

**Executive
and Legislative Proposals**

Identity Documents, Marriage Certificates and Burial

**The missing rights of adherents
of "unrecognized" religions**

Identity documents, marriage certificates and burial:

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Executive and legislative proposals

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Introduction

Since 2015, the media and speeches by the president, religious officials, politicians, academics, and pundits have widely touted “the renewal of religious discourse,” “religious reform,” and a “religious revolution,” but the ostensibly sweeping reforms suggested by such headlines have left state religious policies largely untouched.

In November 2018, President Abd al-Fattah al-Sisi, [speaking at the World Youth Forum in Sharm al-Sheikh](#), seemed to stress the need for the state to uphold the religious freedoms of all manner of religious communities, beyond the three state-recognized religions of Islam (the official state religion), Christianity, and Judaism.

“In the past, the Egyptian state did not think of building houses of worship for citizens other than mosques,” he said. “But now the state is dedicated to building for every new community...churches for its citizens, for they have the right to worship like everyone else. And if we have other religions in Egypt, we would build them houses of worship. If there are Jews, we will build them houses of worship and if there are other religions, we will do the same.” He added, “We do not discriminate between one religion and another. Everyone is equal. This is not just talk, but action that must be taken, to become standardized, sustained policies and mechanisms for the state.”

This statement affirms the state’s need to accept religious diversity, even of religions other than Christianity and Judaism, and to guarantee the right of worship and the right to establish houses of worship for these faiths. It also asserts the state’s need to respect citizens’ choices to belong to any religion.

Reactions from citizens belonging to religious minority communities soon followed. Hatem al-Hadi wrote an article for al-Tahrir—titled [“Yes, Mr. President, there are other religions in Egypt”](#)—saying that Egyptian Bahais welcomed the statement and hoped it would translate into policies to guarantee religious liberty for everyone. Al-Hadi referred to “problems impeding Bahai citizenship rights, like other Egyptians, including issues related to the personal status law, like the lack of designated cemeteries for their dead. These needs are now pressing...before they hope to have houses of worship built, as you stated and as is permitted to Bahais in the 160 countries whose representatives attended the World Youth Forum.”

A number of citizens also signed a public statement “from atheist, non-observant, and agnostic Egyptians or citizens who prefer to keep their beliefs private,” which read in part:

These statements are not reflected in any state practices or policies. Yet we look forward to such practices and policies, which affirm freedom of belief and the right of every citizen to believe what he wants without facing discrimination, harassment, or the denial of rights. As citizens, and as atheists, non-observant people, or agnostics, we demand the most basic right: that the state not lie on the religion slot in our official documents. This slot still contains the religion of our fathers if they belonged to one of the only three religions that can be inscribed in that slot (Muslim, Christian, Jew). Attempts to keep the slot blank or write a dash (—) have been refused by the Civil Status Department at the Interior Ministry.

These responses to the president’s speech demonstrate that there are indeed “other religions” in Egypt and that the state’s commitment to their right to worship and houses of worship, as alluded to by President Sisi, or their right to non-state interference in their religious choices, remains

unfulfilled. On the contrary, their aspirations are in direct conflict with the history and reality of the Egyptian constitution, legislation, and current religious policies, which refuse to recognize any religious formation beyond the three Abrahamic religions. This status quo violates their most basic rights, such as the right to correctly identify their religion on official documents, the right to have their marriages certified, and their right to designated burial places.

Article 64 of the Egyptian constitution¹ states that the state must guarantee freedom of worship and the freedom to build houses of worship for the adherents of “revealed religions.” Numerous executive policies and judicial rulings make clear that “revealed religions” refers solely to Islam, Christianity, and Judaism, exclusive of other religions and beliefs, which are described as “unrecognized,” meaning the agency or entity that represents this community or belief has no legal personhood. But non-recognition affects not only the freedom to worship or build houses of worship; it threatens the basic rights of people belonging to religions other than Islam, Christianity, or Judaism.

Apart from Islam, which the constitution recognizes as the state religion, recognition of Christianity and Judaism is not absolute, but is limited to specific confessions and sects granted legal personhood by the state. There are some Christian communities that are not officially recognized.

For people who adhere to unrecognized religions or beliefs, or those who adhere to no religion at all, the most significant fundamental rights threatened are the right to obtain official documents with their religion correctly stated, or at least documents that do not affiliate them with a community they do not belong to; the right to certify marriage; litigation rights in personal status matters; and burial procedures and designated burial grounds. Their right to freedom of expression is also curtailed. There are numerous precedents that treat the expression of unorthodox or minority beliefs and ideas as “the propagation of extremist ideas,” which is subject to prosecution under Article 98f of the Penal Code as blasphemy or contempt of religion.

These rights and liberties are not only collective rights of religious communities awaiting recognition by the state. Most of them are personal rights inherent in the right to citizenship, which must be guaranteed to individuals regardless of their beliefs. In this case, state policies and legislation must guarantee basic rights and religious freedoms. Currently, however, there are numerous barriers to the exercise of these rights and freedoms, which the proposals below are designed to remedy.

In this brief paper, we present several executive and legislative proposals that could be directly and immediately adopted by state institutions if they are serious about the commitment, as articulated by President Sisi, to guarantee freedom of religion and belief for everyone without discrimination. This paper also discusses constitutional amendments and more comprehensive reforms needed to cement and sustain freedom of religion and belief.

These proposals are based on various rulings of Egyptian high courts as well as provisions in international human rights law, which under the 2014 Egyptian constitution became an integral part of national law.

1- The amended constitution of 2014.

1- Urgent executive proposals to protect basic rights

These proposals seek to eliminate barriers to the exercise of basic rights by citizens who do not belong to Islam, Christianity, or Judaism, such as the right to obtain a national identity card and marriage certificate, litigation rights in personal status matters, and burial rights. These proposals all involve executive decrees issued by the government that require no legislative or constitutional amendment and do not address amendments or reforms related to the recognition of minority religious communities.

A- Listing of religion in personal status records and national identity cards

The interior minister should issue a decree amending Article 33 of the implementing regulations of the personal status law. The regulations were issued with Decree 1121/1995, amended by Interior Minister Decree 520/2009 to add the following paragraph:

A dash (—) shall be placed in the slot for religion for Egyptian citizens who were previously registered or obtained identity documents, or whose fathers registered or obtained identity documents, that do not list one of the three revealed religions or place a dash in the religious slot, or pursuant to a final court ruling. This shall apply to all forms and releases appended to these regulations, provided an application is filed with the deputy interior minister for the personal status department or his deputy and it is entered in the proper registry.

Proposal

Amend the article to add: “or file an application with a special committee formed by the civil status division that will be the competent body to record Egyptian citizens’ adherence to other than the three religions of Islam, Christianity, and Judaism.”

Background

The interior minister issued Decree 250/2009 amending Article 33 of the implementing regulations of the personal status law after several rulings from the Administrative Court that refused to compel the Interior Ministry list other than the three Abrahamic religions in the religion slot on national identity cards. More than one of These rulings required the Interior Ministry to leave the slot blank or write in a dash (—) for citizens who had obtained, or whose fathers had obtained, identity documents listing other than the three recognized religions. The Interior Ministry did not appeal these rulings, but the High Administrative Court denied an appeal on the rulings in March 2009.

In ruling no. 12780/61JY, the Administrative Court stated, “Based on the principle that no citizen be compelled to enter a revealed religion if his documents do not list a revealed religion in the slot for religion, he may obtain national identity cards in which the slot for religion is left blank or filled in with a specific mark clearly indicating that he does not adhere to any of the three revealed religions.” The court added, “The relevant statutes do not preclude placing a dash (—) for persons who do not belong to a revealed religion who have previously obtained documents that list no religion.

The court dismisses the administration’s argument based on a legal opinion that would compel them to list a revealed religion, reasoning that this would constitute a grave injury to the religion that would be falsely listed.”

The current situation in which Egyptian citizens whose official documents list one of the three recognized religions, following the father’s religion, while they do not, in fact, adhere to that religion—whether because they belong to an unrecognized religion or no religion at all—is contrary to fact and contravenes the Administrative Court ruling, which was upheld by the High Administrative Court. While the court required the Interior Ministry to place a dash in the religion slot only if older official documents showed that the applicant or his father did not adhere to a revealed religion, freedom of belief is an absolute individual belief and should therefore not be contingent on the religion of one’s father or limited by older documentation. If a person decides to change his belief or join a religion other than that into which he was born, the Interior Ministry, to properly comply, should form a body within the civil status division responsible for recording the affiliation of citizens not belonging to the three recognized religions. No such entity currently exists.

The court ruling also referred to Article 47 of Law 143/1994 on civil status, which states that one’s religious affiliation may be changed pursuant to a court ruling or documents issued by a competent body. Yet, it is improper for a citizen—given the absolute freedom to choose his belief under the constitution—to confirm his religion through litigation. At the same time, there is no competent body to affirm his religious affiliation if the citizen does not adhere to a recognized religion and sect with legal personhood that can issue such an affirmation recognized by the state and admissible in court. The civil status division must therefore create a competent body, even temporarily, to provide such recognition and facilitate citizens’ receipt of their official documents.

B- Designation of burial places

Proposal

Governors should issue decrees designating burial places for persons who are not adherents of the three recognized religions in governorates in which citizens request such a place.

Background

Egyptians who are not adherents of the three recognized religions complain that there are insufficient places for burial. In interviews with EIPR researchers, they said that in the past they were designated places for burial in the governorates of Cairo, Alexandria, and Port Said.

State decrees to establish cemeteries for adherents of non-Abrahamic religions is unrelated to official recognition of such rites. An example is an edict issued by King Farouq, published in no. 53 of the Official Gazette on April 14, 1949, titled “Edict to create a cemetery in Port Said in the Canal governorate for the burial of individuals who belong to rites other than the religions recognized in Egypt.”

C- Right to marriage, certification thereof, and legal recourse in personal status matters

Proposal

The minister of justice should issue a decree appointing notaries in various governorates to certify marriage contracts for non-Muslim Egyptians whose religion on official documents is listed as a dash (—) by the civil status department, pursuant to Article 3 of Law 68/1947, which states:

The offices shall undertake to certify all documents, with the exception of marriage contracts and divorce and reunification statements for Muslim Egyptians and non-Muslim Egyptians of the same sect and rite. Marriage contracts and divorce for non-Muslim Egyptians of the same sect and rite shall be certified by notaries appointed by decree of the justice minister. The minister shall establish regulations elucidating the conditions for appointment of the notaries, their competencies, and all related matters. The aforementioned marriage contracts shall be subject to a fee pursuant to Law 91/1944.²

Background

Official bodies refuse to certify the marriage of numerous Bahais, and the Civil Status Department continues to issue them national identity documents that list them as unmarried, even after they have obtained birth certificates for their children, on the grounds that since the state does not recognize the Bahai faith—and hence, Bahai marriage rites—official bodies are justified in disregarding and denying the fact of their marriage and actual social status. As a result, many Bahais turn to the family courts to win recognition of their marriages.

Although state bodies stubbornly refuse to recognize Bahai marriage, as a religious rite for an unrecognized religion, the state must provide for the right to marry and have that marriage certified regardless of the religious form of the marriage. This is consistent with the right of Egyptians of other religions and beliefs, or no belief, to marry and certify the marriage.³

The Egyptian State Council has previously interpreted the phrase “non-Muslims” in Article 3 of Law 68/1947 to include non-Muslims of all types, including Bahais, in legal opinion no. 582 of November 19, 1952. The article therefore applies to all non-Muslim Egyptians who do not belong to one of the three recognized religions.

In addition, the Civil Status Department issues identity cards to Bahais with a dash next to the slot for religion, making them of the same sect and rite, since they have the same legal status in the registry for religion. The justice minister can therefore issue a decree appointing notaries for marriage contracts of couples who both have identity documents that place a dash in the religion slot.

2- EIPR submitted this proposal to the justice minister in 2012 in an unpublished paper titled “Paper on the Certification of Bahai Marriages,” written by Adel Ramadan, EIPR’s legal officer.

3- Article 16(1) of the Universal Declaration of Rights states, “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry.” Article 10 of the Egyptian constitution states, “The family is the foundation of society, its pillars religion, morals, and patriotism. The state has an interest in its cohesion and stability and in cementing its values.”

For litigation in personal status matters, the Cassation Court has established the principle that in personal status matters, Islamic law (sharia), as the common law, is the applicable legal standard for both Muslims and non-Muslims, with the exception of non-Muslim couples of the same sect and rite with a religious personal status code recognized by the state. Other than this, what the Cassation Court has called the “common law” or “common sharia” applies. The court has ruled, “It is established in the jurisprudence of this court that Islamic law is the common law, meaning that it has original jurisdiction in family relations for Muslims and non-Muslims. Other legal codes have exceptional jurisdiction when meeting certain conditions.”⁴

As long as the state refuses to recognize the personal status code of Bahais or other unrecognized religions and beliefs—or the lack of such by non-observant or atheist citizens—the principle established by the Cassation Court should apply, and all litigation on personal status matters should be based on the common law.

2- Short-term legislative proposal

Alternative to marriage certificates for unrecognized religions: notary public offices

This proposal addresses the lack of a legal framework for the certification of marriage and personal status matters for Egyptians not belonging to a recognized religion and rite. As an alternative, it suggests enabling them to certify marriage and divorce and have legal recourse in personal status matters without necessarily remedying the underlying issue of non-recognition.

Proposal

Amend Article 5 of Law 143/1994 on civil status, which reads, “...Notary public offices shall be competent to certify marriage and divorce if one of the spouses is a foreigner or both of the spouses are Egyptians of different religions or rites,” by adding “or if there is a dash (—) in the religion slot for both spouses.”

Subsequently, the justice minister should issue a decree annulling Article 134 of Chapter Five, Section Two, of the notary public directives, which states:

The marriage of Bahais or a marriage between a Bahai and a person of another religion recognized by the Arab Republic of Egypt may not be certified. A marriage in which one of the spouses is a Jehovah’s Witness Christian may similarly not be certified. No authentication or notarization of any document issued by the Watch Tower Bible Society, which is the Jehovah’s Witnesses Association, shall be accepted.

This article entails discrimination against certain sects of Egyptians and denies them their right to certify their marriages.

This legislative change is related to the proposed change above in the implementing regulations of

4- Cassation Court ruling in appeals no. 16 and 26/48JY/personal status.

the civil status law, to allow a dash to be placed in the religion slot on documents for groups whose faith is not recognized by state bodies. In such a case, marriages between spouses who both have a dash in their identity documents in the slot for religion can be certified at notary public offices. Litigation in personal status matters will be based on the common law rather than a religious code.

3- Legislative changes entailing partial reform of the recognition policy

Separating “the recognition of the existence of a religious community and the guarantee of basic rights to its adherents” from “recognition of public worship and houses of worship”

If denying sects of Egyptians the right to worship and operate houses of worship, due to recognition policies and constitutional provisions, contradicts constitutional principles, discriminates against Egyptians, and denies them religious freedom, the failure to recognize the existence of sects of Egyptians and their existing social relationship and the refusal to certify their marriages is a flagrant injustice and violation of the most fundamental rights of citizenship.

This proposed medium-term legislative fix seeks to protect the right to marry under a minority religious rite and secure the state’s recognition of the existence of such communities and their social relations without addressing the right to worship and houses of worship, which would require constitutional amendments and comprehensive reform of state policies in the administration of religious affairs.

Proposal

Amend Article 3 of Law 1/2000, which states, “...Judgments shall be issued in personal status disputes between non-Muslim Egyptians of the same sect and rite who had communal judicial bodies as at December 31, 1955 pursuant to their code and the public order,” to strike the phrase “who had communal judicial bodies as at December 31, 1955”

Background

The phrase to be stricken refers to December 31, 1955, which is the date a law was issued dissolving the sharia and communal courts and putting all such matters under the jurisdiction of the civil courts.

Prior to that date, the sharia courts adjudicated personal status cases for Muslims. The communal judicial bodies regulated personal status matters—marriage and related affairs—for the Christian and Jewish communities and were recognized by the state.

After the dissolution of the sharia and communal courts, civil courts assumed jurisdiction over personal status cases, judged based on the personal status code for Muslims, derived from Islamic law,

or the personal status codes of various religious rites which had previously had communal courts. Islamic law was applied if spouses were of a different sect and rite.

The phrase in question precludes the recognition of personal status codes other than those recognized before this date, which prevents other rites, even other sects of Christians or Jewish rites, from submitting personal status codes to the state for approval.

This amendment would require the Interior Ministry to affirm the existence of any religious community to which Egyptians belong and recognize its formal structure and its personal status regulations, using the same procedures used to adopt the codes of Christian and Jewish rites. The official organizational structure of these sects, recognized by the state, would be the body competent to issue documents attesting to Egyptian citizens' affiliation with that community. Based on that, their religion could be entered on national identity cards. Personal status courts could adjudicate cases based on their religious codes provided these do not conflict with constitutionally protected rights and liberties.

4- Constitutional amendments

Reforming the status of freedom of religion and belief and religious policies requires a set of inter-linked constitutional and legal policies and remedies touching on the status of the official religion, the use of concepts like Islamic law and the public order, the legal status of al-Azhar and its subordinate bodies and the Endowments Ministry, the legal regulation of houses of worship, personal status laws, and more. But there is one basic amendment needed for Egyptians who are not adherents of the three recognized religions that would allow them to exercise their religious freedoms and related rights. It concerns the concept of "revealed religion," the basis of numerous legal and administrative policies and practices and judicial rulings as it relates to recognition and the right to religious freedom.

Proposal

Amend Article 64 of the Egyptian constitution, which states, "Freedom of belief is absolute. The freedom to worship and establish houses of worship for adherents of revealed religions is a right regulated by law," to strike the phrase "for adherents of revealed religions."

The restriction of freedom to worship and establish houses of worship to adherents of revealed religions constitutes discrimination against Egyptians on the basis of belief. Moreover the term "revealed" is legally vague, referring to an otherworldly attribute that is claimed by most religions and faiths. Islamic law and the tradition of Islamic jurisprudence do not use this term to single out certain religions or beliefs exclusive of others.

In terms of its meaning, as has been clarified in numerous official interpretations and judicial rulings, "revealed religions" refers to Islam, Christianity, and Judaism. Several judicial interpretations indicate that the special status of revealed religions (Judaism and Christianity) derives from the status of the People of the Book (ahl al-kitab) or protected minority communities in the Islamic tradition.

In Islamic law, People of the Book refers mainly to Christians and Jews, but Islamic history and juris-

prudence contains multiple examples of a more expansive view, in which other religious communities were recognized as “People of the Book” and considered protected minorities “ahl al Dhimma/the dhimmi”, granted the right to worship by the Islamic state, which recognized their own personal status codes governing social relations and transactions. When it comes to religious rights, the constitutional framework for the modern nation-state should move beyond the framework of “People of the Book” and protected minorities “ahl al Dhimma/the dhimmi”, not slide back toward it.

Objections are raised in light of contemporary religious diversity and the fact that such religious adherents would be considered “apostates” from Islam. Many Egyptian court rulings see “apostasy” as a threat to the public order insofar as it contravenes the sharia. Other courts have ruled that not recognizing apostasy does not infringe freedom of belief because such freedom is limited by respect for the public order, while some equate the public order with sharia itself, or see it as derived from sharia. The substantial contradiction between the most obvious form of freedom of belief—the right of a person to change their belief—and what the judiciary considers the public order must be addressed, first and foremost on the constitutional and legal level, in order to uphold basic religious freedom.⁵ Even in terms of islamic jurisprudence, many contemporary islamic scholars hold that there is no penalty for apostasy in sharia.

In addition, for religious communities like Bahais in Egypt, we are currently seeing generations who have been raised by two Bahai parents. The critical debate of their parents’ time—about conversion from Islam or Christianity to Bahaism—is no longer salient.

A constitutional amendment that removes the restriction of worship and the establishment of houses of worship to revealed religions could mark the beginning of a reconsideration of numerous practices and policies based on this limitation—even before it was explicitly added to the constitution in 2012—and would pave the way to genuine reform of the state of freedom of belief in Egypt.

5- General Comment no. 22 on Article 18 of the International Covenant on Civil and Political Rights states, “The fact that a religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers.” It also states, “[L]imitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.”