

Viewpoints
No. 15

Women's Rights Under Egypt's Constitutional Disarray

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Egypt's post-revolution constitution does not explicitly prohibit discrimination based on gender or religion. It only recognizes women's domestic role within a family "founded on religion, morality, and patriotism." Clerics will have the final word over the new laws.

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Egyptian women challenged tradition and dealt a blow to all taboos when they took to the streets alongside their male compatriots calling for freedom, dignity, social justice, and democracy. They were fighting for their liberty as they called for Hosni Mubarak to step down. Educated young women and men, using the most sophisticated tools of social media, inspired the hopes of a nation. The sense was that women were regarded as equals for the first time in modern history. This epic movement promised a civic boom. Egyptians were becoming more politically savvy and equally empowered. They looked toward a new constitution to secure the freedoms they had fought for.

The process of constitution writing, however, has not been as inspiring and women's rights emerged as a thorny issue. The tide started to turn against women a few weeks after the fall of Mubarak. On March 19, 2011, in the absence of women and without any form of debate, a constitutional declaration swiftly removed the parliamentary quota for women. It also gave the People's Assembly the right to choose a Constituent Committee (CC) charged with writing Egypt's post-revolution constitution.

The Islamists controlled parliament through an unfair advantage afforded to them by an unconstitutional electoral law, which was later repealed. They gave marginal representation to women both in terms of number of seats (6 percent) and the choice of women on whose shoulders the burden of protecting women's rights would fall. This all took place against a backdrop of radical, anti-feminist sentiment.

The People's Assembly was consequently dissolved, bringing with it the looming threat of the dissolution of the CC. Uncertainty and illegitimacy threats jeopardized the process and the work of the CC, which was constantly accused of lacking transparency and being devoid of public consensus. The hegemony of political Islamists led to the withdrawal of representatives of other crucial sectors of society such as Christians and experts. This move further impacted the process of rewriting the constitution and left the ground unchallenged for Islamists.

HUMAN RIGHTS-BASED CONSTITUTION

To its credit, the constitution expanded the identification of rights and freedoms, covered in 51 articles compared to 21 articles in the 1971 constitution. A whole chapter is devoted to human rights and their guarantees.¹

¹ This was among my recommendations when I was asked for my input on an earlier draft of the constitution, and I am glad to see this one, unlike others, taken into account.

That said, the constitution lacks a human rights approach. Where rights were mentioned, they were either stated in the third person or without guarantees. The constitution did not follow the globally acknowledged classification of human rights, and they were relegated to a secondary position. Religion is vaguely injected in certain articles, threatening restrictions on the exercise of certain rights. The cases of women, children, freedom of expression, and religion are some examples.

AN ENVIRONMENT CONDUCIVE TO RESPECT OF HUMAN RIGHTS

Generally speaking, the constitution does not provide a foundation that is conducive to the realization of human rights. Article 2 maintains “principles” of *shari’a* as the source of legislation. Contrary to the 1971 constitution, this provides for soliciting the views of Al-Azhar, a religious entity, concerning the interpretation of *shari’a*. In a constitutional precedent, Article 2 is interpreted by Article 219 using language that effectively turns the non-controversial “principles” into the more restrictive and controversial “provisions of *shari’a*.” This translates into subjectivity as clerics will have the final word over the laws that translate such broad terms. This gives non-elected, non-judicial individuals authority over the elected legislature and other democratically-elected bodies. Al-Azhar, which has been the subject of takeover attempts by the ultra-conservative Salafis, may shift from being a moderate enlightened institution to taking a more radical stance. This naturally poses a threat to women’s rights given political Islam’s notoriety for being against these rights.

THE CONSTITUTIONAL FRAMEWORK FOR WOMEN’S RIGHTS

The right to equality is covered in two articles. Article 8 uses paternalistic language that the state “ensures achieving justice, equality and freedom, along with channels of social charity and solidarity... to protect honour and property and provide adequate subsistence as regulated by legislation.” Article 33 states, “all citizens are equal before the law, in public rights and duties without discrimination.” The article overlooks personal rights where gender-based discrimination is flagrant. Moreover, it is devoid of legal guarantees of implementation.

The state’s responsibility to guarantee equality between men and women, a basic tenet of all Egyptian constitutions since 1923, was removed altogether from the new constitution. The new document is short of the minimum international standards observed by almost all democratic constitutions. The post-revolution constitution does not prohibit discrimination on the grounds of gender, sex, religion, origin, or any other grounds.

The provision of the 1971 constitution concerning women committed the state to ensure gender equality in all walks of life, provided it does not violate the provisions of *shari’a*. Women campaigned to remove this caveat but failed, and the entire article was removed. Article 10 about the family is the only article that mentions women as a specific group and is placed under the chapter on the moral foundations of society, outside the chapter on human rights. It only recognizes women’s domestic role within a family, “founded on religion, morality and patriotism.” It does not establish any rights for women, let alone guarantee their

implementation. The constitution places “public morals above fundamental individual rights” and leaves its definition to the law. Article 10 relegates society beside the state to ensure “compliance with the authentic nature of the Egyptian family and its morals.” Many fear that such a provision will allow for militia groups to terrorize citizens into what they see as good Islamic dress codes and behavior.²

The constitution does not explicitly prohibit human trafficking, servitude, or slavery and signals strong intentions to lower the minimum age of marriage.³ Women’s rights are threatened by *shari’a* as the source of legislation, jurisprudence modified by Article 219 and through a religious body (Article 4),⁴ and by article 76 that allows punishment based on a constitutional clause. Women risk losing acquired gains such as the right to a unilateral divorce granted by law no. 1/2000, and protection from child marriage and female genital mutilation (FGM) criminalized by law no. 126/2008, to name but a few.

RIGHTS GUARANTEES

Crucial human rights guarantees are missing. First, reference to the international human rights treaties, which Egypt has ratified and is bound to uphold, has been removed from the constitution. Gone with it is the elevated status of these treaties in guiding national legislation. This omission signals reluctance to honor such commitments,⁵ if not the intention to backtrack on some of them.

Second, in a serious violation of the minimum standards of human rights, Article 81 restricts the exercise of rights and freedoms with a vague notion of the “non-violation of foundations of the State.”

Third, Article 76 places the legitimacy of crimes and punishment at the discretion of the judge. It is no longer governed solely by law, but could be based on a constitutional provision, again based on *shari’a* as defined by Article 219. This leaves law enforcement open to subjectivity and potentially negative interpretations leading to the application of *hodoud* (Islamic punishment).

Moreover, both Articles 76 and 81 can be interpreted according to Article 219 by the clerics who will overrule judges. A great number of articles are qualified by the law subjecting the constitution to legislation (peaceful assembly; establishing associations, NGOs, and parties; labor syndicates; and cooperatives could be dissolved by court order). The balance of power and the independence of the judiciary is another concern. The president has all the executive powers (expanded across 22 articles in the new constitution compared to only 12 articles in the 1971 constitution), shares the legislative powers, and has a serious influence over the judiciary.

² Some incidents are unfolding.

³ Yasser Burhamy of the Salafis, among others, publicly defended child marriage as low as 6 years old.

⁴ Al-Azhar, the highest seat of learning in Sunni Islam, currently headed by the moderate and enlightened Dr. Ahmed El Tayeb.

⁵ Statement by the High Commissioner for Human Rights, December 7, 2012

CONCLUSION

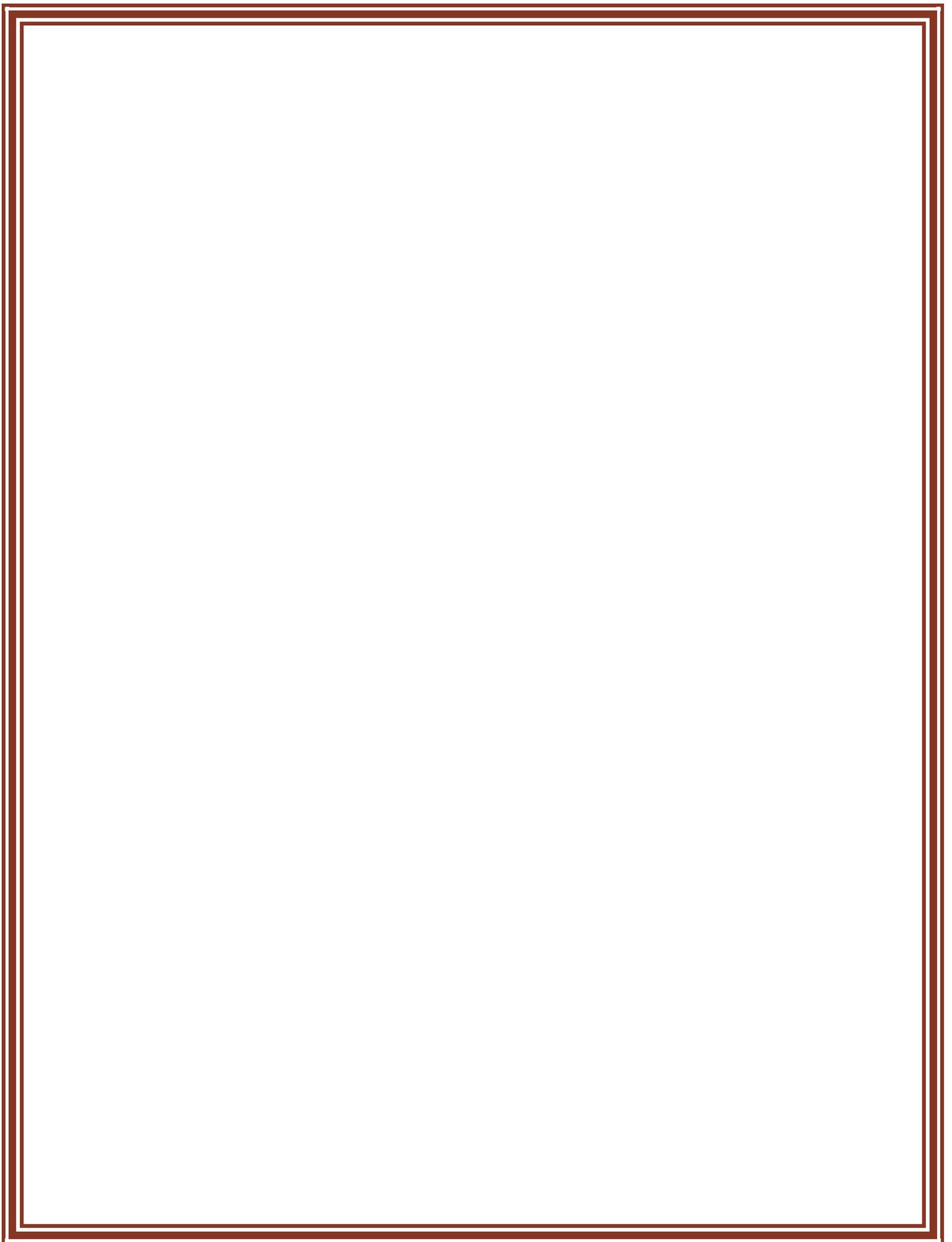
Egypt's post-revolution constitution has divided the nation, instigated unprecedented violence, and dealt a blow to women, who represent 50 percent of the population and who made the revolution possible. The Islamists have succeeded in passing a constitution that bears their mark. They have swiftly moved to pass a battalion of laws called for by the constitution. The Islamist-controlled Shura Council, elected without mandate and with only 7 percent of the votes, is assigned this mammoth task until the election of the lower house. The president used the constitutional declaration of 2011 to appoint 90 members on the eve of the adoption of the new constitution, which only provides for the appointment of ten members.

To suppress objections to the draft constitution, the president lured people to vote in favor of the constitution with the bizarre promise that disputed clauses would be revised after the adoption of the constitution. Such a revision is technically impossible as it requires approval of both houses of parliament with a qualified two-thirds majority in a long and complicated process followed by a referendum. The process of revision will be another distraction bearing no fruit, particularly if the new parliament continues to be controlled by the Islamists.

The Shura Council, during its consideration of the election laws, rejected a proposal to place women on the first half of party lists. Having learned from their mistakes, civil opposition is finally uniting and regrouping with the aim of bringing down the constitution and preparing for the upcoming parliamentary elections. The faltering popularity of the Islamists makes for an opportune time for such unity, which would gain in numbers and strength if joined by women. Women need to organize themselves as a political force and join the liberal movement. These questions remain: Can women unite under one banner? Have liberals learned enough from past mistakes to treat women as equals? Or will women be used as a prop by the liberals to improve their image? My fingers are crossed.



The opinions expressed herein are those of the author and do not reflect those of the Woodrow Wilson Center.



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