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The Coptic Church in Egypt: A Comment on Protecting Religious Minorities from Nonstate Discrimination*

I. INTRODUCTION

With the dawn of modern democracy in the Middle East during the last century . . . the Copts live everywhere side by side with their Muslim neighbours without discrimination, either political or racial; they enjoy their religious freedom, and their churches increase throughout Egypt. In sum, the Copts have survived as a religious entity, otherwise completely integrated within the body politic of the Egyptian nation, sharing the privileges and responsibilities of all citizens irrespective of faith or creed.¹

In 1998, exactly thirty years after this statement was authored, the International Coptic Federation took out a full-page advertisement in the *Washington Post* complaining that the Egyptian Copts were “experiencing . . . the worst hardships in their modern history.”² More specifically, the advertisement complained of government “restrictions on church activities, discrimination in political, academic and military affairs, rape and forced conversion of Coptic girls and requirements that Copts pay protection money.”³ A similar advertisement, taken out in the *New York Times* a month earlier, accused the Egyptian government of turning a blind eye to atrocities committed against the Copts by nonstate actors.⁴ In response to these allegations, a panel of New York religious leaders visited Egypt in March 1998. At the conclusion of their visit, the panel

* I dedicate this Comment to my father, S. Kent Brown—a true believer in religious pluralism, a scholar of the Middle East, and a dear friend to both Copts and Muslims.

1. AZIZ S. ATIYA, A HISTORY OF EASTERN CHRISTIANITY 16-17 (1968).

2. *Christians of Egypt (The Copts), Descendants of the Pharaohs, Have No Place In Modern Egypt!*, WASH. POST, Mar. 24, 1998, at A5.

3. *Copts Are Full Egyptians Citizens: Presidential Advisor*, AGENCE FR.-PRESSE, Mar. 29, 1998, available in 1998 WL 2250795.

4. See *The Luxor Massacre: Not the Problem, Just a Symptom . . .*, N.Y. TIMES, Feb. 13, 1998, at A18.

noted several problem areas, including the delays of building permits for new churches and for halting the deterioration of ancient churches. But the panel attributed the problem more to an entrenched bureaucracy than to prejudice.

The report also found Christians are underrepresented in the government and that institutional discrimination exists in business, the military and universities.

It concluded that although individual acts of violence exist, the government does not condone them.⁵

In short, the panel found “no evidence of organized persecution’ against Coptic Christians in Egypt.”⁶

This Comment analyzes the issues raised by the panel of religious leaders, with particular focus on the Egyptian government’s affirmative duty to protect their Coptic citizens from discrimination by nonstate actors. Part II of this Comment describes the historical background of the Coptic Orthodox Church in Egypt and discusses some of the recent events in Egypt that have led to the increase of nonstate discrimination against the Copts. Part III sets up the legal framework for analyzing the Egyptian government’s affirmative duty to protect Copts from nonstate discrimination. Central to this framework is Egypt’s role in the United Nations and its coinciding obligations to establish and protect the religious human rights of its Coptic citizens.⁷ Applying the framework set forth in Part III, Part IV analyzes current acts of nonstate discrimination against Copts in Egypt and concludes that, despite the fact that the Egyptian government does not “condone” these acts and has fought against the more violent nonstate actors, Egypt cannot create a society truly tolerant of religious pluralism and thereby permanently protect Copts from non-

5. Amy Worden, *Panel Clears Egyptians of Targeting Christians*, PORTLAND OREGONIAN, Mar. 27, 1998, at A09, available in 1998 WL 4193423.

6. Richard Engel, *Egypt Denies Persecuting Christians*, WASH. TIMES, Apr. 8, 1998, at A12. The International Coptic Federation took out a third advertisement in the *Washington Post* after the report was issued. See *The Copts (Christians of Egypt) Don’t Have a Problem, The Copts Have Problems!*, WASH. POST, Apr. 29, 1998, at A11. This advertisement “posed 18 questions, citing cases where Copts, who number about 10 million, continuously face discrimination from Egyptian laws that, for example, restrict the building of churches.” George Hishmeh, *Letter from America*, MIDEAST MIRROR, May 1, 1998, available in 1998 WL 27568413.

7. See *infra* Part III.

state discrimination without first eliminating all forms of religious discrimination from its own Constitution, courts, and legislation.

II. HISTORICAL BACKGROUND

An analysis of post-1970 nonstate religious discrimination affecting Copts in Egypt and the government's affirmative duty to protect the Copts from such discrimination requires a perfunctory understanding of the history of the Coptic Orthodox Church in Egypt. Accordingly, Part II.A discusses the formation and early history of the Coptic Church. Part II.B focuses on the first laws that Muslims established that affected Coptic Christians after the Islamic invasion of Egypt in A.D. 640. Part II.C discusses important events in the last 150 years of Egypt's history that have given rise to the current situation of nonstate religious discrimination against the Copts. These three parts provide the historical context necessary to analyze the Egyptian government's affirmative duty to protect the Copts from nonstate religious discrimination.

A. Brief History of the Origins of Coptic Christianity

The Copts⁸ trace their Christian roots to the time that the Holy Family fled Bethlehem and took refuge in Egypt.⁹ Copts claim that their church was founded between A.D. 55 and A.D. 61 by Saint Mark in Alexandria, Egypt.¹⁰ According to legend,

on entering the city [Alexandria] by the eastern gate, [Saint Mark] broke the strap of his shoe. So he went to a cobbler to mend it. When the cobbler took an awl to work on it, he accidentally pierced his hand and cried aloud: 'Heis ho Theos' (God is one). Mark rejoiced at this utterance and, after miraculously healing the

8. On the word "Copt" and their ethnic origin, it is said:

The words Copt and Egyptian are identical in meaning, and both are derivatives from Greek '*aigyptos*'. . . . The Arabs called Egypt 'dar al-Qibt', home of the Copts, and since the original natives of the land were Christians, the words Coptic and Christian became interchangeable in the Arab mind. . . .

Ethnically, the Copts are neither Semitic nor Hamitic, but rather Mediterranean. They have been described as the direct descendents of the ancient Egyptians and some attempts have been made to prove their similarity to those distant dwellers on the Nile.

ATIYA, *supra* note 1, at 16.

9. See generally O.E.A. MEINARDUS, IN THE STEPS OF THE HOLY FAMILY FROM BETHLEHEM TO UPPER EGYPT (1963).

10. See ATIYA, *supra* note 1, at 27.

man's wound, took courage and gave the lesson to the hungry ears of his first convert. This happened to be Anianus, Mark's successor as the second patriarch of Alexandria. The spark was fired, and the cobbler took the Apostle home with him. He and his family were baptized, and many others followed.¹¹

As a result of the large number of conversions, rumors arose that "a Galilean was in the city preparing to overthrow the [pagan] idols."¹² These rumors, and the ensuing hostilities toward Christians, influenced Saint Mark's decision to leave Egypt for several years.¹³ Upon his return to Egypt in A.D. 68, however, he was lynched by "pagans" and dragged through the streets of Alexandria on a rope until he died.¹⁴

After Saint Mark's death, the Alexandrian Christians avoided public exposure in hopes of eluding further persecution.¹⁵ In fact, except for naming the ten successive Alexandrine patriarchs that followed Anianus's death, there is little or no historical mention of the Christians in Egypt from A.D. 68 to A.D. 202.¹⁶ Between A.D. 202 and A.D. 313, however, most of the pagan emperors of Rome sought out and killed many Christians, including the Copts.¹⁷ This Christian persecution reached its height in the Roman Empire during the reign of Emperor Diocletian (A.D. 284-305), who ordered all Christian churches closed and Christian literature destroyed.¹⁸ Diocletian also dismissed Christians from all state offices.¹⁹ A sizable number of Christians throughout the empire attempted to unify and fight against Diocletian, but their resistance was met with "a most formidable wave of persecution and martyrdom."²⁰ Among all Christians, the Coptic Egyptians tended to fare the worst. According to

11. *Id.*

12. See Aziz S. Atiya, *Saint Mark*, in 5 THE COPTIC ENCYCLOPEDIA 1528, 1530 (Aziz S. Atiya ed., 1991) [hereinafter Atiya, *Saint Mark*].

13. See ATIYA, *supra* note 1, at 27.

14. See Atiya, *Saint Mark*, *supra* note 12, at 1531.

15. See ATIYA, *supra* note 1, at 29.

16. See *id.*

17. See *generally id.*

18. See W.H.C. Frend, *Diocletian*, in 3 THE COPTIC ENCYCLOPEDIA 904, 907 (Aziz S. Atiya ed., 1991).

19. See *id.*

20. ATIYA, *supra* note 1, at 31.

the church, when the reign of terror ended²¹ there were some 144,000 to 800,000 Coptic martyrs.²²

The famous "Edict of Milan," issued in A.D. 313 by Constantine the Great put an end to Christian persecution.²³ In A.D. 323, Constantine adopted Christianity as the state religion.²⁴ At this time, Alexandrian Christianity, now known as the Coptic Church, "became the light of the [Christian] world" because of its significant contributions to Christian theology and monasticism.²⁵ The light began to dim, however, as theological and calendric rifts arose between the different Christian sects.²⁶ These theological and calendric differences resulted both in a division between the eastern, or "Orthodox," church and the western, or "Catholic," church, as well as important theological differences between the Orthodox churches of Constantinople and Alexandria.²⁷ Today, while the Coptic Church belongs to the larger "Orthodox" church headquartered in Istanbul, it is governed by its own patriarch, typically referred to as the Coptic Pope.²⁸ Most Egyptian Copts are "Orthodox Copts" and adhere to the Coptic patriarch. Some Egyptian Copts, however, are still loyal to the Roman Catholic Church and are called "Catholic Copts." The Egyptian government estimates today that Copts of both varieties make up about ten percent of Egypt's population.²⁹

21. *Id.* ("[T]he persecution inaugurated by Diocletian was sustained by Maximinus Daia (A.D. 305-13), his successor in the East.").

22. *See id.*

23. Randall Stewart, *Constantine I*, in 2 THE COPTIC ENCYCLOPEDIA 588, 588-89 (Aziz S. Atiya ed., 1991).

24. *See* ATIYA, *supra* note 1, at 32.

25. *Id.* at 33 ("The venerable fathers of the Coptic Church, the great theologians of the Catechetical School of Alexandria, the Coptic saints and heretics, the founders of monasticism, all these and numerous other illustrious Copts made permanent contributions to the establishment of the [Christian] faith.").

26. *See id.* at 56, 69 (stating that "first great schism" of Christianity was a result of "the Chalcedon decisions in 451. . . . The East was branded by the West as Monophysite, while the West was described by the East as Diophysite. The rise of the so-called 'Monophysitism' in the East was of course led by the Copts of Egypt.") For a further discussion of this "schism" and its effects *see id.* at 72-75. It should also be noted that at this time Constantinople had not yet become the seat of the Eastern Church.

27. *See id.* at 72.

28. *See id.* at 122-23.

29. *See Christians Feel Under Siege in the Mideast*, L.A. TIMES, Aug. 14, 1997, at A1, available in 1997 WL 2237875 ("Copts are by far the largest Christian population in the Middle East The number of Christians in the Middle East is subject to some debate. No one has precise figures, in part because Egypt and Lebanon, the two countries with the largest

B. The Rise of Islam in Egypt and Its Legal Effects on the Copts

At the time of the Islamic invasion in A.D. 640,³⁰ the Egyptians, and particularly the Copts, were weary of religious and political persecution by their Byzantine oppressors.³¹ Indeed, many Copts welcomed the Muslim invaders and supported their cause against the Byzantines.³²

The new Muslim rulers gave the Egyptians two choices: either convert to Islam or pay the *jizyah*, a monetary tax on non-Muslims.³³ This tax precipitated a few rebellions, but eventually the Egyptians either converted to Islam to avoid paying the *jizyah*³⁴ or willingly paid the *jizyah*.³⁵ Those who paid the *jizyah* were called *dhimmis*, a term used to describe the “protected” status of non-Muslims living in a Muslim country.³⁶ In addition to the *jizyah* tax, *dhimmis* were subject to other forms of discrimination. For example, Muslims were forbidden from hiring *dhimmis*³⁷ and, at times, imposed external re-

Christian populations, have not released recent censuses. The Coptic hierarchy in Egypt, for instance, routinely speaks of there being 10 million to 12 million Christians But the Egyptian government usually says Copts make up 10% or less of the population—fewer than 6 million people.”).

30. See ATIYA, *supra* note 1, at 80.

31. See *generally id.* at 75-78; see also JACQUES TAGHER, CHRISTIANS IN MUSLIM EGYPT: AN HISTORICAL STUDY OF THE RELATIONS BETWEEN COPTS AND MUSLIMS FROM 640 TO 1922, at 4-7 (S. Kent Brown ed. & Ragai N. Makar trans., 1998).

32. See TAGHER, *supra* note 31, at 7, 29. Tagher writes,

For some time, the native population believed that the victory of the Muslims would help Christianity. . . .

. . . .

[But] [b]y and large, the Copts were unable to receive the Arabs as liberators because the invaders belonged to a different religion. It is true that the Arabs liberated them from the Byzantine yoke. But they were never comfortable with rulers who adopted a religion other than Christianity.

Id.

33. See ATIYA, *supra* note 1, at 83.

34. See *id.* Perhaps not surprisingly, conversions to Islam “became so frequent that at one point the Muslim governors seemed to discourage steady conversion in order to protect the state revenue.” *Id.*

35. See *id.*

36. See TAGHER, *supra* note 31, at 36.

37. See *id.* at 36-37. Tagher quotes the following passage from the Qur’an:

“Let not believers take disbelievers for intimate friends in preference to believers.” “O ye who believe, take not Jews and Christians as your helpers, for they are helpers of one another. Whoso from among you takes them as helpers will indeed be one of them. Verily, Allah guides not the unjust people.” How can there be a guarantee for the others, who, if they were to prevail against you, would have no regard for any tie

strictions on them, such as requirements on how they should dress.³⁸ Eventually, the relationship between Muslims and non-Muslims living in Islamic countries came to be governed by the *shari'a*. The *shari'a*

was not developed until the second or third centuries of Islam. . . . [and] is not a formally enacted legal code. It consists of a vast body of jurisprudence in which individual jurists express their views on the meaning of the Qur'an and Sunna and the legal implications of those views.³⁹

The *shari'a* is about much more than just the relationship of Muslims and non-Muslims—it covers all of life.

Fortunately, other than requiring the Copts to pay the *jizyah*, the Muslim rulers in Egypt largely ignored the harsh rules of their religious leaders outside of Egypt, as set forth in the *shari'a*, and treated the Copts with relative dignity.⁴⁰ In fact, at times, the Copts reaped significant benefits from the Muslim Conquest:

In the local administration [the Copts] monopolized the government offices. They became the only scribes, tax collectors and magistrates. A revival of Coptic culture also filled the vacuum created by the sudden disappearance of Byzantine influence. . . . Christian

of kinship or pact with respect to you. They seek to please you with words, which their hearts repudiate; most of them are perfidious.

Id. (citations omitted).

38. *See id.* at 41-42. The external restrictions could be quite cruel. On one occasion, the caliphs were told:

“To facilitate the collection of the *jizyah*, it is advisable to affix sealable rings on the necks of those liable to pay it After the completion of the collection, the rings may be removed upon request. They should not be permitted to emulate Muslims in clothes, in riding horses and donkeys, or in their general appearance. They should wear girdles that resemble thick drapes tied around their waists. They should fix a wooden ball in the shape of a pomegranate [on their saddles] instead of the saddle bow, and double-lace their sandals, and should not emulate Muslims. Their women should not be permitted to ride on saddles. . . . They should be permitted to live in the towns of Muslims and in their streets, to buy and sell anything except wine and pigs, and not to make a display of their crosses in the towns. They should wear long roundish caps. Order your governors to require the dhimmis to adopt this dress.”

Id. (footnote omitted).

39. *See* Abdullahi Ahmed An-Na'im, *Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives*, 3 HARV. HUM. RTS. J. 13, 18-19 (1990) [hereinafter An-Na'im, *Human Rights*].

40. *See generally* ATIYA, *supra* note 1, at 83-84. There were a few Muslim rulers who treated the Copts quite poorly. The most infamous of which is al-Hakim bi-Amr Allah. *See, e.g.*, TAGHER, *supra* note 31, at 100-09.

disabilities, such as the imposition of a distinctive dress or the prohibition from horse riding, were rarely enforced.⁴¹

Nevertheless, prior to the European law reforms beginning in 1850, the Copts never enjoyed full equality with their Muslim neighbors, and they were forced to give up numerous material privileges to keep up their "spiritual heritage."⁴²

C. Events in Egypt Between 1850 and 1970 Giving Rise to Current Nonstate Discrimination Against the Copts

Egypt retained its strong Islamic heritage in both its society and law until the European legal reforms between 1850 and 1950.⁴³ As pertaining to religious freedom, the two most important legal reforms during this time concerned the enactment of an Egyptian Constitution and a legal code. Egypt's first Constitution, which was enacted in 1923 and lasted until 1953,⁴⁴ proclaimed:

All Egyptians are equal before the law. They enjoy impartially civil and political rights, and are equally subject to public duties and responsibilities, without any distinction of race, language or religion. They alone are eligible for public office, civil and military; foreigners are not eligible for these offices save in exceptional cases determined by law.⁴⁵

Liberty of religious opinion is absolute.⁴⁶

The State protects, in accordance with the practice established in Egypt, the free exercise of the rites of all religions and creeds, on condition that they are not prejudicial to public order or morality.⁴⁷

41. ATIYA, *supra* note 1, at 84.

42. *See id.* at 92.

43. *See generally* J.N.D Anderson, *Law Reform in Egypt: 1850-1950*, in *POLITICAL AND SOCIAL CHANGE IN MODERN EGYPT* 209 (P.M. Holt ed., 1968).

44. *See* ROBERT L. MADDEX, *CONSTITUTIONS OF THE WORLD* 71-72 (1995).

45. EGYPT CONST. (Royal Rescript No. 42 of Apr. 30, 1923) art. 3, *reprinted in* AMOS J. PEASLEE, *CONSTITUTIONS OF NATIONS* 721-22 (1950) [hereinafter *CONSTITUTION OF 1923*].

46. *Id.* art. 12.

47. *Id.* art. 13.

No restriction may be imposed upon the free use of any language . . . in religious matters. . . .⁴⁸

These articles in Egypt's 1923 Constitution helped solidify the tolerance of religious pluralism that had developed under the European legal reforms.

The enactment of Egypt's legal code took place in 1948⁴⁹ and was modeled after the French code.⁵⁰ Although an Explanatory Memorandum to the code declares that many of the "general provisions" and "detailed provisions" were derived from the *shari'a*,⁵¹ the code's author admitted that, instead of the *shari'a*, three-fourths or five-sixths of the new legal code was "based on the decisions of Egyptian courts and the existing legislation."⁵² Nevertheless, the explicit reference to the *shari'a* in the explanatory memorandum was proof near the end of the European legal reforms that Egypt was beginning to return to its pro-Islamic traditions.

In 1952, the political face of Egypt changed dramatically. Led by a young Lt. Colonel named Gamal Abdel Nasser, a group of disgruntled military officers, called the Free Officers, took over the government of Egypt in the Colonel's Revolution.⁵³ Within two years, the British, who had occupied Egypt since 1882, were finally and completely forced out of Egypt, and Nasser was elected as the country's president.⁵⁴

48. *Id.* art. 16. It should be noted that the Egyptian Constitution was modeled after Belgian and Ottoman models. See Anderson, *supra* note 43, at 224.

49. Anderson, *supra* note 43, at 224-227.

50. See *id.* at 226.

51. See *id.* at 227. One reason the explanatory memorandum may have been issued was in response to a counter-movement that was developing among Egypt's lower-middle class Muslims, called the Muslim Brotherhood. See Saad Eddin Ibrahim, *An Islamic Alternative in Egypt: The Muslim Brotherhood and Sadat*, in EGYPT, ISLAM AND DEMOCRACY: TWELVE CRITICAL ESSAYS 35 (1996) [hereinafter Ibrahim, *An Islamic Alternative*]. The Muslim Brotherhood, which advocates Islamist views, was established in 1928 and has been oriented towards changing society to conform with Islamic values as defined by the *shari'a*. See *id.* at 35, 39 ("In this sense the MB is to be distinguished from Sufi and retreatist movements. The latter are individual-oriented, seeking human salvation by minimum involvement in societal affairs and maximum spiritual unity with God."). The primary purpose of the Muslim Brotherhood is to reinstate the *shari'a* as the central and most important legal text in Egypt. See *id.* at 38.

52. Anderson, *supra* note 43, at 227.

53. See DEREK HOPWOOD, EGYPT: POLITICS AND SOCIETY 1945-1981, at 37-45 (1982).

54. See *id.* at 41. Nasser's reign covered historically meaningful moments like the Suez Canal crisis, Egypt's alliance with Russia, and Egypt's bitter defeat in the six-day war with Is-

The 1923 Constitution was one of the first casualties of Nasser's takeover. In 1953, a revolutionary command council abrogated the 1923 Constitution and proclaimed Egypt a republic.⁵⁵ In 1956, a new constitution was created that established a restricted national assembly, a cabinet, and Nasser as the president.⁵⁶ Between 1956 and 1964, Nasser's government continued to revise and amend Egypt's Constitution.⁵⁷ None of these revisions, however, gave the *shari'a* an important role in Egypt's laws.⁵⁸ Nor is there any evidence that the religious human rights of the Copts were violated because of these constitutional revisions.⁵⁹

In 1970, President Nasser died, and President Mohammed Anwar El-Sadat succeeded him.⁶⁰ At the start of his presidency, Sadat asked Egypt's national assembly "to draft a constitution that outlined certain basic [legal] principles."⁶¹ In addition, the Federation of Arab Republics, consisting of Libya, Syria, and Egypt, required each country to conform its constitution to the federation's terms.⁶² These two factors led to the adoption of a new constitution on September 11, 1971.⁶³ In addition to retaining the 1956 Constitution's "authoritarian style" and single-party system, the Constitution of 1971 included a clause stating that "the principles of Islamic Shari'a law shall be a main source of legislation."⁶⁴

By establishing the *shari'a* as "a main" source of legislation, the new constitution was a sign of unfortunate confrontations to come between the Copts and Islamists. In 1971, Pope Kyrillos VI (the Coptic Patriarch) died and Pope Shenouda III succeeded him.⁶⁵

rael. See generally *id.*; RAYMOND FLOWER, NAPOLEON TO NASSER: THE STORY OF MODERN EGYPT (1972).

55. See MADDEX, *supra* note 44, at 72.

56. See *id.*

57. *Id.*

58. See *id.*

59. See *id.*

60. See NADIA RAMSIS FARAH, RELIGIOUS STRIFE IN EGYPT: CRISIS AND IDEOLOGICAL CONFLICT IN THE SEVENTIES I (1986).

61. MADDEX, *supra* note 44, at 72.

62. See *id.*

63. See *id.*

64. See *id.*; see also Abdullahi Ahmed An-Na'im, *Religious Freedom in Egypt: Under the Shadow of the Islamic Dhimma System*, in RELIGIOUS LIBERTY AND HUMAN RIGHTS IN NATIONS AND RELIGIONS 43, 46 (Leonard Swidler ed., 1986) [hereinafter An-Na'im, *Religious Freedom*].

65. See FARAH, *supra* note 60, at 1.

Pope Shenouda's strong personality and unwillingness to compromise angered many of the more conservative Muslims in Egypt. For example, in Alexandria in 1972, pamphlets were distributed over the entire city, "claiming that Pope Shenouda was aggressively conducting a missionary campaign to convert Muslims to Christianity."⁶⁶ The pamphlets also claimed that the Pope was planning a takeover of Egypt, which prompted many riots and demonstrations decrying this "alleged Coptic scheme."⁶⁷ As a result, on November 6, 1972, "a small [Coptic] church was burned [down] in a Delta village."⁶⁸ This act of violence resulted in a Coptic demonstration at the site of the burned church, which, in turn, "erupted into anti-Coptic street demonstrations."⁶⁹ During the anti-Coptic demonstration "an unknown person, thought to be a Copt, fired shots into the air."⁷⁰ This, according to the police, led to further acts of violence by Muslims who burned down Coptic homes and shops.⁷¹ In total, forty-eight people died during these riots.⁷² After these incidents, a parliamentary inquiry was undertaken in which the government ultimately accused "foreign agents of stirring up religious animosity."⁷³ As a result of this inquiry, no Egyptians were punished for instigating the violence. Sadat, to his credit or discredit, depending on one's point of view, in a much publicized move, persuaded both the rector of Al-Azhar University (a Muslim leader) and the Coptic Pope to "issue public pronouncements condemning the strife and its foreign instigators."⁷⁴

Despite calming some of the violence in the earlier years of the 1970s, Islamists continued to gain considerable influence over Muslims, particularly in universities.⁷⁵ In 1977, there were also "widespread clashes between Muslims and Copts in Upper Egypt."⁷⁶ That

66. *Id.* at 2.

67. *See id.*

68. *Id.* ("The police reports that an unknown or unknown persons tried to burn a chapel in the 'Khanka' village.").

69. *Id.*

70. *Id.*

71. *Id.*

72. *See* An-Na'im, *Religious Freedom*, *supra* note 64, at 43.

73. FARAH, *supra* note 60, at 2.

74. *Id.*

75. *See id.* In fact, "[i]n 1974, a neo-Islamic group called Muhamed's Youth attempted the takeover of the Military academy." *Id.*

76. *Id.*

same year “a neo-Islamic group called Repentance and Holy Flight kidnapped” and murdered Sheikh Mohammed Dahbi, a famous Islamic scholar who had attacked religious fanaticism and who had been the former Minister of Waqfs (religious endowments).⁷⁷ All of these acts of violence were a sign that the Islamists were becoming stronger.⁷⁸ Indeed, Islamists were becoming stronger throughout the entire Middle East and were pressuring governments to adopt a literal application of Islamic law, based on the *shari’a*. As one Muslim scholar explained, the *shari’a*’s minor role in Islamic countries was no longer tolerated by Islamic fundamentalists:

Due to both internal factors and external influence, Shari’a principles had been replaced by European law governing commercial, criminal, and constitutional matters in almost all Muslim countries. . . .

Recently, many Muslims have challenged the gradual weakening of Shari’a as the basis for their formal legal systems. Most Muslim countries have experienced mounting demands for the immediate application of Shari’a as the sole, or at least primary, legal system of the land. . . . Governments of Muslim countries generally find it difficult to resist these demands out of fear of being condemned by their own populations as anti-Islamic.⁷⁹

Indeed, this is what was happening in Egypt in the late 1970s, and it was quite successful.

In August of 1977, to appease the increasingly popular Islamists in Egypt, the Egyptian government submitted a draft law to the parliament (People’s Assembly) proposing the adoption of the Islamic penal code on the subject of apostasy.⁸⁰ The Coptic Church, shocked by the proposal, declared a five day fast “for all Copts.”⁸¹ This reaction and additional support from American, Canadian, and Australian Copts caused the government to withdraw its proposal.⁸² Nevertheless, tensions between Islamists and Copts continued to mount. In 1978, “a number of churches were burned and some priests were

77. *See id.*

78. *See id.* at 3.

79. An-Na’im, *Human Rights*, *supra* note 39, at 20-21 (citations omitted).

80. *See FARAH*, *supra* note 60, at 3.

81. *See id.*

82. *See id.*

physically attacked” in the cities of Assuit and Minya.⁸³ During the same period, the Abu-Zabadal Coptic church was burned in Cairo, and, a year later, the famous Kasrayat Al-Rihan church was burned in the heart of the Christian suburb of Old Cairo.⁸⁴ Meanwhile, on March 26, 1979, the Egyptian-Israeli Peace Treaty was consummated in Washington, D.C., and Sadat’s popularity with Western democracies soared.⁸⁵ His actions, however, angered many Islamists and eventually led to his assassination.

On January 6, 1980, “the eve of Coptic Christmas,” further tragedy was inflicted upon Copts in Egypt when “several bombs exploded in churches in Alexandria.”⁸⁶ Two weeks later, Islamists “staged a vitriolic attack on the Copts” at a large conference at Al-Azhar University.⁸⁷ Because of the increasing threats of violence, in March Pope Shenouda canceled all Easter celebrations and withdrew to a desert monastery with his bishops.⁸⁸

Five months after these attacks, on May 22, 1980, Islamists gained a significant political victory when the Egyptian Constitution was amended to (1) specify Islam as the official state religion,⁸⁹ (2) establish “Islamic jurisprudence as the principal source of legislation,” and (3) reinstate the *shari’a* as “the main” source of Egyptian legislation.⁹⁰ Nevertheless, these amendments failed to appease many

83. *Id.*

84. *See id.*

85. *See* RAYMOND WILLIAM BAKER, *SADAT AND AFTER: STRUGGLES FOR EGYPT’S POLITICAL SOUL I* (1990). Baker observed:

Anwar Sadat was the one Arab leader whom Americans thought they knew and understood. In American eyes, Sadat was the man who repudiated socialism and expelled the Soviets from Egypt; he made peace with Israel, liberalized the Egyptian polity, and returned Egypt to the Western fold. During Sadat’s years in power the United States involved itself deeply in Egyptian politics, underwriting everything from the 1979 peace with Israel to the official population control effort. The United States provided Egypt with over \$17 billion, making it the second-largest recipient of U.S. aid in the world. Over the years the United States supplied every conceivable technical device, at a cost estimated at \$20 to \$25 million, to protect the life of the man on whom U.S. Middle East strategies depended. The president of Egypt was *Time* magazine’s man of the year, his wife the “first lady” of the Arab world.

Id. (footnote omitted).

86. FARAH, *supra* note 60, at 3.

87. *See id.*

88. *See id.*

89. Even though Islam was specified as the state religion, this did not give Egypt the right to discriminate against the Copts. *See infra* note 189 and accompanying text.

90. MADDEX, *supra* note 44, at 72.

Islamists who wanted “immediate and total implementation” of the *shari’a*.⁹¹ Naturally, these amendments were not well received by the Copts, either.⁹² The discontent of both the Islamists and the Copts with the amendments led to a massive revolt in the Cairo “district of Al-Zawya Al-Hamra on June 17, 1981.”⁹³ In total, seventeen people were killed “[nine] Copts,⁹⁴ [seven] Muslims and one unidentified), 112 were injured and 171 public and private” buildings were damaged over a three day period.⁹⁵ In light of the serious fighting and strong contention between the two religions, Sadat ordered 1500 arrests of both political and religious figures “from the extreme right to the left.”⁹⁶ Sadat withdrew state recognition of Pope Shenouda III and banished him to a monastery in Upper Egypt.⁹⁷ In addition, many Islamists were arrested and jailed.⁹⁸ Just one month later, Sadat was assassinated by violent Islamists.⁹⁹

91. An-Na’im, *Religious Freedom*, *supra* note 64, at 46.

92. See ANTHONY McDERMOTT, *EGYPT FROM NASSER TO MUBARAK: A FLAWED REVOLUTION* 113 (1988).

93. FARAH, *supra* note 60, at 3.

94. This figure was questioned by a *Le Monde* correspondent, who reported “that ‘Coptic infants were thrown from windows or burned alive with their parents.’” McDERMOTT, *supra* note 92, at 193.

95. See FARAH, *supra* note 60, at 4.

96. *Id.* at xi.

97. See *id.* at xi. In other words, Sadat annulled the 1971 election of the Pope. See WASH. POST, Jan. 2, 1985, at A19, *available in* 1985 WL 2140431.

98. See FARAH, *supra* note 60, at xi.

99. See *id.* at xi. On Sadat’s assassination, one author wrote:

Americans responded with outrage and sorrow and anticipated an outpouring of mass grief in Egypt. Instead, Egyptians responded with disconcerting quiet to Sadat’s assassination. When Sadat’s predecessor, Gamal Abdul Nasser, had died a decade earlier, crowds had poured into the streets to grieve at the death of a leader routinely denounced in the United States as either a fascist or a communist. In the days following Sadat’s assassination Egyptians went about celebrating a religious holiday as though nothing had happened. Foreign journalists reported that, if anything, the streets were unusually deserted. Interviews by American correspondents revealed that “many people in Cairo expressed less outrage over the assassination than over the week’s cancellation of movies, soccer games and regular television programming (including the popular series ‘Dallas’).” On the day of Sadat’s funeral, lines of policemen “stood with arms locked as if to hold back a crowd. But there was no crowd.”

BAKER, *supra* note 85, at 2 (footnotes omitted).

Sadat's successor, President Mohammed Hosni Mubarak¹⁰⁰ was primarily concerned with a possible revolution in Egypt, similar to that which occurred in Iran two years earlier.¹⁰¹ Fortunately, however, Mubarak was able to contain threats of revolution, in part by arresting some two thousand people.¹⁰² In addition, when Mubarak first came to power, he declared Egypt to be in a "state of emergency."¹⁰³ This "state of emergency," which remains in effect, gives the president power to "refer cases to State security courts, to ratify judgments and to pardon."¹⁰⁴ The "state of emergency" also allows the Egyptian government to detain suspected violent criminals for up to sixty days without a hearing.¹⁰⁵

The first task of Mubarak's presidency was to deal with the Islamists who had assassinated Sadat and who were growing in both numbers and strength.¹⁰⁶ Aside from arresting the two thousand mentioned above, over three hundred men (mostly students) were put on trial for Sadat's assassination.¹⁰⁷ Although five of the three hundred accused admitted that they took part in Sadat's assassination, they claimed they were innocent because they had received a *fatwa* (legal ruling) from a *mufti* (a religious judge) that "it was legal to kill a ruler who had disobeyed the ordinances of God."¹⁰⁸ This claim is unnerving because it demonstrates how serious the Islamists

100. See MCDERMOTT, *supra* note 92, at 68. At "his first public appearance before the People's Assembly after Sadat's killing," Mubarak was still bandaged from the attack. *Id.* It should also be noted that, at the beginning of his presidency, Mubarak asked that "Mohammed" be removed from reports of his actions and pronouncements. *See id.*

101. *See id.* at 196.

102. *See id.* at 73, 196-97. Other reasons would be that, first, Sadat's September arrests had incarcerated many Muslim militants; second, the militant Muslims who had assassinated Sadat wrongly assumed that Egypt would naturally break out into revolt. *See id.*

103. *See, e.g.,* U.N. Hum. Rts. Comm., 47th Sess., 1260th Mtg., at ¶ 7-9, U.N. Doc. CCPR/C/79/Add.23 (1993), *reprinted in* 1 INT'L HUM. RTS. REP., May 1994, at 269, 270 [hereinafter U.N. Hum. Rts. Comm.]. The primary concern for human rights under this "state of emergency" are for the Islamic militants arrested and detained for up to 60 days before "permitting a challenge to the legality of the detention before a court of law." 15A HUMAN RIGHTS, THE HELSINKI ACCORDS, AND THE UNITED STATES 1410 (Igor I. Kavass & William M. Walker eds., 1992) [hereinafter HELSINKI ACCORDS]. Legal duration of detention without the "state of emergency" in effect is 48 hours. *See id.* Naturally, Copts are not immune to "state of emergency" arrests.

104. U.N. Hum. Rts. Comm., *supra* note 103, ¶ 9.

105. *See* 15A HELSINKI ACCORDS, *supra* note 103, at 1410.

106. *See generally* MCDERMOTT, *supra* note 92, at 73, at 196-97.

107. *See id.* at 198.

108. *Id.*

were about following their rigid interpretation of the *shari'a*.¹⁰⁹ Surprisingly, the trial and the execution of the five conspirators took place with very little disturbance or demonstration.¹¹⁰

In the 1980s, Mubarak's government exhibited "a combination of reconciliation with moderates and toughness with those threatening the country's security."¹¹¹ Indeed, Mubarak had many religious leaders of Muslim groups, primarily the Islamists, released from prison, notably Omar Telmessani and Sheikh Kishk.¹¹² As for the Copts, Mubarak has traditionally appointed two Copts as ministers to his cabinet¹¹³ and is authorized to appoint up to ten members of the Parliament,¹¹⁴ typically consisting of Copts and women. In addition, Mubarak rescinded Pope Shenouda's exile (confinement to his monastery), and thus enabled Pope Shenouda to return to Cairo in 1985 to celebrate Christmas with the Copts.¹¹⁵

III. TAKING STRIDES TOWARD A RELIGIOUSLY PLURALISTIC SOCIETY: EGYPT'S ROLE IN THE UNITED NATIONS AND OBLIGATIONS UNDER THE INTERNATIONAL RELIGIOUS HUMAN RIGHTS' STANDARDS

Egypt's relationship with the United Nations and Egypt's attempts to eradicate religious human rights discrimination in the second half of the twentieth century are key factors in understanding current human rights issues in modern-day Egypt.

Traditionally, Egypt has had a positive association with the United Nations. This association, beginning in late 1945,¹¹⁶ reached

109. *See id.*

110. *See id.*

111. *Id.* It appears that this policy worked quite well during the first four years of Mubarak's presidency (1982-85). In fact, there were only an average of eight casualties per year, making these years the most peaceful years since the 1952 revolution. *See* Saad Eddin Ibrahim, *The Changing Face of Egypt's Islamic Activism*, in EGYPT, ISLAM AND DEMOCRACY: TWELVE CRITICAL ESSAYS 69, 72 (1996) [hereinafter Ibrahim, *The Changing Face*].

112. *See* MCDERMOTT, *supra* note 92, at 198.

113. Zina Hemady, *Coptic Christians Living in Fear*, LAS VEGAS REV.-J., May 15, 1993, at 5C, available in 1993 WL 4492538 ("Copts rarely are given influential posts in government and the judiciary, military or diplomatic corps. Two Copts traditionally serve in each Cabinet, but do not hold such major portfolios as foreign affairs or defense.")

114. *See* MADDEX, *supra* note 44, at 74; 16A HELSINKI ACCORDS, *supra* note 103, at 1381-83.

115. *See* MCDERMOTT, *supra* note 92, at 198-99. Violence against the Copts in the 1990s and the Egyptian government's reaction to it will be discussed further in Part IV.A.

116. *See* PEASLEE, *supra* note 45, at 717.

its pinnacle when Boutros Boutros-Ghali, an Egyptian Copt, was appointed as the Secretary-General of the United Nations in 1992.¹¹⁷ As a member of the United Nations, Egypt has committed itself to the obligations found in the International Bill of Human Rights (IBHR).¹¹⁸ The IBHR is “the most authoritative and comprehensive prescription of human rights obligations that governments undertake in joining the U.N.”¹¹⁹ The IBHR includes the following documents: the Universal Declaration of Human Rights (“UDHR”);¹²⁰ the International Covenant on Economic, Social and Cultural Rights;¹²¹ the International Covenant on Civil and Political Rights (“CCPR”);¹²² and the Optional Protocol to the International Covenant on Civil and Political Rights.¹²³ This Part focuses primarily on Egypt’s obligations under two of these instruments: the UDHR and the CCPR. This Part concludes that through the UDHR and CCPR Egypt has made a strong and binding commitment to protect the religious human rights of its citizens.

A. Egypt and the UDHR

In 1948, the same year that Egypt enacted its French-based legal code, the United Nations General Assembly adopted the UDHR.¹²⁴ The UDHR attempted to solidify the guarantee of “human rights for all” found in the United Nations Charter.¹²⁵ Articles 7 and 18 of the UDHR provide:

117. See Stanley Meisler, *Globocop Boutros Boutros-Ghali, The Cryptic Egyptian Who Heads the United Nations, Has Ambitious Plans for Keeping the Peace in a Changing World. But Is It Enough?*, L.A. TIMES, Nov. 1, 1992, at 34, available in 1992 WL 2844394 [hereinafter *Boutros Boutros-Ghali*].

118. See FRANK NEWMAN & DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* 14 (2d ed. 1996).

119. *Id.* at 8.

120. G.A. Res. 217 A (III), U.N. Doc. A/810 (Dec. 10, 1948) [hereinafter UDHR].

121. G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

122. G.A. Res. 2200A, (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976 [hereinafter CCPR].

123. G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force Mar. 23, 1976.

124. See NEWMAN & WEISSBRODT, *supra* note 118, at 8.

125. THE UNITED NATIONS AND HUMAN RIGHTS, 1945-1995, at 6 (1995). This guarantee of universal human rights was made in response to the Nazi atrocities and World War II. See *id.*

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.¹²⁶

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.¹²⁷

Egypt, the only African country belonging to the United Nations when the UDHR was adopted, took part in the drafting and discussions accompanying the adoption of the UDHR.¹²⁸ Despite this fact, it can be argued that Egypt is not legally bound by the language of the UDHR. The primary reason for this argument is that the United Nations General Assembly only adopted the UDHR as a resolution; it “is not a convention subject to the ratification and accession requirements foreseen for treaties.”¹²⁹ But the history following the adoption of the UDHR demonstrates that the UDHR possesses tremendous “legal weight” above that of normal United Nations resolutions.¹³¹ For example:

The role of the Assembly in interpreting provisions of the UN Charter, references in other instruments and resolutions, statements made by the Secretary-General and by governments in international and national settings, the above-mentioned monitoring activities on the basis of the UDHR, and its influence on subsequent standard-setting activities are all part of this picture, especially when

126. UDHR, *supra* note 120, art. 7.

127. *Id.* art. 18. Articles 13, guaranteeing the “freedom of movement,” and Article 26, providing the “right to education,” are also important to this Comment and will be discussed in more detail below. *See infra* Part IV.B.

128. *See* Åshild Samnøy, *The Origins of the Universal Declaration of Human Rights*, in *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMON STANDARD OF ACHIEVEMENT* 3, 10 (Gudmundur Alfredsson & Asbjørn Eide eds., 1999). Most third world countries have since joined the United Nations.

129. Asbjørn Eide & Gudmundur Alfredsson, *Introduction*, in *THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: A COMMON STANDARD OF ACHIEVEMENT* xxv, xxx (Gudmundur Alfredsson & Asbjørn Eide eds., 1999) [hereinafter Eide & Alfredsson, *Introduction*]. Interestingly, representatives from Egypt supported the argument that a nonbinding declaration should be first adopted, and then, at a future time, a binding convention should take its place. *See*, Samnøy, *supra* note 128, at 10.

131. *See* Eide & Alfredsson, *Introduction*, *supra* note 130, at xxx.

these instances make use of the UDHR as law for the purpose of providing a legal framework.¹³²

This statement, and others like it, tend to show that the UDHR should be viewed as a kind of customary international human rights law.¹³³ Consequently, this Comment will analyze Egypt's obligation to protect the religious human rights of its Coptic citizens as such. In other words, Egypt will be viewed as if it had a "legal duty"¹³⁴ under the UDHR to protect the religious human rights of the Copts.

B. Egypt and the CCPR

In addition to being a member of the United Nations when the UDHR was adopted, Egypt is a party to the CCPR, put into force in 1976.¹³⁵ Unlike the UDHR, the CCPR is binding on all nations who are a party to it, and, therefore, it imposes binding obligations and affirmative duties on those state parties.¹³⁶ As for the obligations imposed under the CCPR, Article 18 states that freedom of conscience, thought, and religion are guaranteed.¹³⁷ In addition, Article 27 forbids states from denying religious minorities "the right, in community with other group members, to enjoy their own culture, profess and practice their own religion, or to use their own language."¹³⁸ The affirmative duties imposed upon states are found in Article 2:

- (2) Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its *constitutional*

132. *Id.* at xxx-xxxi.

133. See Henry J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 28 (1996).

134. See *id.*

135. See Donna E. Arzt, *The Treatment of Religious Dissidents Under Classical and Contemporary Islamic Law*, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: RELIGIOUS PERSPECTIVES 387, 394, n.24 (John Witte, Jr. & Johan D. van der Vyver eds., 1996). Arzt also notes that this Covenant was signed by 23 other Muslim countries. See *id.* Of these 23 Muslim countries, only seven (Egypt not included), have signed the Optional Protocol. See *id.* at n.131.

136. See Philip Alston & Gerard Quinn, *The Nature and Scope of States Parties' Obligations Under the International Covenant on Economic, Social and Cultural Rights*, 9 HUM. RTS. Q. 156, 166 (1987) (stating that Article 2 of the CCPR requires state parties to enact domestic legal measures guaranteeing the freedoms set forth in the CCPR).

137. See CCPR, *supra* note 122, art. 18.

138. *Id.* art. 27.

processes and with the provisions of the present Covenant, to adopt such *legislative or other measures* as may be necessary to give effect to the rights recognized in the present Covenant.

- (3) Each State Party to the present Covenant undertakes:
- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by the persons acting in official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.¹³⁹

Thus, the CCPR expects states to incorporate its principles into the states' domestic laws.

The CCPR, under Article 40, created the United Nations Human Rights Committee, also known as the CCPR Committee, to whom states are to submit reports "on measures taken to 'give effect' to the undertakings of the Covenant and on progress in the enjoyment of rights declared by the Covenant."¹⁴⁰ In return, the CCPR Committee comments on the reports and gives to the reporting state general suggestions on how to improve human and religious rights among its populace.¹⁴¹ Article 28 of the CCPR requires that the committee be selected from "persons of high moral character and recognized competence in the field of human rights."¹⁴² In 1994, Egypt was privileged to have one of its citizens elected to the committee.¹⁴³

139. *Id.* art. 2(2)-(3) (emphasis added).

140. STEINER & ALSTON, *supra* note 133, at 501; *see also* CCPR, *supra* note 122, art. 40.

141. *See* STEINER & ALSTON, *supra* note 133, at 501. The effect these reports had on Egypt will be discussed later. *See infra* Part IV.B.

142. CCPR, *supra* note 122, art. 28.

143. *See* NEWMAN & WEISSBRODT, *supra* note 118, at 91.

In summary, Egypt has enjoyed a commendable association with the United Nations. Egypt was an active participant in the adoption of UDHR and is a state party to the CCPR. As a result of this association, Egypt has displayed a commitment to high standards of protecting religious freedoms among its citizens.

IV. ANALYSIS: THE EXTENT OF EGYPT'S DUTY TO PROTECT THE COPTS FROM NONSTATE DISCRIMINATION.

This Part analyzes the Egyptian government's affirmative duty to protect Copts from nonstate religious discrimination and offers suggestions as to how Egypt can better combat such discrimination. Accordingly, Part IV.A focuses on the Egyptian government's affirmative duty to protect Copts from violent attacks. Part IV.B argues that the first step Egypt must take in order to more completely fulfill this duty is to eliminate all forms of discrimination found in its own Constitution, courts, and legislation. Finally, Part IV.C discusses how three different countries, through their constitutions, courts, and legislative laws, have tried to fulfill their affirmative duty to protect their religious minorities from nonstate discrimination.

A. Egypt's Affirmative Duty to Protect Religious Groups From Discrimination by Nonstate Actors

The most radical form of discrimination against Coptic Egyptians is violence by nonstate actors.¹⁴⁴ Part IV.A focuses on the Egyptian government's affirmative duty to protect the Copts from these violent attacks. Specifically, Part IV.A.1 briefly describes the current state of violence in Egypt and the government's response to these acts of violence. Part IV.A.2 responds to two issues: (1) whether the UDHR and the CCPR impose upon governments an affirmative duty to protect the religious human rights of their citizens; and (2) whether the UDHR and the CCPR impose upon governments a duty to control the discriminatory acts of nonstate actors. Part IV.A.2 also discusses the consequences of ignoring or treating lightly this affirmative duty.

144. Another form of discrimination is the forcible collection of the *jizyah*. See *The Cry of the Egyptian Church*, in *THE COPTS: CHRISTIANS OF EGYPT*, Jan.-June 1999, at 3 ("In spite of the abolition of the *jizya*, it is still forcibly collected from many Christians in Upper Egypt by Muslim extremists.").

1. The current state of violence in Egypt and the government's reaction

The first four years of the 1990s were the bloodiest in twentieth-century Egypt.¹⁴⁵ During this time span, some 1164 people were killed in Egypt due to religiously and politically motivated violence.¹⁴⁶ Admittedly, the Copts were not always the target of these violent rampages, but religious principles were.¹⁴⁷ While it was hoped that this violence had come to a permanent end in the latter half of the 1990s,¹⁴⁸ the bloodiest sectarian clash in Egypt's modern history left twenty Copts and one Muslim dead on January 2, 2000, in the village of Al-Kosheh.¹⁴⁹

Though the perpetrators of these violent attacks against Copts have been Islamists,¹⁵⁰ many complaints, some over-dramatized and

145. See Ibrahim, *The Changing Face*, *supra* note 111, at 72.

146. See *id.* Egyptian Organization for Human Rights ("EOHR") has reported that approximately 109 Copts have been killed in the last decade (1990-2000). See *Kosheh Investigations Begin*, CAIRO TIMES, Jan. 13-19, 2000 (visited Jan. 20, 2000) <<http://www.cairotimes.com/news/kosheh3.html>>.

147. See Ibrahim, *The Changing Face*, *supra* note 111, at 73:

[S]everal assassination attempts were made by Islamic activists on the lives of high-ranking public figures. Two of them were successful—Rifa't al-Mahgub, the former speaker of parliament (October 1990)[] and Farag Fouda, Egypt's most outspoken secular intellectual (June 1992). The activists also managed to assassinate four police generals, including the top ranking anti-terrorist officer (General R. Khayrat on 9 April 1994). There were attempts on the lives of two cabinet members (the ministers of information and the interior, in April and August 1993, respectively) and on the prime minister (in November 1993).

Id.

148. In March of 1999, an article in the *Economist* read:

Although their movement had at one time seemed dangerously pervasive, Egypt's Islamists never had a wide popular base. Under persecution, the air went out of them. Their (banned) political party, the Muslim Brotherhood, had long since grown fat and flabby; in the countryside, there was little public support for the radicals; and the security force's counter-measures were savagely effective. More than 1,000 people—guerrillas, soldiers and civilians—were killed in the violence. Some 100 activists were sentenced to death, mainly by military courts, and about half of these sentences have been carried out. The remaining guerrillas are in prison, in exile or on the run.

The last seven or eight years have been troublesome, but most Egyptians believe that the worst is over, for now.

Is the War Against the Militants Won?: Islamists In Retreat, ECONOMIST, Mar. 20, 1999, at 15, available in 1999 WL 7362217.

149. See *At Least 20 Killed in Kosheh Clashes*, CAIRO TIMES, Jan. 13-19, 2000 (visited Jan. 21, 2000) <<http://www.cairotimes.com/news/newkosh.html>>.

150. See Saad Eddin Ibrahim, *Governance and Structural Adjustment*, in EGYPT, ISLAM AND DEMOCRACY 135, 169 (1996) [hereinafter Ibrahim, *Governance and Structural Adjust-*

some not, have been directed against the Egyptian government for its failure to prevent and investigate the violence. For example, in 1993, it was alleged, in a rather biased manner, that

[n]ot a month goes by that a number [of Copts] aren't murdered, tortured, or beaten for their faith. Mobs kill them; the government discriminates against them and deliberately withholds protection. . . . Those who slept through the Cold War will continue to slumber during the coming Holy War, unless a dynamite blast shakes them out of their lethargy.¹⁵¹

A less dramatized complaint in 1993 listed Egypt among the “worst areas involving the suppression” of a religious group because “the government has failed to prevent harsh Muslim discrimination, often including violence, against Coptic Christians.”¹⁵² Finally, the Egyptian Organization for Human Rights (“EOHR”), in a report issued in 1993, “accused Egyptian security forces of allowing Islamic extremists to commit acts of anti-Christian violence with their complete knowledge, sometimes even when they had advance warnings.”¹⁵³ These same complaints were revisited after the Al-Kosheh violence in January of 2000, where the EOHR reported that Egyptian security forces failed to implement any preventive plans between the initial confrontations between Copts and Muslims and the bloody massacre two days later.¹⁵⁴

2. *A government's affirmative duty to act under the UDHR and the CCPR*

If the violent attacks against the Copts were encouraged or perpetrated by the Egyptian government, there would be a clear and serious violation of Egypt's obligations under the UDHR and CCPR.¹⁵⁵ But, as the panel discussed in Part I pointed out, Egypt

ment] (stating that the increased violation of human rights have been at the hand of “non-state actors—namely militant Islamic groups”).

151. Don Feder, *In Sheik Omar, Do We Behold Islam's True Face?*, B. HERALD, Aug. 30, 1993, at 021, *available in* 1993 WL 6284485.

152. Stanley Meisler & Tyler Marshall, *Hot Spots On Human Rights: A List of Offenders*, ATLANTA J. & CONST., June 14, 1993, *available in* 1993 WL 3368416 (referring to a list put out by the United Nations, private human rights monitors and new accounts).

153. Bob Hepburn, *Egypt's Christians Harbor Deep Fears*, TORONTO STAR, Apr. 19, 1993, *available in* 1993 WL 7251672.

154. *See Kosheh Investigations Begin*, *supra* note 146.

155. Indeed, between 1982 and 1993, over 25,000 Egyptians suspected of participating

has, at the very least, “not condoned” these acts.¹⁵⁶ Thus, the argument seems to be that Egypt is not guilty of discriminating against the Copts, even if Egypt fails to react quickly to violent acts¹⁵⁷ or fails to prevent foreseeable violent acts, as alleged above. In other words, it may be argued that while the Egyptian government itself is obligated under the UDHR and the CCPR not to violate the religious human rights of the Copts, the government may not be obligated to prevent nonstate actors from violating the religious human rights of the Copts as long as they do “not condone” the violence. This argument raises two issues: (1) whether the UDHR and the CCPR impose upon governments an affirmative duty to protect the religious human rights of their citizens; and (2) whether the UDHR and the CCPR impose upon governments a duty to control the discriminatory acts of nonstate actors.

a. A government’s affirmative duty to protect the religious human rights of its citizens under the UDHR and CCPR. A government’s duty to act differs under the UDHR and the CCPR. The UDHR

in politically-motivated violence were arrested and detained. See Ibrahim, *The Changing Face*, *supra* note 111, at 72-73. Moreover, in July of 1992 the parliament

passed several antiterrorism amendments to the Penal Code. These amendments broadened the definition of terrorism to include “spreading panic” or obstructing the work of authorities. The amendments allow the police to hold suspects for 24 hours before obtaining arrest warrants and prescribe the death penalty or life imprisonment for membership in a terrorist group.

17 HELSINKI ACCORDS, *supra* note 103, at 992. Some Copts would argue that the government only took these affirmative measures to combat violence because of the toll it took on Egypt’s most profitable industry: tourism. For example:

Many Copts feel bitter that President Hosni Mubarak’s government did not act decisively against extremism until its economic interests were threatened. Police began to crack down after attacks on tourists last year reduced income from tourism by half within weeks.

“There’s a lot of discontent that the government didn’t take serious action to fight extremism,” said Antoun Sidhum, editor of the Coptic newspaper Watani.

Hemedi, *supra* note 113.

156. See *supra* Part I.

157. A classic example of the government’s “slow reaction” is portrayed in a late 1980s takeover of Western Munira, a Cairo shantytown, by a group of Islamic militants who practically ruled it for three years—collecting taxes, imposing their own law and order, and Islamic codes of morality. In December 1992, the Egyptian state finally took action, dispatching some twelve thousand security forces with armored vehicles to reclaim the area. It took three weeks, one hundred casualties (on both sides), and the arrest of some six hundred suspected militants before W[estern] Munira was pacified.

Ibrahim, *The Changing Face*, *supra* note 111, at 75-76.

simply prohibits a government from engaging “in any activity or . . . perform[ing] any act aimed at the destruction of any of the rights and freedoms set forth herein.”¹⁵⁸ But, in general, the UDHR does not require “government machinery” to affirmatively protect religious human rights.¹⁵⁹ Article 2(2) of the CCPR, however, requires that a state undertake “the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.”¹⁶⁰ Article 2(3) requires states to provide an “effective remedy” to those individuals whose religious human rights have been violated.¹⁶¹ Thus, states that are party to the CCPR, as Egypt is, are affirmatively obligated to enact “legal measures” to protect the religious human rights of their citizens.¹⁶²

b. A government’s affirmative duty to control nonstate discrimination under the CCPR. Although Egypt has a duty to enact “legal measures” to ensure the protection of its citizens’ religious human rights under the CCPR, there is no explicit affirmative duty on a state party to the CCPR to control the discriminatory acts of nonstate actors. General Comments on the text of the CCPR, however, clarify that a state party to the CCPR does have an affirmative duty to protect its citizens’ religious human rights from the discriminatory acts of nonstate parties. For example, in the General Comments to Article 7 of the CCPR, the Human Rights Committee stated that, “it is also the duty of public authorities to ensure protection by the law against [discrimination] even when committed by persons acting outside or without any official authority.”¹⁶³ Likewise, in a General

158. UDHR, *supra* note 120, art. 30.

159. After discussing the importance the UDHR plays in “customary international human rights law,” Boutros Boutros-Ghali admits:

[T]he Universal Declaration does not have a direct impact on government machinery. Its preamble deals for the most part with “peoples” and “individuals” and its inspiring message provides encouragement to the excluded and the persecuted in their daily struggles. Their cry for justice and freedom, amplified by human rights groups, resonates louder each day in the corridors of power.

THE UNITED NATIONS AND HUMAN RIGHTS, *supra* note 125, at 28.

160. CCPR, *supra* note 122, art. 2(2).

161. *See id.* art. 2(3).

162. *See* Alston & Quinn, *supra* note 136, at 166.

163. *Report of the Human Rights Committee, General Comments on Article 7 of the Covenant*, 37 U.N. GAOR Supp. (No. 40) at 95, U.N. Doc. A/37/40 (1982).

Comment on discrimination, the Committee receiving states' reports requested "to know if there remain any problems of discrimination in fact, which may be practised [sic] either by public authorities, *by the community, or by private persons or bodies*. The Committee wishes to be informed about legal provisions and administrative measures directed at diminishing or eliminating such discrimination."¹⁶⁴

Given the strength and clarity of these comments on the CCPR, Egypt arguably does have an affirmative duty to protect its citizens from the discriminatory actions of nonstate actors. And, because "[o]ne clear victim of the . . . violence in Egypt is human rights,"¹⁶⁵ this protection should include an alert and timely response to threats or beginnings of violence and an adequate and fair investigation of the violence after it has occurred. If the allegations are valid that the Egyptian government is slow to respond to threats of violence by nonstate actors against the Copts and fails to adequately investigate these acts of violence, then Egypt is violating its obligations under the CCPR.

c. Consequences of ignoring or treating lightly the affirmative duty. Merely "not condoning" nonstate discrimination does not release the Egyptian government from its responsibility to protect the Copts' religious human rights from this discrimination. Indeed, if the Egyptian government merely deplors the violence but does nothing to stop it, the government sends the message to Islamists that violence will not be punished. Even if the Egyptian government does more than "not condone" the violence but nonetheless reacts slowly or inadequately to it, the Islamists still have very little reason to refrain from violence. Thus, under these scenarios, the Copts must either suffer extreme forms of discrimination or stand up to discrimination themselves by confronting violence with violence. Clearly, such outcomes are not in the best interest of the Copts or the Egyptian government. Therefore, the government must do something more than simply "not condone" nonstate discrimination against Copts.

164. *General Comment No. 18, "Non-discrimination"*, U.N. Doc. HRI/GEN/1/Rev.1, 4 Sept. 1992, at 25 (emphasis added).

165. Ibrahim, *Governance and Structural Adjustment*, *supra* note 150, at 169.

B. A New Legal Reformation in Egypt

This Part argues that the first step Egypt needs to take in order to more completely fulfill its affirmative duty to protect the Copts from nonstate discrimination is to substantially reform its legal system. Indeed, under Articles 2(2)-(3) of the CCPR, Egypt is required to reform its laws in such a way that the religious human rights of all its citizens will be protected. Accordingly, Part IV.B.1 points out the insufficiency of solutions already proposed by the United Nations and the United States. Part IV.B.2 argues that for Egypt to enhance the protection of the Copts, Egypt must eliminate all forms of state-sanctioned discrimination by reforming its own Constitution, courts, and legislation. Finally, Part IV.B.3 provides a summary of the issues presented and the changes suggested that could create an Egyptian society more tolerant of religious pluralism.

1. Inadequate solutions proposed by the United Nations and the United States

The natural way for Egypt to enhance its protection of Copts from nonstate discrimination and violence is to improve its response, make more thorough investigations, and strengthen the punishment of those perpetuating the violence. But this solution is too simplistic for two reasons. First, the Egyptian government already claims that it is doing all it can do to eliminate violent acts of discrimination.¹⁶⁶ After all, even if the government did not care about its effect on the Copts, they certainly do care about its drastic effect on their most prized industry: tourism.¹⁶⁷ Second, assuming the government uses all of its effort to fight violence, this fight does nothing to combat the *ideology* behind the violence—that traditional Islam, with all of its discriminatory effects on non-Muslims, should be reinstated as the foundation of Egypt's society and culture. Thus, the violence, no matter how fiercely combated, will continue to appear so long as the ideology exists. In other words, it is like pulling a weed out of the garden but leaving its roots in the ground to grow another day. Therefore, something more than quicker responses, better investiga-

166. See, e.g., *Kosheh Investigations Begin*, *supra* note 146 (summarizing typical headlines to the effect that “[t]he government affirms that it will strike hard against any attempt to create division within the people”).

167. See *supra* text accompanying note 155.

tions, and swifter prosecutions must be undertaken. This Section will consider the solutions to this issue proposed by the United Nations and United States.

a. The United Nations' solution. The only suggestion given by the Human Rights Committee during Egypt's more violent years was to withdraw Egypt's state of emergency laws.¹⁶⁸ As mentioned in Part II of this Comment, these laws give the Egyptian President the unilateral power to involve himself in both the executive and judiciary branches of Egypt's government.¹⁶⁹ These laws also permit the President to "refer cases to State security courts, to ratify judgments and to pardon."¹⁷⁰ The most egregious portion of this law is its ability to incarcerate criminal suspects for up to sixty days before "permitting a challenge to the legality of the detention before a court of law."¹⁷¹

The Human Rights Committee, however, was not concerned with the religious human rights of the Copts in making this suggestion. Instead, this suggestion was made in response to reports of Egyptian security forces unjustly detaining and torturing suspected nonstate Muslim perpetrators of violence.¹⁷² This suggestion is inadequate to solve the problem for several reasons. First, it does not take into account the Coptic situation. In fact, there is no evidence that the Human Rights Committee was at all concerned about the violent acts perpetrated against the Copts.¹⁷³ Second, there is a strong argument that without the state of emergency powers in effect, the government's response to, and investigation of, violence would be even slower and more inadequate. Finally, the Human Rights Committee's suggestion is not responsive to the reasons underlying Egypt's current state of emergency and to the underlying cause of violence in Egypt. In other words, the United Nations' solution may improve the human rights of those persecuted under Egypt's state of emergency laws, but it does nothing to combat the ideology that underlies the violence. Therefore, dissolving Egypt's state of emergency is not only unresponsive to the problems of vio-

168. See U.N. Hum. Rts. Comm., *supra* note 103, ¶ 9. It should be noted that religious human rights are nonderogable during times of emergency. See CCPR, *supra* note 122, art. 4.

169. See U.N. Hum. Rts. Comm., *supra* note 103, ¶ 9.

170. *Id.* ¶ 9.

171. 15A HELSINKI ACCORDS, *supra* note 103, at 1410. Legal duration of detention without the "state of emergency" in effect is 48 hours. See *id.*

172. See U.N. Hum. Rts. Comm., *supra* note 103, ¶ 9.

173. See generally *id.*

lent acts committed against the Copts, it may even enhance the problem.

b. The United States' solution. Another solution to the problem of controlling violence against Copts in Egypt is found in the International Religious Freedom Act ("IRFA"), passed on October 9, 1998, by a vote of 98-0, in the United States Senate.¹⁷⁴ Under the IRFA, Congress has the power to adjust United States foreign aid according to how well a country is protecting the religious freedom of its inhabitants.¹⁷⁵ Likewise, under the IRFA, Congress can impose economic sanctions on countries for not responding to religious persecution at the hands of nonstate actors.¹⁷⁶ Because Egypt receives approximately two billion dollars a year from the United States in foreign aid, the IRFA has real implications for Egypt.¹⁷⁷ In an effort to utilize the full strength of the IRFA, the American Coptic Association successfully lobbied the Senate appropriations subcommittee to propose that the entire two billion dollars in foreign aid "be conditioned on improvements in 'respect' for Copts."¹⁷⁸

The IRFA has not been well received by either Copts or Muslims living in Egypt. For example, while the IRFA was still being debated before the House, Egyptian Economy Minister, Youssef Boutros-Ghali, a Copt and nephew to Boutros Boutros-Gahli, went to Washington to urge congressmen not to support the bill.¹⁷⁹ One newspaper reported, "Boutros-Ghali stated that while he was not saying that Christians in Egypt were doing fine—'they are not'—external pressures would be to no avail 'and I will ally myself with the Moslem against Congress, which seeks to meddle [in Egypt's internal affairs].'"¹⁸⁰

174. Pub. L. No. 105-292, 112 Stat. 2787 (codified at 22 U.S.C. § 6401-81 (Supp. 2000)) [hereinafter IRFA]; see also Aimee Howd, *Pyramid Shadows Hide Persecution*, INSIGHT MAG., Aug. 9, 1999, at 22, available in 1999 WL 8674124; *Major Provisions of H.R. 2431 the International Religious Freedom Act*, in THE COPTS: CHRISTIANS OF EGYPT, Jan.-June 1999.

175. See IRFA, supra note 174; see also *Major Provisions of H.R. 2431 the International Religious Freedom Act*, supra note 174.

176. See Timothy C. Morgan & Kees Hulsman, *Church of the Martyrs: Copts Thrive in the Face of Bloody Carnage, Legal Restraints, and Discrimination*, CHRISTIANITY TODAY, Aug. 11, 1997, at 6, available in 1997 WL 8863266.

177. See *id.*

178. *Id.* It should be noted that nothing, as of yet, has been done. But, the New York City Council has begun to consider a bar to granting municipal contracts with firms that do business "with countries that persecute Christians," including Egypt. See *id.* at 6-7.

179. See *Egyptian Coptic Minister in Washington to Lobby Against Religious Persecution Bill*, MIDEAST MIRROR, Apr. 15, 1998, available in 1998 WL 27568379.

180. *Id.*

Furthermore,

the reaction of Egyptian Copts to recent legislation in the United States, purportedly intended to protect religious minorities around the world from persecution, was anything but grateful.

Everybody from Coptic Pope Shenouda III on down said they were shocked-shocked!—to learn that anyone would think there was religious discrimination in Egypt. And besides, the United States ought to keep its nose out of Egypt's business.¹⁸¹

While it is doubtful that the once outspoken Pope Shenouda III was shocked to think that anyone would believe there is religious discrimination in Egypt, there is good reason for the Egyptian Copts to resist the U.S. government's cutting off of aid to Egypt on their behalf. The reason is that Egypt's economy is very fragile, and violent acts within Egypt have been shown to correlate with Egypt's economy.¹⁸² In other words, encouraging Egypt to speed up its response to religious discrimination against Copts by cutting off their economic lifeline may only increase the probability of violent acts committed against Copts. Thus, cutting off economic aid to the Egyptian government is not an effective means of protecting Copts from violent attacks at the hands of nonstate actors. Even if the IRFA were successful in compelling a quicker response by the Egyptian government, it would not address the underlying cause of nonstate discrimination in Egypt. Thus, under the very best of circumstances, the IRFA will only pick the weed but leave the root in

181. James J. Napoli, *Egypt's Coptic Christians, While Struggling to Maintain Their Heritage, Decry U.S. Anti-Persecution Act*, WASH. REP. ON MIDDLE E. AFF., Aug. 31, 1998, available in 1998 WL 27643841.

182. See Ibrahim, *The Changing Face*, *supra* note 111, at 76. Ibrahim concludes:

[I]t seems clear to us that the swift rise and spread of Islamic activism, with all its violent and non-violent strands, is associated with real or perceived crises—social, economic, political, cultural, regional, and international. The social crisis has to do with worsening equity, rising unemployment, structural misery, and the spreading sense of relative deprivation. The economic crises has to do with Egypt's narrow resource base, rapidly growing population, external debt, and inadequate investments—factors which have depressed the real rate of economic growth to an annual average of 2 percent in the last decade.

Id. Others argue that the real problem of violence originates with other Muslim countries. For example, "[e]ven today, some Middle east Christians argue that if it was not for the glut of oil money, the Islamist movement would wither. 'If they stopped the funds coming from Saudi Arabia and Iran, all these problems would end,' declared Father Ibrahim, a priest at the Ghamra Church in Cairo." John Daniszewski, *Christians as Underdogs Called Foreigners by Arabs, They Pre-Date Them*, PITTSBURGH POST-GAZETTE, Aug. 17, 1997, at 5, available in 1997 WL 11839576.

IRFA will only pick the weed but leave the root in the ground. Under the very worst of circumstances, the IRFA not only leaves the weed in the ground but depresses Egypt's economy even further and thereby causes the weed to grow uncontrollably.

In summary, the answer to curbing violence carried out against the Copts in Egypt is very complex. Simply withdrawing Egypt's "state of emergency" now in force will not combat the violent acts of nonstate actors because such an action will only slow down government reaction and reduce its power to convict the criminals. In addition, this solution does not respond to the underlying causes of violence in Egypt. Likewise, while the United States' solution of threatening to cut off economic aid may force the government to speed up its response to the violence, such an action will depress the Egyptian economy and thereby contribute to the violence. Like the United Nations, the United States has done nothing to address the underlying causes of violence. This Comment argues that, to be effective, prevention of nonstate discrimination in Egypt must first be dealt with by Egypt's Constitution, courts, and legislation.

2. Eliminating all forms of discrimination sanctioned by Egypt through reforming its Constitution, courts, and legislation

A more plausible solution to nonstate discrimination against the Copts in Egypt would be for the Egyptian government, of its own free will, to eradicate all forms of religious discrimination in its own laws and thereby create a society more willing to accept religious pluralism. For example, as Egypt currently stands, it does not seem to be "condoning" nonstate discrimination against the Copts but permitting less visible forms of discrimination in its Constitution, courts, and legislation. Not only is this "double-standard" a violation of Egypt's obligation to conform its law to religious human rights protection under Article 2(2)-(3) of the CCPR,¹⁸³ but it also sends the wrong message to nonstate discriminators: that Egypt is willing to tolerate discrimination based on religion. Accordingly, Part IV.B.2.a discusses areas of Egypt's Constitution that need to be reformed. Part IV.B.2.b compliments Egypt's Supreme Constitutional Court for its diligent efforts to reconcile the *shari'a* and democracy but offers suggestions on how Egypt's entire court structure may be

183. For Article 2(2)-(3), see note 139 and accompanying text.

reformed to enhance religious human rights protection. Finally, Part IV.B.2.c analyzes specific laws that may be contributing towards Egypt's double standard of "not condoning" nonstate discrimination but permitting discrimination in its own laws.

a. Reformation of Egypt's Constitution. As stated above in Part II.D, in 1980, Egypt's Constitution was amended to: (1) specify Islam as the official state religion,¹⁸⁴ (2) establish "Islamic jurisprudence as the principal source of legislation," and (3) reinstate the *shari'a* as "the main" source of Egyptian legislation.¹⁸⁵ These amendments to Egypt's Constitution, in and of themselves, do not violate the Copts' religious human rights.¹⁸⁶ "Nevertheless, international law does not allow states to invoke religious law, or indeed any domestic law, as an excuse for breaching their treaty obligations."¹⁸⁷ In addition, as the Human Rights Committee emphasized,

the fact that a religion is recognized as an official or state religion or that its followers constitute the majority of a state's population, is not a lawful ground for impairing any rights under the [CCPR], including rights under articles 18 and 27, of anyone who does not accept the official ideology or even outright opposes it.¹⁸⁸

In other words, the manner and extent to which the *shari'a* has been implemented to deprive the Copts of their religious human rights determines whether its inclusion in the Egyptian Constitution is a violation of Egypt's obligation under the UDHR and CCPR.

A total and complete implementation of the *shari'a* into Egypt's legal system would clearly violate the Copts' religious human rights.¹⁸⁹ For example, the *shari'a* does not treat a non-Muslim living

184. See *infra* note 189 and accompanying text.

185. MADDEX, *supra* note 44, at 72.

186. See Arzt, *supra* note 135, at 424 ("[I]nternational law does not require the separation of church and state, so Muslim governments are not absolutely precluded from enacting Shari'a within the formal structure of their domestic legal systems."). However, in response to the 1980 *shari'a* amendment to the Egyptian constitution, one scholar argued: "[t]he change from 'a main' to 'the main' was clearly intended to emphasize the role of Shari'a, thereby giving constitutional support to demands for immediate and total implementation of Shari'a. . . . [T]his is detrimental to the cause of religious freedom and tolerance." An-Na'im, *Religious Freedom*, *supra* note 64, at 46.

187. Arzt, *supra* note 135, at 425.

188. *Id.* at 394 n.25 (citing General Comment Adopted by the Human Rights Committee under Article 40, ¶ 9 of the International Covenant on Civil and Political Rights, U.N. Doc. CCPR/c/21/Rev.1/Add.4, Sept. 27, 1993, 4).

189. See An-Na'im, *Human Rights*, *supra* note 39, at 22.

in an Islamic state as a full citizen of that state.¹⁹⁰ Admittedly, non-Muslims are guaranteed protection of their person and property and a degree of autonomy “to practice their own religion,”¹⁹¹ but these limited rights are based upon the contingency that the *dhimmis* pay the *jizyah*, discussed above.¹⁹² In addition, the lives of *dhimmis*

are evaluated as inferior in monetary terms as well: they are not entitled to the same amount of *diyya* or financial compensation for homicide or bodily harm as Muslims. The reputation of a *dhimmi* is not protected by the Shari’a on equal terms with that of a Muslim since the *hadd* of *qadhf*, the special criminal penalty for an unproven accusation of fornication, does not apply unless the victim is a Muslim. In the private law of Shari’a, discrimination against non-Muslims includes the rule that a Muslim man may marry a *dhimmi* woman but a *dhimmi* man may not marry a Muslim woman.¹⁹³

Thus, substantial portions of the *shari’a* do not protect the fundamental religious human rights of non-Muslims living under its jurisdiction.

Fortunately, Egypt has not yet implemented the more discriminatory effects of the *shari’a* into its law and society. Indeed, Article 46 of Egypt’s Constitution “provides that the state guarantees the freedom of religion and the freedom of practicing religious rites.”¹⁹⁴ Nevertheless, there are strong indications that the 1980 amendments to Egypt’s Constitution are moving Egypt further and further into a society less tolerant of religious pluralism. For example, as mentioned in Part II of this Comment, to minimize any resistance from the Copts after the enactment of the amendment, President Sadat blamed the necessary constitutional amendment on Pope Shenouda and his alleged efforts to initiate and intensify religious strife occurring in Egypt.¹⁹⁵ As a consequence of this amendment, on June 17, 1981, a massive revolt occurred in Cairo.¹⁹⁶ After three days of tur-

190. *See id.* at 24.

191. *Id.*

192. *See id.*

193. *Id.* (footnotes omitted).

194. Awad Mohammed El-Morr, *Judicial Sources for Supporting the Protection of Human Rights*, in *THE ROLE OF THE JUDICIARY IN THE PROTECTION OF HUMAN RIGHTS* 5, 17 (Eugene Cotran & Adel Omar Sherif eds., 1997) [hereinafter El-Morr, *Judicial Sources*].

195. *See FARAH, supra* note 60, at 3.

196. *See id.*

moil, seventeen people had died “([nine] Copts,¹⁹⁷ [seven] Muslims and one unidentified), 112 were injured and 171 public and private” buildings were damaged, as noted.¹⁹⁸ In light of the serious fighting and strong contention between the two religions, Sadat ordered 1500 arrests of both political and religious figures “from the extreme right to the left.”¹⁹⁹ Moreover, Sadat withdrew state recognition of Pope Shenouda III and banished him to a monastery in Upper Egypt.²⁰⁰ Under Article 2(3) of the CCPR, quoted above, Egyptian laws should have provided the Pope and his followers with an “effective remedy” for this violation of their “rights and freedoms.” Unfortunately, none was provided, and the Coptic Pope consequently remained in exile for over four years.²⁰¹

There are other, equally vivid indications that the 1980 amendments are moving Egypt towards a society less tolerant of religious human rights. In 1981, the “Islamic Council,” consisting of representatives from Egypt, Pakistan, and Saudi Arabia, prepared the Universal Islamic Declaration of Human Rights (“UIDHR”).²⁰² At first glance, the UIDHR appears to mirror the UDHR, but this is misleading.²⁰³ For example, the UIDHR “does not guarantee equal treatment for religious minorities or state that discrimination based on religion is impermissible.”²⁰⁴ In addition, while Article 10 does state that there “shall be no compulsion in religion,” it cites as authority the Qur’an 2:256, which is traditionally interpreted to mean “that *dhimmis* should not be forced to convert to Islam,” not that *dhimmis* will be treated on an equal basis with Muslims.²⁰⁵

197. This figure was questioned by a *Le Monde* correspondent, who reported that “Coptic infants were thrown from windows or burned alive with their parents.” MCDERMOTT, *supra* note 92, at 193.

198. FARAH, *supra* note 60, at 4.

199. *Id.* at xi.

200. *See id.* at xi. In other words, Sadat annulled the 1971 election of the Pope. *See* David B. Ottoaway, *Egypt Frees Coptic Pope*, WASH. POST, Jan. 2, 1985, available in 1985 WL 2140431.

201. *See* MCDERMOTT, *supra* note 92, at 198-99.

202. *See* ANN ELIZABETH MAYER, ISLAM AND HUMAN RIGHTS: TRADITION AND POLITICS 22 (2d ed. 1995). The UIDHR is also referred to as the Muslim Declaration on Human Rights. A reprinted English version is found in Muhammad Tal’at Al-Ghunaimi, *Justice and Human Rights in Islam*, in JUSTICE AND HUMAN RIGHTS IN ISLAMIC LAW 1, 14-22 (Gerald E. Lampe ed., 1997).

203. *See* MAYER, *supra* note 202, at 22.

204. *See id.* at 131.

205. *See id.*

In 1985, the Egyptian Parliament voted for a “gradual[] and scientific[]” implementation of the *shari’a* into Egyptian society and to revise aspects of the law inconsistent with the *shari’a*.²⁰⁶ Five years later, the Organization of the Islamic Conference (to which Egypt belongs) adopted the Cairo Declaration, which embodies a “general consensus—although only at the governmental level—on how Islam should affect rights.”²⁰⁷ The Cairo Declaration stands in clear defiance to the UDHR and CCPR. For example, the last article of the Cairo Declaration announces that it is based only on the *shari’a* but that the Declaration applies to “every human being.”²⁰⁸ Thus, by applying the Declaration to every human being, the *shari’a* and its manifested problems for non-Muslims are also applied to every human being, regardless of religious affiliation. In addition, the Cairo Declaration contains no provision for equality of rights for non-Muslims, excludes non-Muslims from the right to serve in public office, and forbids non-Muslims from marrying Muslims.²⁰⁹

Finally, the Human Rights Committee has recently questioned the propriety of basing a country’s legal system on Islamic criteria: “the developments that had occurred in the world since the emer-

206. See An-Na’im, *Religious Freedom*, *supra* note 64, at 46. In May of that same year, the pro-Islamic parliament abolished

the 1979 women’s rights law on the grounds of its being unconstitutional. This law, known as ‘Jihan’s law’ because it was championed by Sadat’s wife (and issued by presidential decree and without the consent of parliament) declared that polygamy was legally harmful to a first wife and automatically gave her the right to divorce her husband. Moreover, it gave the wife the right to custody of young children and to the family dwelling after the divorce. Until that time, a husband could divorce his wife by saying simply ‘I divorce you’ three times.

MCDERMOTT, *supra* note 92, at 200. Although this explanation is very simplistic and skims the surface, one reason for the abolition of women’s rights and the strong movement to implement the *shari’a* immediately into Egypt’s legislative system is that the Muslim Brotherhood was exerting an ever stronger presence in Parliament. See *id.* at 93. Although, under the Constitution, they were not allowed to form a political party, they were able to forge pacts with various political groups that would pursue their political agenda. See *id.* at 92-93. In short, “[s]ince Egypt’s national elections in 1984, Moslem Brotherhood’s leaders, many of whom have spent years in prison, have taken up moderate policies, saying they have renounced violence and decided to work within the system.” Stephen Franklin, *Arab World Wary of Surging Islamic Fervor*, CHI. TRIB., June 10, 1990, at 1, available in 1990 WL 2839806. These political actions led to a greater rift between the Islamic fundamentalists and militants because the militants viewed the fundamentalist’s willingness to “operate within the system” as compromising true Islamic values. See MCDERMOTT, *supra* note 92, at 93.

207. MAYER, *supra* note 202, at 24.

208. See Arzt, *supra* note 135, at 396.

209. See MAYER, *supra* note 202, at 138.

gence of Islam [make] it permissible to ask whether the fact of ordering the whole life of a country on the basis of such ancient precepts could not give rise to certain problems.”²¹⁰ As demonstrated by the Coptic Pope’s exile and the legislation discussed below, “certain problems” have already arisen in Egypt.

In summary, Egypt has not implemented the more extreme forms of religious discrimination found in the *shari’a*. Nevertheless, there are strong indications that the 1980 amendments to Egypt’s Constitution are moving Egypt further and further into a society less tolerant of religious pluralism. In addition, by leaving the 1980 amendments in Egypt’s Constitution without providing an “effective remedy” as provided by Article 2(3)(b) of the CCPR, Egypt has not fulfilled its obligation under the CCPR to undertake “the necessary steps, in accordance with its constitutional processes” to protect the religious human rights of the Copts. Furthermore, even if the Egyptian government does not “intend” to use the *shari’a* to deprive Copts of religious human rights, allowing the *shari’a* to remain “the main” source of Egyptian law gives the wrong message to nonstate actors who do “intend” to utilize the *shari’a* to the detriment of Copts. On the basis of these possibilities, one scholar argued: “abolish *dhimma* and all discrimination against non-Muslims under Shari’a. Unless these are abolished, there is no prospect for religious freedom in Egypt or anywhere else in the Muslim world which purports to apply any part of Shari’a.”²¹¹ While the abolition of the *shari’a* may be the best solution, Egypt’s Constitution should at least be reformed to clarify that principles of religious human rights trump the legal principles of the *shari’a* and that “effective remedies” will be provided when religious human rights are violated.

b. Reformation of Egypt’s courts. Established in 1979,²¹² Egypt’s Supreme Constitutional Court “is an independent judicial body that exclusively applies judicial review of the constitutionality of laws and regulations, and also interprets the legislative texts, as prescribed by

210. Human Rights Committee, *Summary Record of the 1194th Meeting*, U.N. Doc. CCPR/C/SR.1194 (1993), at 2, reprinted in FRANK NEWMAN & DAVID WEISSBODT, *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* 139 (2d. ed. 1996).

211. An-Na’im, *Religious Freedom*, *supra* note 64, at 59.

212. Abd-El-Rahman Nosseir, *The Supreme Constitutional Court of Egypt and the Protection of Human Rights*, in *THE ROLE OF THE JUDICIARY IN THE PROTECTION OF HUMAN RIGHTS* 47 (Eugene Cotran & Adel Omar Sherif eds., 1997).

law.”²¹³ Accordingly, the Constitutional Court has tried to strike a balance between “normative Islamic principles” and Egypt’s “democratic character.”²¹⁴ In addition, the Constitutional Court has advocated the need for Egypt to honor its obligations to international human rights instruments.²¹⁵ In these endeavors, the Constitutional Court has been quite successful. For example, in 1996, the Constitutional Court liberally interpreted Article 46 of Egypt’s Constitution on the “freedom of religion.” The court stated that

this freedom principally and plainly means that no one may be compelled to believe in a religion which he denies; to declare the religion to which he adheres; to withdraw from the one he has chosen; or to favour a particular religion in prejudice of another, either by way of contempt, defamation or renunciation. In other words, all religions are to be mutually tolerated and reciprocally respected.²¹⁶

Because of this decision and others²¹⁷ Egypt’s Constitutional Court has drawn “wide admiration” in many countries.²¹⁸

One of the reasons Egypt’s Constitutional Court has been successful in protecting the human rights of Egyptian citizens is because of its refusal to apply Article 2 of the Constitution (the 1980 *shari’a* amendment) to any legislation that was enacted before the article was adopted in May 1980.²¹⁹ Likewise, the Constitutional Court has “adopted a cautious attitude” toward applying Article 2 to any legis-

213. Hatem Aly Labib Gabr, *Recent Judgments of the Supreme Constitutional Court of the Arab Republic of Egypt Upholding Human Rights*, in *THE ROLE OF THE JUDICIARY IN THE PROTECTION OF HUMAN RIGHTS* 61 (Eugene Cotran & Adel Omar Sherif eds., 1997) [hereinafter Gabr, *Recent Judgments*].

214. Baber Johansen, *Supra-Legislative Norms and Constitutional Courts: The Case of France and Egypt*, in *THE ROLE OF THE JUDICIARY IN THE PROTECTION OF HUMAN RIGHTS* 347, 372 (Eugene Cotran & Adel Omar Sherif eds., 1997) [hereinafter Johansen, *Supra-Legislative Norms*].

215. Adel Omar Sherif, *Unshakable Tendency in the Protection of Human Rights: Adherence to International Instruments on Human Rights By the Supreme Constitutional Court of Egypt*, in *THE ROLE OF THE JUDICIARY IN THE PROTECTION OF HUMAN RIGHTS* 35, 35 (Eugene Cotran & Adel Omar Sherif eds., 1997) [hereinafter Sherif, *Unshakable Tendency*].

216. El-Morr, *Judicial Sources*, *supra* note 194, at 17-18.

217. *See, e.g.*, Sherif, *Unshakeable Tendency*, *supra* note 215, at 37-45 (summarizing cases on army discipline, nature preserves, mandatory arbitration, right to marry, right to employment for disableds, and students’ medical insurance).

218. *See* Gabr, *Recent Judgments*, *supra* note 213, at 61.

219. *See* Johansen, *Supra-Legislative Norms*, *supra* note 214, at 372.

lation adopted after May 1980.²²⁰ For example, in Case No. 29 of the eleventh judicial year, the Court held legislative acts that “may not contradict Islamic *Shari’a* principles” are only those acts “that are definitive in certainty as to the source from which they derive and as to their meaning.”²²¹ In other words, acts that are not of certainty derived from the *shari’a* are subject to “discretionary interpretation” and do not have to be in complete conformity with the *shari’a*.

Despite the Constitutional Court’s impressive rulings on human rights and reluctance to apply Article 2 to legislation enacted after May 1980, there is still need for reform in Egypt’s court system. First, Egyptian courts should not have to strike a balance between “normative Islamic principles” and Egypt’s “democratic character” if religious human rights are at stake. Under the UDHR and CCPR these rights cannot be compromised. Second, other high courts in Egypt have not followed the impressive precedent set by the Constitutional Court in balancing Islamic principles and Egypt’s democracy. For example, in 1995 and 1996, two of Egypt’s highest courts gave “precedence to the protection of religious legal doctrine developed more than 1,000 years ago over the constitutional guarantees of religious freedom and freedom of research.”²²² On these decisions, one scholar observed:

Instead of attempting to strike a balance between [Islam and democracy], they have opted for a hierarchical understanding of their relationship. . . . It seems to me that the option for a hierarchical understanding between religious values and democratic freedoms may have serious repercussions on the understanding of the freedoms of religious practice, the freedom to profess a faith and the freedom of research. These freedoms are as vulnerable as religious texts and norms, and much as religious texts and norms they cannot be made congruent with each and every interpretation.²²³

In other words, some of Egypt’s highest courts compromise important aspects of religious freedom by promoting what are seen to be discriminatory traditions of Islam. Thus, Egypt’s courts need to be reformed in such a way that when there is a conflict between tradi-

220. *See id.*

221. Case No. 29 of the Eleventh Judicial Year, Mar. 26, 1994, *reprinted in* 1 YEARBOOK OF ISLAMIC AND MIDDLE EASTERN LAW 128 (Eugene Cotran & Chibli Mallat eds., 1995).

222. Johansen, *Supra-Legislative Norms*, *supra* note 214, at 373. For more information on these cases, *see id.*, at n.72.

223. *See id.* at 373.

tional notions of Islam and religious human rights, religious human rights will take precedence. This system of precedence is currently in effect in Lebanon and is discussed below in Part IV.C.

c. Reformation of discriminatory laws. The 1980 *shari'a* amendment's implementation into Egyptian law and society has, at the very least, brought into question Egypt's commitment to honor its obligations under the UDHR and CCPR. Some Copts and international human rights organizations have additionally accused the Egyptian Parliament of depriving the Copts of religious human rights in present-day Egypt through legislative means not necessarily related to the 1980 *shari'a* amendment.²²⁴ This subpart analyzes those accusations and suggests reformation in the following areas of legislative law: (1) building permits, (2) public education, (3) government representation, (4) conversion from Islam to Christianity, and (5) press laws.

(1) *Building permits.* Article 21 of the CCPR states:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.²²⁵

Despite Egypt's commitment to these principles, it is claimed that "[t]he most blatant discrimination against Copts is a law requiring presidential approval for the construction or repair of a church. It dates back to 1856 and is the only legal vestige of Ottoman Turk rule."²²⁶ This law, sometimes called the Hamayouni Decree because of its historical origin, has made it extremely difficult for Copts to get a permit to renovate or build a new place of worship.²²⁷ Originally, this law, which is inapplicable to Muslims, required the Coptic Church to obtain "a series of permits culminating in a presidential decree" before it could start building or renovating.²²⁸ In 1998,

224. See *supra* Part II.C and accompanying notes.

225. CCPR, *supra* note 122, art. 21.

226. Zina Hemady, *Copts Target of Muslim Radicals: Egyptian Christians Fear Government Favors Islamic Fundamentalists*, NEW ORLEANS TIMES-PICAYUNE, Mar. 28, 1993, at A36, available in 1993 WL 7649210.

227. See 15A HELSINKI ACCORDS, *supra* note 103, at 1417.

228. See *id.* For example,

one Coptic Father complained that under this law he was prohibited from fixing a

however, President Mubarak amended the law so that governors too can authorize the issuance of a building permit.²²⁹ This procedural change to the law increased the issuance of permits from twenty building permits in 1997²³⁰ to 207 in 1998.²³¹ But despite these improvements to the Hamayouni Decree, one Coptic Bishop pointed out:

The procedure has changed, but not the regulations. The governor signs in stead of the president, but we still need permission to repair even a toilet. As far as we can see, the security forces are still taking the final decisions. It's a problem that the various stipulations are still not clear enough. One of these, to give you an example, is that we are not allowed to build in the vicinity of a mosque. But who knows what is considered to be 'the vicinity' of a mosque? How many metres is this? It would be a great improvement if criteria like these would have been clarified.²³²

Thus, there are still obvious problem areas in Egypt's law on building permits.

To be sure, there are valid reasons behind the use of the Hamayouni Decree in Egypt. For example, building a Christian church in a Muslim neighborhood could lead to serious civil disruptions. In addition, the government should have a right to regulate buildings, including how, where, and for whom they are built. Nevertheless, the language in Article 21 of the CCPR, quoted above, expressly grants the right to "peaceful assembly" with certain exceptions. In addition, none of these exceptions are applicable in the case of Egypt. For example, imposing a 150-year-old building law only on the Copts in Egypt is "not necessary" for Egypt to maintain a democratic society. Furthermore, limiting the rights of Copts to worship in churches in

leaky roof and sewage problems in his church. He had originally applied for a permit to fix them, but after facing one obstacle after another, he "secretly brought in a Christian plumber" to do the job. The repair work without the permit, which was still incomplete, was discovered and the Father was threatened "with a lengthy prison sentence," but "got off with a fine almost equal to the amount in the building fund. The completed work had to be undone, including demolishing the new toilets. Water still pours down the walls from the roof, and the toilets are stopped up."

Egypt: Do Toilets have a Religion?, in THE COPTS: CHRISTIANS OF EGYPT, July, 1994, at 17.

229. See *Hamayouni Legislation Obstructs Church Reconstruction*, IDB, Apr. 1998, at 7.

230. See 18 HELSINKI ACCORDS, *supra* note 103, at 1172.

231. See 23A HELSINKI ACCORDS, *supra* note 103, at 1653.

232. *Hamayouni Legislation Obstructs Church Reconstruction*, *supra* note 229, at 7.

need of renovation does not protect “public health or morals.” Finally, although there may be “security or public safety” concerns, it is still a violation of the Copts’ religious human rights to require them to comply with this ancient law without requiring the same of their Muslim counterparts. Thus, it appears that instead of amending the law to make it less restrictive, as President Mubarak has done, the law ought to be abolished altogether or made applicable to all religious groups.

(2) *Public education.* The role of the *shari’a* and Islamic values in public education have become an increasingly sensitive topic in Egypt. For example, in 1996, the Supreme Constitutional Court of Egypt affirmed a 1994 appellate court’s decision that the Minister of Education should prohibit female pupils in school from covering their faces.²³³ The court held that the *shari’a* did not specifically state that a woman’s entire face must be covered, except the eyes, and the *shari’a* was subject to several interpretations, and thus the Minister of Education had discretion to implement it as he did.²³⁴ In so holding, the Court advocated the “middle course” by refusing to impose an excessive dress code but upholding a very modest one.²³⁵ Although none of the parties to this suit were Copts, it is clear that while the Court refused to impose an excessive dress code on all Egyptian school girls, Copts are subjected to the dress code issued by the Minister of Education as he implements the *shari’a*. Hence, the Minister of Education’s ability to impose the *shari’a* on Coptic children in public schools violates Article 18(2) of the CCPR: “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.”²³⁶ Thus, although the Constitutional Court softened the impact of the *shari’a*, the court’s decision still violated the CCPR by reinforcing the *shari’a*’s application to all Egyptians regardless of religious preference.

In related aspects of public education, Coptic children in public schools are required to memorize parts of the Qur’an in their Arabic studies class but are deprived of lessons on the subject of Christianity

233. See Case No. 8 of the 17th judicial year, judgment dated May 18, 1996, reprinted in 3 YEARBOOK OF ISLAMIC AND MIDDLE EASTERN LAW 178-80 (Eugene Cotran & Chibli Mallat eds., 1996).

234. See *id.* at 180.

235. See *id.*

236. CCPR, *supra* note 122, art. 18(2).

in Egypt.²³⁷ In the universities, Copts were also denied admission to medical schools because “some Islamists find [] treatment of Muslim women by Coptic doctors [] offensive.”²³⁸ Furthermore, a law passed in 1972 gives the government authority to appoint university presidents and deans of departments.²³⁹ This law, initially passed to thwart attempts of Islamic fundamentalists from taking over universities, has more recently been the means of depriving many qualified Coptic professors from these important positions.²⁴⁰

Because these acts give preference to Muslims, they violate Article 26 of the CCPR: “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . religion.”²⁴¹ More importantly, however, discrimination in public education teaches those students in education that it is acceptable to treat individuals differently because of their religion.

State authorized discrimination sends the wrong message to those nonstate actors who prefer to discriminate against Copts in more extreme manners. Just as importantly, any discrimination in public education teaches future leaders of Egypt that religious discrimination is acceptable.

(3) *Government Representation.* Article 25 of the CCPR states:

Every citizen shall have the right and opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections. . . .

237. See 17 HELSINKI ACCORDS, *supra* note 103, at 997-98.

238. See *id.*

239. See Ibrahim, *Governance and Structural Adjustment*, *supra* note 150, at 167 (citing Law No. 49/1972).

240. See Charles M. Sennott, *A Struggle Against Intolerance*, B. GLOBE, Jan. 18, 1999, at A1, available in 1999 WL 6043846 (“None of the presidents or deans at Egypt’s universities is a Copt.”).

241. CCPR, *supra* note 122, art. 26.

- (c) To have access, on general terms of equality, to public service in his country.²⁴²

Egypt's commitment to this article is questionable. For example, Egypt's Constitution forbids sectarian groups from forming political parties.²⁴³ Additionally, even if the Copts could form themselves into a nonreligious political party, they would have to garner eight percent of the total vote before a member of their party could have a seat in Parliament.²⁴⁴ Hence, it is not surprising that in 1995 "[f]ifty-six Copts ran in the election, but all lost."²⁴⁵ In addition to low or no representation in elected positions, there are complaints that Copts are rarely appointed heads of public or government institutions.²⁴⁶ A classic example of discrimination in this area is Boutros Boutros-Gali. Despite his expertise in foreign affairs, he was only appointed to the President's cabinet as the deputy to the President's Minister of Foreign Affairs.²⁴⁷ Finally, after years of assisting Egypt's Minister of Foreign Affairs, on January 1, 1992, Boutros Boutros-Gali was ap-

242. *See id.* art. 25.

243. *See* MCDERMOTT, *supra* note 92, at 92. Note that this law was primarily enacted to keep the Muslim Brotherhood from forming a political party. But, its members have exerted tremendous political influence by forming coalitions with opposition parties. *See id.* at 117.

244. *See id.* at 118. The majority of parliamentary seats are filled by members of the National Democratic Party (NDP). *See id.* They typically occupy over three hundred of the available 418 seats. *See id.* While the NDP is not affiliated with fundamentalists, they were the overwhelming majority in Parliament when the Constitution was amended to include the *shari'a* as "the main" source of legislative law. *See id.* at 113. Thus, even though it is possible for a Copt to be a member of the NDP and run for parliament as a member of their party, it is unlikely that a Copt would feel comfortable running for office in the party that made such a drastic change to the constitution.

245. Jasper Mortimer, *Copts Find Road to Advancement Closed: Egypt's Christians Feel Shut Out of Government*, SAN DIEGO UNION-TRIB., July 11, 1999, at A29, available in 1999 WL 4077329. It is interesting to note, however, that all political parties covet the Coptic vote: "Even the Moslem Brotherhood, which is banned in Egypt but whose activities have long been tolerated, has joined the bandwagon. In a declaration entitled 'Address to the People' issued in early May, 1995, the group underlined its 'condemnation of terrorism and support for complete civil rights for Copts.'" Mona Salem, *Opposition Parties Line Up To Woo Egypt's Christians*, AGENCE FRANCE-PRESSE, May 24, 1995, available in 1995 WL 7807110.

246. *See* 17 HELSINKI ACCORDS, *supra* note 103, at 998. Traditionally, mayors of villages, for example, were elected positions. Now the law requires that these positions be appointed by the government. *See* Ibrahim, *Governance and Structural Adjustment*, *supra* note 150, at 167 (citing a law passed in April 1994 "doing away with the election system for village mayors").

247. Christopher Walker, *Egyptian Copts Flee Islamic Extremism*, TIMES LONDON, Mar. 10, 1993, available in 1993 WL 10562086.

pointed Secretary-General of the United Nations.²⁴⁸ In short, for Egypt to create a society more tolerant of religious pluralism, religious organizations must be given a greater opportunity to voice their concerns both to government and as representatives of the government.²⁴⁹

(4) *Conversion from Islam to Christianity.* Article 18(1)-(2) of the CCPR provides:

- (1) Everyone shall have a right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice. . . .
- (2) No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.²⁵⁰

In addition, Article 12(2) states: “Everyone shall be free to leave any country, including his own.”²⁵¹

Despite these provisions under the CCPR, Muslim converts to Christianity have been arrested and detained under Egypt’s “state of emergency” laws.²⁵² In addition, Egyptians are required by law to identify their religion on their birth certificate, driver’s license, travel papers, and employment applications.²⁵³ Moreover, the law not only requires Egyptian citizens to display their religion on their identification cards but Muslims who have converted to Christianity are not permitted to change the status of their religion on their card from

248. See *Boutros Boutros-Ghali*, *supra* note 117.

249. See Ibrahim, *The Changing Face*, *supra* note 111, at 79 (arguing that the government’s belatedness in both socially upgrading depressed areas of Egypt, including Upper Egypt, and conversing with opposition parties and professional associations has been a major reason for the dramatic increase in violence).

250. CCPR, *supra* note 122, art. 18(1)-(2).

251. See *id.* art. 12(2).

252. See, e.g., 15A HELSINKI ACCORDS, *supra* note 103, at 1416. There is no penalty under Egyptian law for a Christian to convert to Islam. See *The Cry of the Egyptian Church*, *supra* note 145. These converts are arrested and detained for threatening “social peace and intercommunal relations.” See *id.* Another example is that in August 1993 the government security police arrested a Copt for making photocopies of a book containing the conversion stories of Copts from Islam and formally charged him with violating the Penal Code. See 18 HELSINKI ACCORDS, *supra* note 103, at 1171.

253. See John Lancaster, *Egypt’s Endangered Christians; After Violent Attacks, Ancient Coptic Minority Fears It Has Become the Target of Islamic Militants*, WASH. POST, Mar. 18, 1997, at A12, available in 1997 WL 10007936.

Islam to Christianity.²⁵⁴ Finally, there have been instances of Muslim converts to Christianity being arrested in the Cairo airport because of a law that forbids such converts from traveling abroad.²⁵⁵ These traveling restrictions were eventually lifted, but the converts' names are kept on an "immigration lookout list."²⁵⁶ Treating Muslims and Copts differently simply because of their religious preference is unhealthy for a society trying to preserve religious pluralism and combat nonstate discrimination against such individuals.

(5) *Press laws.* The CCPR states:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.²⁵⁷

In 1996, the Egyptian parliament passed a new "press law," providing for all sorts of freedoms associated with the press, including "prohibition against racist policies, scorn for religions, [and] attacking the beliefs of others."²⁵⁸ Nevertheless, this "press law" also provided that the government could censor newspapers during "states of emergency."²⁵⁹ Hence, censorship continues to be prevalent because Egypt has been in a "state of emergency" since 1981. Such censorship has a detrimental effect on the religious human rights of Copts because it forbids negative information about the government from being published and prevents the international community from becoming more sensitive toward the Coptic situation. In addition, press censorship cuts off the ability of Islamists to vent their frustration and anger at the government through more peaceful means instead of resorting to violence to convey their message. Thus, press censorship not only violates the CCPR and creates a society less

254. See 15A HELSINKI ACCORDS, *supra* note 103, at 1416-17; see also 17 HELSINKI ACCORDS, *supra* note 103, at 996. In 1997, a suit was filed "seeking removal of the religious affiliation category from identification cards." 23A HELSINKI ACCORDS, *supra* note 103, at 1653. The resolution of this suit has not been reported.

255. See 18 HELSINKI ACCORDS, *supra* note 103, at 1171.

256. See 23A HELSINKI ACCORDS, *supra* note 103, at 1653.

257. CCPR, *supra* note 122, article 19(2).

258. See Press Law No. 96 of 1996, *reprinted in* 3 YEARBOOK OF ISLAMIC AND MIDDLE EASTERN LAW 184 (Eugene Cotran & Chibli Mallat eds., 1996).

259. See *id.*

aware of its problems, but it also cuts off an important way for society to express itself.

3. Summary: the impact of the shari'a, the courts, and legislation on the religious human rights of the Copts

A more plausible solution to violence in Egypt by nonstate actors is comprehensive legal reform. This may not include removing the 1980 *shari'a* amendment from the Constitution, but it must clarify that the amendment will not be used to deprive any Egyptian citizen of religious human rights. In addition, despite Egypt's Supreme Constitutional Court's impressive treatment of religious human rights, other high courts in Egypt need to be reformed in such a way that religious human rights are given precedence over conflicting notions of Islam. A successful legal reformation would also include equitable treatment in less visible areas of the law, including the issuance of building permits, public education, government representation, conversion, and press laws. Religious organizations must be given more of a chance to voice their concerns both to government and as representatives of the government.²⁶⁰ Public education must be unfettered by strong religious overtones.²⁶¹ The press should be given more freedom to report on human rights abuses, and thereby awaken both Egypt's and the international society's awareness of these problems and work towards a comprehensive, yet sensitive, solution. Finally, to completely eradicate all forms of violent discrimination now used against the Copts, these legal reforms must be followed by comprehensive economic, social, and political reforms.²⁶²

C. Models to Follow: Other Countries' Solutions to Affirmative Treatment of Nonstate Discrimination

This subpart briefly discusses the laws in three different countries that have recognized the government's affirmative duty to protect religious minorities from nonstate discrimination, have enhanced those protections, and have provided an "effective remedy" for any religious discrimination that does occur. The laws in these three

260. See Ibrahim, *The Changing Face*, *supra* note 111, at 79.

261. See *id.*

262. See *id.* (arguing that Egypt will not be able to stem the tide of Islamic activism until there are comprehensive economic, social, and political reforms).

countries serve as models upon which Egypt can rely in reforming its own laws and enhancing its protection of Copts from nonstate discrimination. The first nation, Ireland, is important because it shows how a country has chosen to affirmatively protect the religious human rights of its citizens by explicitly stating so in its Constitution. The next nation, the United States, exemplifies ways that Egypt can better protect the religious human rights of its citizens from nonstate discrimination by improving its treatment of victims of religious discrimination and more thoroughly prosecuting the perpetrators of the discrimination. Finally, the last nation, Lebanon, shows how a country has chosen to automatically incorporate international human rights instruments into its legal system and give those instruments precedence over conflicting law.

1. The Irish model

Ireland has had a great deal of experience in confronting violence by nonstate actors against others because of religious affiliation. Ireland has chosen to confront this violence and to pursue its duty to protect its citizens from such through its constitution. For example, Article 40.3 of the Irish Constitution provides:

- (1) The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.
- (2) The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.²⁶³

In addition to these rights, the Irish courts have found a related “unenumerated right” protected under the Constitution: “The right to freedom from torture or inhuman or degrading treatment or punishment.”²⁶⁴ Thus, the Irish model is useful in showing how the government’s affirmative duty to protect its citizens from nonstate discrimination is made concrete by making those protections an explicit part of the Irish Constitution.

263. Ronan Keane, *The Role of the Judiciary in the Protection of Human Rights: The Irish Experience*, in *THE ROLE OF THE JUDICIARY IN THE PROTECTION OF HUMAN RIGHTS* 219, 222 (Eugene Cotran & Adel Omar Sherif eds., 1997).

264. *See id.* at 222.

2. *The United States model*

The United States serves as a useful model because of its comprehensive treatment of the government's affirmative duty to protect its citizens from continuous acts of nonstate discrimination and provide an "effective remedy" for victims of such discrimination. First, the United States' courts protect the victim's life, dignity, and privacy from nonstate discrimination in five ways: (1) by issuing "stay away orders" or "emergency protective orders"; (2) by setting bail for the accused based on that accused's threat to public safety; (3) by notifying the victim if the nonstate actor is released on bail; (4) by prosecuting any threats of violence against the victim; and (5) by relocating the victim of the discrimination.²⁶⁵ Second, the United States has increased the likelihood of convicting nonstate and state perpetrators of discrimination. This has been accomplished through several methods:

by changing the rules of evidence to allow relevant evidence to be admitted into the court, and by training prosecutors and using that training in specialized teams to ensure expertise. As to police abuses and misconduct, conviction of those that use legal authority to terrorize and brutalize must be ensured through independent investigations, and the incentives to act illegally must be removed through legislation and even through judicial remedies.²⁶⁶

Third, the United States allows the victim of nonstate discrimination to actively participate in the judicial process. For example, victims are notified of the time and place of the court proceedings, and the victim is permitted to present information at a plea bargain or sentencing or parole hearing.²⁶⁷ Finally, the United States "demands that the victim should be made 'whole' financially."²⁶⁸ This compensation is first sought from the nonstate actor, and, if the offender has insufficient funds, the victim can seek compensation from the government.²⁶⁹ In summary, the United States provides a good model

265. See generally Michael E. Hartmann, *Protection of Human Rights Through the Criminal Justice System: Protection and Participation of the Victims of Crime, and the Prosecution of Their Oppressors*, in *THE ROLE OF THE JUDICIARY IN THE PROTECTION OF HUMAN RIGHTS* 161, 165-169 (Eugene Cotran & Adel Omar Sherif eds., 1997).

266. See *id.* at 177.

267. See generally *id.* at 186-90.

268. *Id.* at 192.

269. See *id.* at 192.

for Egypt to follow in affirmatively protecting the religious human rights of those discriminated against by nonstate actors. It is a demonstration of how Egypt can effectively prosecute, and thereby deter, nonstate discrimination.

2. *The Lebanese model*

The final model, that of Lebanon, is useful because of how it has incorporated international guarantees of human rights into its own constitution and legislative laws. The manner in which these rights are incorporated into law and subsequently applied help define the boundaries of the government's affirmative duty to protect religious human rights and the extent to which those rights are protected. Lebanon has enabled the automatic incorporation of international treaties into its legal system "by virtue of ratification by the Executive after consent of the Parliament."²⁷⁰ After the treaty is incorporated into its legal system, "the provisions of the international treaties have precedence over the provisions of the internal legislation pertaining to the same subject, that is, even if there isn't any contradiction *per se* between the said provisions."²⁷¹ Thus, by these methods, Lebanon has made a clear commitment to affirmatively protect the religious human rights of its citizens.

IV. CONCLUSION

The Copts have been at home in Egypt for over 1900 years. Throughout their existence, Copts have enjoyed complete religious freedom at times and total repression at others. Currently, the Copts are facing increasing violations of their religious human rights by nonstate actors. Under the UDHR and CCPR, Egypt's government has an affirmative duty to protect the Copts from such acts of discrimination. However, Egypt's affirmative duty to protect the Copts from nonstate discrimination cannot be satisfied by quicker responses, better investigations, or swifter prosecutions of these acts of discrimination. Instead, for Egypt to effectively combat this type of discrimination in the long run and create a society more tolerant of religious pluralism, Egypt must first eliminate all forms of discrimina-

270. Georges J. Assaf, *The Application of International Human Rights Instruments by the Judiciary in Lebanon*, in *THE ROLE OF THE JUDICIARY IN THE PROTECTION OF HUMAN RIGHTS* 81, 85 (Eugene Cotran & Adel Omar Sherif eds., 1997).

271. *Id.* at 86 (citations omitted).

tion from its Constitution, courts, and legislation. In addition, other reforms outside the scope of this Comment, including economic, social, and political changes, must be instituted for Egypt to stem the violent discrimination perpetrated by nonstate actors.

Despite the comprehensive reforms that Egypt must undergo in the face of strong cultural and religious diversity, a society truly tolerant of religious pluralism can flourish in Egypt. Indeed,

cultural [and religious] diversity is not incompatible with human rights; it is one of the byproducts, one of the purposes of human rights, particularly of religious human rights. Pluralism is inseparable from the liberty that induces it. . . . What is universal in all societies is the need for the rule of law and the belief in human dignity. What differs from culture to culture is how and why one gets to those conceptions.²⁷²

By implementing the legal reforms suggested in this Comment, Egypt will come closer to realizing tolerance and religious pluralism in its society. In return, the Copts of Egypt will enjoy the full extent of their religious human rights.

Scott Kent Brown II

272. Arzt, *supra* note 135, at 400.