criticised for being too lenient with hardline Salafists who have committed violence against intellectuals and artistic activities.<sup>82</sup>



79. See the statement by the Egyptian Initiative for Personal Rights on 16 July 2012, available at <http://www.eipr.org/pressrelease/2012/07/16/1453>.

80. See L. Hajji, 'The 18 October Coalition for Rights and Freedoms in Tunisia', Arab Reform Initiative, February 2007, available at <http://www.arab-reform.net/18-october-coalition-rights-and-freedoms-tunisia>.

81. 'Tunisia President Launches Attack against Ruling Islamists', AFP, available at <http://www.google.com/hostednews/afp/article/AleqM5jc0Qzez62kG3rLP2EptGS3vbTT-Q?docId=CNG.6ecabf95f500747be87b5725a70d2e9.7b1>.

82. N. Dalaa, 'Is the Ennahda Government Soft on Salafists?', *Al-Monitor*, 24 May 2012, available at <http://www.al-monitor.com/pulse/politics/2012/05/tunisian-media-and-political-ana.html>.

Egypt's President Morsi has vowed to respect the right to artistic creativity and freedom of expression. But Islamists' bleak record in practice in this area casts doubt on the official positions of the Muslim Brotherhood and Salafists. Since the 1990s, Islamist activists have pressured the Mubarak regime to restrict certain types of expression that are protected under international human rights. Numerous parliamentary interrogations were presented by members of the Muslim Brotherhood, including President Morsi himself, against publications released by the ministry of culture and the ministry of information that were deemed offensive to Islam. One prominent leader of the MB recently sponsored actions taken by al-Azhar and the government against academic freedom, freedom of expression and artistic creativity, stating that freedom of expression should respect the values and morals of the society.<sup>83</sup>

A group of Egyptian intellectuals, actors, artists and novelists have formed 'Egypt's Creativity Front' to protect the right to artistic creativity and freedom of expression. Those artists were alarmed by a series of cases filed against Egyptian artists by Islamist lawyers who accused them of offending Islam and its symbols. The Front has vowed to combat any attempts to impose censorship on cultural activities by Islamists.<sup>84</sup>

President Morsi has taken no legal measures to ensure that artists are protected from this kind of lawsuit. And the new draft constitution includes an article that prohibits the defamation of religion, the Prophet and his family and companions. This draft article was presented by al-Azhar and backed by Islamists, as well as other political forces.<sup>85</sup> The article could, for example, be used to prosecute Muslims deemed heretics under the dominant Sunni perspective, such as Shi'i Muslims. It will have a far-reaching negative impact on freedom of expression and religious freedom in Egypt's emerging order.

President Morsi and his government have taken tough stances against media in recent months. An increasing number of lawsuits have been filed against journalists on charges of defaming the president and the Muslim Brotherhood. At the same time, President Morsi and his government have tolerated the discriminatory discourse engaged in by Salafist media and some Islamists. Instead of working to reconstruct the ownership of the state-owned media as promised in its platform, the Muslim Brotherhood has used its political power inter alia to control the appointment of the leaders of public newspapers.<sup>86</sup>

The prosecution of journalists in Tunisia over the last few months has given rise to doubts about the commitment of al-Nahda to freedom of expression. Al-Nahda has proposed criminalising offenses against the sanctity of Islam in the future constitution. Some observers argue that the movement has given in to the demands of Salafists.<sup>87</sup> In the meantime, it has failed to deter hardline Islamists who threaten public liberties and freedom of artistic creativity.

83. See the statements of Abd al-Rahmman al-Barr to al-Hurrah Tv on 13 January 2012, Taqrîr Khaṣ, available at <http://www.youtube.com/watch?v=ZXOG6cgWNkl>.

84. A. Mohsen, 'Dark Comedy: Is Adel Imam's Sentence the Start of a Worrying Trend?', *Egypt Independent*, 25 May 2012, available at <http://www.egyptindependent.com/news/dark-comedy-adel-imam-s-prison-sentence-start-worrying-trend>.

85. See Makhawif Ala Huriyyah al-Aqiddah Fî Misr, August 2012, available at <http://almarayanews.com/new/permalink/5501.html>.

86. See the Joint Statement by Egyptian Rights Groups on 9 August 2012, 'The Muslim Brotherhood Following Mubarak's Footsteps', available at <http://www.cihrs.org/?p=3773&lang=en>.

87. See Amnesty International, 'Tunisian Journalist Faces 'Public Morals' Charge after Criticizing Government', 8 August 2012, available at <http://www.amnesty.org/en/news/tunisian-journalist-faces-public-morals-charge-after-criticizing-government-2012-08-07>; A. Guellali, 'Tunisia's Setback in Freedom of Expression'. *Human Rights Watch*, 2012, available at <http://www.hrw.org/news/2012/06/24/tunisia-s-setback-freedom-expression>.

In terms of gender equality, human rights activists in Egypt fear that previous reforms in the Personal Status Law could be reversed under the Islamists.<sup>88</sup> Female leaders of the Freedom and Justice Party have stated on many occasions that family law should be amended to be consistent with *Shari'ah*. They have also said that international treaties on the rights of women have been destructive to the values of Muslim families. Members of al-Nour have proposed draft laws in the post-revolution parliament that are inconsistent with the rights of women. One of these proposals aimed to reduce the age of marriage for girls to 12 years old. In an electoral debate, President Morsi said he thought that early marriage should be legalised. Al-Nour has also proposed decriminalisation of the practice of female genital mutilation. This is consistent with the position of the Muslim Brotherhood, which believes that this practice should be left to the discretion of families but that doctors must conduct it.<sup>89</sup> In 2008, the parliamentary bloc of the Muslim Brotherhood opposed the criminalisation of female genital mutilation and resisted raising the age of marriage to 18 years old.<sup>90</sup>

After the fall of Ben Ali, al-Nahda was keen to assure Tunisian women that their rights under family law would not be taken away. The party accepted the electoral law that allocated an equal number of seats to men and women in the electoral lists of parties. In August 2011, the Tunisian government lifted its reservations on CEDAW. But it has made an ambiguous declaration saying that the implementation of the treaty should not violate Islam as the official religion of the state.<sup>91</sup> Al-Nahda has been under attack as a result of its proposal to use the expression 'complementarity of roles between men and women' in the constitution. This proposal has triggered outrage among secularists and human rights advocates. They fear that it could be used to justify future retreat from the protection of women in Tunisian law.<sup>92</sup>

The rights of religious minorities under the Egyptian draft constitution are in peril. According to the draft constitutional provisions proposed by the Islamist-led Constituent Assembly, the practice of religious freedom will only be guaranteed for monotheistic religions. This means that other religious minorities such as Baha'is will continue to be deprived of their religious rights. The parliamentary bloc of the Muslim Brotherhood was outspoken against the recognition of the Baha'i religious minority in the parliament of 2005. It considers Baha'i a heretical belief that should not be protected in a Muslim society.

The constitutional clause on Islamic law recognises the rights of non-Muslims to apply their own religious regulations within their family and religious affairs. Many observers have seen this article as a step forward for the rights of non-Muslims, since it represents the first time that a constitution has recognised the existence of other religions in Egypt. However, this article entrenches the sectarian regulation of family in Egypt, rather than having one civil law for all citizens regardless of their religion. Many Christians suffer from the strict regulations on divorce applied by the Orthodox and Catholic Churches. Some Christians have had

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88. H. Badran, 'The Arab Spring Represents a Leap Backward for Women'. *The Daily Star*, 27 August 2012, available at <http://www.dailystar.com.lb/Opinion/Commentary/2012/Aug-27/185770-the-arab-spring-represents-a-leap-backward-for-women.ashx#axzz24mOSmBKj>.

89. Ibid.

90. See Al-Markaz al-'lāmī Lil Ikwan al-Muslimun, 'Al-Ikhwān al-Muslimun fī Parlamān 2005', *Al-Mawsū'ah al-Tarīkhīyah al-Rasmiyyah li al-Ikhwān*, 2008, available at <http://bit.ly/099T9U>, accessed 23 August 2012.

91. See Human Rights Watch, 'Tunisia: Government Lifts Restrictions on Women's Rights Treaty', 7 September 2011, available at <http://www.hrw.org/news/2011/09/06/tunisia-government-lifts-restrictions-women-s-rights-treaty>.

92. H. Mcrobie, 'Will the Tunisian Constitution Erode the gains of Women in the Arab Spring' *New Statesman*, 15 August 2012, available at <http://www.newstatesman.com/blogs/politics/2012/08/will-tunisian-constitution-erode-gains-women-arab-spring>.

to convert to Islam in order to avoid Christian regulations prohibiting divorce.<sup>93</sup> Applying sectarian religious family laws means that members of each religious community will be subject to discriminatory religious regulations that are not in line with human rights.

The rights of the Christian minority in Egypt have not improved after the revolution. The intolerant religious climate aggravated by Islamists' political dominance has deepened the fears of Christians. Egypt witnessed a series of sectarian clashes over the past year, without tackling the root causes of the injustice felt by religious minorities. By dealing with the sectarian clashes as a security issue rather than addressing the legitimate rights of Christians to equality and non-discrimination, the Muslim Brotherhood and President Morsi have repeated the mistakes of the outgoing regime. One fundamental demand of Christians in Egypt has been to remove legal restrictions on building and maintaining churches. In June 2011, the transitional government headed by Essam Sharaf presented a draft unified law on building places of worship. Many Christians opposed the law, considering it restrictive and below their expectations. The Muslim Brotherhood and al-Nour have been firm that any regulations must be proportional to the number of Christians and their exact needs. They therefore oppose having a unified law on places of worship.<sup>94</sup>

The appointment of non-Muslims and women to senior political positions is contentious for Islamists in Egypt. In his electoral campaign, President Morsi vowed to appoint a Christian and a woman as vice presidents. This proposal was opposed by Salafists, who considered that the position of vice president, similar to the president, should only be occupied by a Muslim male. President Morsi gave in to the pressure and changed his mind. He appointed a woman and a Christian as presidential assistants and named a prominent male judge as his deputy.

To sum up, Islamists' ambivalence about the foundations and content of human rights has translated into constitutional and legal practices that endanger the full enjoyment of certain universal human rights in the emerging regimes in Egypt and Tunisia. The experience of Islamists in power so far demonstrates that their conception of democracy has been reduced to competition in ballot boxes with less appreciation for the rights of minorities, individual liberties, the separation of powers and the independence of public institutions. If this trend were to continue, Islamists would lead post-revolutionary regimes to authoritarian majorities and not true democracies as envisaged by the revolutions.

## Conclusion

»» Scrutinising the human rights records of Islamists is very important at this stage in the Arab transitions. It could be argued that Islamists are not the only actors who are hostile to human rights. It is true that the belief in international

93. See 'Protesting for the Right to Divorce', *Ahram Weekly*, 28 July 2011.

94. See al-Wafd Newspaper, 16 May 2012, available at <http://www.alwafd.org/قروتال-ناملرب/471-تاشقانم-471/عشال-تاشقانم-210983/بغشال-تاشقانم-471>, and al Masry al-Youm, 21 March 2012, available at <http://www.almasryalyoum.com/node/725126>.



human rights of many non-Islamist actors is questionable. But the Arab revolutions have shown that the political culture of Muslims is not monolithic and that the popularity of international human rights is on the rise. Islamists' impact on religious discourse is immense. The political rise of Islamists in a country like Egypt since the 1970s prompted Sadat and Mubarak to adopt repressive religious policies to appease Islamists. This political and social ascendancy has influenced society as a whole. Its ideology has infiltrated cultural, media, educational and religious institutions. Islamists reinforce cultural relativism and conservatism in society.

There has been no expectation that Islamists in power will positively transform the human rights landscape in the region. Islamists have so far failed to offer a coherent and consistent theory and practice in harmonising their Islamist agenda with international human rights. The positions of al-Nahda can be considered more progressive than those of Egyptian Islamists. But there are important tensions between fundamental human rights and the positions and actions of all three Islamist parties examined.

A promising factor in both Tunisia and Egypt is the increasing constituency backing international human rights among liberals, young activists and civil society. Liberals are potential competitors of Islamists. If they strengthened their organisational and communications capacity, they could well achieve electoral success in future elections. Human rights defenders have also been outspoken about Islamists' human rights records. While adhering to their universal aspirations, human rights defenders and liberals should not leave religion to be hijacked and distorted by Islamists. Islamic reform and rooting international human rights in Islamic discourse should be a strategic objective. The international community should make sure that Islamist governments effectively respect freedoms of expression and association. These rights can secure a vibrant debate on the future of international human rights and religion, free from intimidation.

Beyond the domestic arena, Islamists' ambivalence about human rights can be expected also to have an impact in the regional and global contexts. Arab governments led by Islamists will likely attempt to trigger a debate on cultural specificities in international human rights institutions. Issues such as gender equality and defamation of religions can be expected to come to the fore both globally and regionally. Universal human rights in bilateral and multi-lateral cooperative frameworks between the EU and the Southern-Mediterranean will be contested on cultural grounds. After a long history of suspicion of Islamists, the US and Europe have recently become supportive of the inclusion of Islamists in political processes. But this policy shift should not come at the expense of the respect of international human rights norms in Arab states. It should also avoid overshadowing the long struggle of liberal Muslims and the human rights community to find common ground between Islamic traditions and international human rights. The US and Europe should enhance their support to liberal Muslims and human rights defenders who share common universal values. International human rights, and particularly gender equality, non-discrimination, and freedom of expression, must continue to be the framework of reference between the EU and its Arab partners. The EU can draw on the diverse experience of Muslim states in human rights and refer to best practices to encourage Islamist parties to develop their legal positions on international human rights treaties.

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