

# Anwendungsorientierte Religionswissenschaft

Beiträge zu gesellschaftlichen und politischen Fragestellungen

3

Cornelis Hulsman (Ed.)

## The Sharia as the Main Source of Legislation?

The Egyptian Debate on Article II of the Egyptian Constitution

# Anwendungsorientierte Religionswissenschaft

herausgegeben von Ulrike Bechmann und Wolfram Reiss



Cornelis Hulsman (Ed.)

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of the Egyptian Constitution

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## Abbreviations

AD	- Anno Domini
ARE	- Arab Republic of Egypt
AWR	- Arab-West Report
CAPMAS	- Central Agency for Public Mobilization and Statistics
CIA	- Central Intelligence Agency
CIDT	- Center for Intercultural Dialogue and Translation
EGHS	- Egypt Demographic and Health Survey
EOHR	- Egyptian Organization for Human Rights
MERIA	- Middle East Review of International Affairs
PA	- People's Assembly
SCAF	- Supreme Council of the Armed Forces
SCC	- Supreme Constitutional Court

## Note on transliteration

The transliteration system for Arabic names and terms is based on the system used in the Library of Congress with the exception that emphatic letters (ص، ض، ط، ظ) and ح are not transliterated with a dot under the letter (cf. <http://www.loc.gov/catdir/cpsd/romanization/arabic.pdf>).

Some Arabic authors, however, did not like their names to be transliterated since they publish under a different spelling. In those cases, when the names are mentioned the first time we have put the transliteration of the Library of Congress system in parentheses: Fatma El-Zanaty (Fātimah al-Zanātī).



## Preface

The Arab Spring was very much welcomed not only in the Arab World, but also in Europe and the U.S. After the initial euphoric optimism, however, disillusion set in about the progress of democratic, social, and peaceful structures. There are very different presuppositions for the change on the one hand, and very different visions of the political and socio-religious system of the future on the other hand.

This book focuses on Egypt, a country that was very often presented in the media during the revolt. Tahrīr Square is now known in the world as *the* place of transformation and protest in the Arab World. It was not only full of protesters during the revolt against President Husnī Mubārak, but different steps of the Revolution were commented through actions on this place.

Western media attention faded when the actual protests ceased and the long political and cultural debate began. In Egypt one of the main points in question is the role that *sharī'ah* will play in the future constitution. *Sharī'ah* is the Arabic term for the Islamic law and means a comprehensive code of behavior that embraces both private and public activities. The book shows that the debate on *sharī'ah* in Egypt is very different from an understanding often presented to Western readers. The choice is not between a secular constitution, which guarantees the rights of any beliefs and a theocracy-based on Islamic law with corporal penalties, but rather how the religious freedom for Coptic Christians can be guaranteed while Islam is defined as the religion of state and *sharī'ah* as the main source of legislation. Is this a contradiction or is it possible to combine *sharī'ah* and the freedom for religious minorities according to a modern understanding in accordance with the general human rights declarations?

The debate focuses on Article II in the Egyptian Constitution (Version of 1980):

Islam is the religion of the state and Arabic its official language. The principles of Islamic *sharī'ah* are the main source of legislation.

الإسلام دين الدولة.  
واللغة العربية لغتها الرسمية،  
ومبادئ الشريعة الإسلامية  
المصدر الرئيسي للتشريع

There are legal experts and Christian representatives in Egypt who believe that a state with an official religion, thus not secular, must not

necessarily be a theocracy in which adherents of other religions have no rights. Some, however, have expressed their wish to change passages or amend the constitution; others are content with the status quo.

On October 10, 2012, the Constituent Assembly has finished the main parts of the first draft of the new constitution and launched the “Know Your Constitution” campaign to encourage community dialogue to familiarize Egyptian citizens with the draft articles. The draft leaves Article II of the constitution unchanged although some ultraconservative Salafist groups had been calling for *sharī’ah* law to play a more prominent role and suggested that the Azhar should play an important role in the interpretation of the principals of *sharī’ah*. The head of the Proposals Committee, Muhammad al-Biltāji said that when the first draft was presented the assembly began a wide community dialogue on the first draft of the constitution after four chapters of the document were completed by four committees in coordination with the Drafting Committee. Every Egyptian is entitled to participate and express their opinion on this draft. A final draft must be produced by the end of November. The constitution will then be put to a popular referendum at begin of December, 2012.

This book provides a good insight into the domestic debate between Egyptian intellectuals, Muslim and Coptic, on this question, which has become particularly meaningful since the Arab Spring and the resurgent discussion about the character of the state after the collapse of the Mubārak regime. It helps to understand the discourse in the Egyptian society.

Cornelis Hulsman, a Dutch sociologist who has engaged in Muslim-Christian dialogue for over 30 years, has gathered and edited a fine collection of studies and papers of renowned Muslim and Christian authors on the question of Article II of the Egyptian Constitution. We present these works to European readers as an important contribution to understand the contemporary developments of a region in transition. We thank him for his contribution and hope for further cooperation.

This book is intended to kick off a series of books on the societal, religious, and political developments in the Middle East as the focus of the series “Applied Studies of Religions” (“Anwendungsorientierte Religionswissenschaft”). This concept is based not only on contemporary religious, political, and cultural developments in Europe, but also in the Middle East and other regions of the world.

Vienna and Graz, November 2012

Ulrike Bechmann / Wolfram Reiss

# Introduction

Cornelis Hulsman

Since the beginning of the Egyptian Revolution on January 25, 2011, there have been discussions about revising the Egyptian Constitution, including the reference to the principles of the *sharī'ah* as the main source of legislation. In particular the references to the *sharī'ah*, of key importance for the identity of Egypt for most Egyptians, have resulted in heated discussions resulting in a wide variety of proposals.

The great electoral victories of the Freedom and Justice Party, founded by the Muslim Brotherhood, and the conservative Salafī al-Nūr Party as well as the June 2012 election of Muhammad Mursī, for many years a leading member of the Muslim Brotherhood, have created great fear among non-Islamist Muslims and Christians for the direction the country would take.

In August 2012 President Mursī, however, appointed four assistant presidents of different political trends: Samir Marcos (Samīr Marqus), a liberal and Coptic Orthodox Christian; Dr. Pākīnām Sharqāwī, a female Muslim scholar not associated to the Brotherhood; Dr. 'Isām al-Haddād of the Muslim Brotherhood; and 'Imād 'Abd al-Ghafūr of the Salafī al-Nūr Party. This indicates an effort to unify the country.<sup>1</sup>

Unification efforts have also resulted in discussions suggesting that Christians and Jews should be ruled according to their respective religious principles in their personal and religious affairs.<sup>2</sup>

This book provides an insight into the discussions taking place in Egypt. It is based on an Arabic book about Article II of the Egyptian Constitution,<sup>3</sup> which stipulates that "Islam is the religion of the state,

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<sup>1</sup> Cornelis Hulsman, "AWR Welcomes President Mursī's Appointment of Assistant Presidents," *Arab-West Report*, August 29, 2012.

<sup>2</sup> Ādil Munīr, "Article for Christians in Constitution," *Arab-West Report*, September 2, 2012.

<sup>3</sup> Center for Intercultural Dialogue and Translation (ed.), *Article II of the Egyptian Constitution; towards new paths*, Cairo 2012 (Original bibliographical data: المادة الثانية من الدستور المصري ... نحو مسارات جديدة، نشر عن مركز تقارب الثقافات والترجمة، القاهرة 2012). For the English edition presented here several chapters have been translated and revised in cooperation with the authors. Nabīl Ahmad Hilmī's chapter was reviewed. Also four studies were added to the English publication of this book: an analysis of Jayson Casper of the opinion poll of Fatma El-Zanaty and Muhammad al-Ghazālī, a 2005 review of Hulsman of an article written by PhD candidate Yustina Saleh on Article II of the Egyptian

Arabic is its official language, and the principles of the *shari'ah* are the main source of legislation.” For the most part, liberal Egyptians and Coptic Christians have been the primary source of opposition, arguing for decades for changing or removing this article, aiming to separate religion and state. Conversely, Islamists would like the article to remain in force. Opponents of Article II find issue particularly with the definite article “the” because this, they argue, excludes other sources of legislation.

It is obvious from various western publications about Egypt’s legislation that authors have lacked access to Egyptian sources and Egyptian views and explanations of the Constitution and civil law.<sup>4</sup> This lack of access results in articles written from a western perspective without sufficiently taking Egyptian views into account and cultural differences between Egypt and the Western world. This is not just a matter of a language barrier, but Egyptians have made little effort to explain Egyptian law, especially Article II of the Constitution, in academic publications.

Insufficient access to Egyptian views and context have contributed to a widespread and dangerous belief in the West that if only Egypt’s laws provided absolute, unconditional equality for all citizens, that is by removing all references to the *shari'ah* and making religion an issue of a personal conviction only, social change would follow. But if such views on Egyptian law and legislation were applied without a corresponding change in society, there would certainly be resistance and communal tension. In other words, changes in society should precede changes in law and legislation, just as this happened in the West.

Legal scholar, Prof. Dr. Nabīl Ahmad Hilmī and Christian author, Hānī Labīb, Managing Director of the Center for Intercultural Dialogue and Translation (CIDT), have strongly argued for an amendment of Article II in the Constitution to allow other sources of legislation as well.

Hānī Labīb presents his own views, as CIDT, which produces the electronic magazine *Arab-West Report*, does not promote any particular political view and is receptive of various opinions and their discussion in dialogue.

Dr. Fatma El-Zanaty (Fātimah al-Zanātī) and Muhammad al-Ghazālī conducted a representative opinion poll about the Constitution,

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Constitution, a review of Article II of the Constitution by Patricia Prentice and a study of an Egyptian media discussion in 2007 about Article II of the Constitution by Nushin Atmaca which shows the sensitivities about this article in Egyptian discussions.

<sup>4</sup> See chapter 6 on Yustina Saleh.

including Article II, with a sample of over 5,000 Egyptians; Usāmah Salāmāh, Editor-in-Chief of *Rose al-Yūsuf Magazine*, who presents the results of a survey among 200 Egyptians who are active in public discussions and belong to eight various political trends and organizations; and CIDT researcher Jayson Casper, who shares the reports of round table discussions during which a number of distinct views of both Islamists and non-Islamists were presented.

I have been editing the English translation for *Anwendungsorientierte Religionswissenschaft* (Applied Religious Studies), whereby I have asked authors to provide additional information. The information presented is fascinating. The poll by Dr. Fatma El-Zanaty and Muhammad Al-Ghazālī offers unique insight into the knowledge and opinions of Egyptians regarding their own constitution and the changes they would like to see. It is evident from this poll that the great majority of Egyptians want their society to have a strong religious, Muslim orientation. This explains why the bulk of public figures in Usāmah Salāmāh's survey, including liberals, were not in favor of cancelling Article II, knowing well that the majority of Egyptians would not be in favor of this and that Islamists would resist such change. Nabīl Ahmad Hilmī and Hānī Labīb knew this and thus also did not argue for a cancellation of Article II, but request an amendment.

The discourse on Article II is not new to CIDT. In 2005 I reviewed the paper of Ph.D. student Yustina Saleh on Egypt's Constitution and found it was heavily based on limited Western sources and lacking Egyptian sources and context. In 2007 CIDT published a paper by Patricia Prentice on Article II of the Egyptian Constitution for which she received the support of two scholars from the Azhar University. Additionally, in August 2007 CIDT intern, Nushin Atmaca published an excellent overview of the Egyptian media discussion that followed a March 2007 referendum on amendments of the Egyptian Constitution. All three papers have now been revised for publication in this book.

The Egyptian media discussion is in many ways interesting. The Constitution was earlier amended in 2005, but then concerned only Article LXXVI, which did not result in notable discussions on other articles of the Constitution. This was, however, different in 2007 when thirty-four provisions were amended, not including Article II.<sup>5</sup> The large number of amendments opened the door to questions why Article II

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<sup>5</sup> Nathalie Bernard-Maugiron, "The 2007 Constitutional Amendments in Egypt, and Their Implications on The Balance of Power," *Arab Law Quarterly* 22 (2008), pp. 397-417, [http://recherche-iedes.univ-paris1.fr/IMG/pdf/constitutional\\_amendments\\_in\\_Egypt.pdf](http://recherche-iedes.univ-paris1.fr/IMG/pdf/constitutional_amendments_in_Egypt.pdf). Accessed September 15, 2012.



could not also be amended. This became the topic of a fierce media debate, primarily initiated by opponents of this article who argued that more amendments to the Constitution were needed. Discussions about the article mainly involved intellectuals but also clergy and journalists, both Muslims and Christians, Islamists, and liberals. They could be divided into three groups: the first calling for the complete omission of Article II, the second for keeping it as long as it would be amended, and the third group wanting to keep the article as it was.<sup>6</sup>

The study of Nushin Atmaca shows the arguments of both opponents to and proponents of Article II. Interestingly enough the same arguments have reappeared in discussions about the Constitution in 2011 and 2012. Interesting, too, were the responses of prominent Egyptians close to the government. They show how cautiously most of them operated. They must have been aware of the strength of Islamist forces in society in 2007. In the same period, Egyptians living abroad participated in the discussions, pressing for changes and opposing the voices asking for caution in Egypt.

When one studies the accumulation of media reporting on Article II until 2007 it becomes evident that proponents of changing Article II received a disproportionate amount of attention in Egyptian Arab media given their marginal numbers in the Egyptian population. Various electoral results indicate that non-Islamists represent around 20-23% of the electorate.<sup>7</sup> Since not all non-Islamists are in favor of changing Article II, it means that the opponents to Article II were rather vocal and pushed Islamists toward a more defensive attitude, as the media discussion in 2007 reveals. Indeed, the tone changed considerably after the January 25 Revolution, when Islamist voices began to dominate the political discourse.

Interestingly, we see the same three positions reemerging in the current discussions. Through Dr. El-Zanaty's and Muhammad Al-Ghazālī's opinion poll, however, we now know that the vast majority of Egyptians are not supportive of change. Her population sample also shows

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<sup>6</sup> Nushin Atmaca, "Arguments, Alternatives and Amendments: Article Two of the Egyptian Constitution," *Arab-West Papers* No. 2, 2007.

<sup>7</sup> The estimated 20-23% non-Islamists does not mean that other Egyptians are Islamists. A very large percentage has not taken in a position in favor or opposed to Islamists or non-Islamists. See the chapter of Cornelis Hulsman, Nabil Ahmad Hilmi: A liberal scholar advocating amending Article II, in this book.

Christians comprising 4.85 percent of the population.<sup>8</sup> Since Islamists are substantially larger in number than non-Islamists, liberals and Christians who either want to remove or amend Article II of the Constitution are fighting an uphill battle.

The opinion poll was conducted in July 2011 and was placed in a book that was presented in May 2012 to the Egyptian media.<sup>9</sup> This book was then published while the debates over the Egyptian Constitution were raging. These debates began almost immediately following the ouster of President Husnī Mubārak.

The country has been in transition since the Revolution. At this stage, no one in Egypt knows what the outcome of this phase will be. President Muhammad Mursī has been elected as the first Islamist president of Egypt, but he does not have the same powers as former President Mubārak as the SCAF limited the powers of the president one day prior to the announcement of the electoral results. Unlike his predecessor, Mursī has been subjected to unprecedented checks and balances from other powers in the country. He thus has to yield to these powers as well as Egyptian public opinion.

Since January 25, 2011 three main power blocs have been struggling for maximum influence in the post-Revolutionary period: the military, Islamists, and non-Islamists. Neither the Islamists nor the non-Islamists (mostly liberal) are united, but it is clear that Islamists of various convictions want the country to become more Islamic, while non-Islamists seek to separate religion and government by varying degrees. Islamists have the support of a large part of the population along with a number of wealthy businessmen; however, among non-Islamists and liberals in particular, one finds other prominent, wealthy Egyptian businessmen.

In the ongoing struggle over the identity of the country, the discussion about the Constitution and especially Article II of this Constitution is of key importance as it addresses the role of the Islamic *shari'ah* in society.

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<sup>8</sup> There might be a margin of error but it is unlikely that the proportion of Christians exceeds 6 or perhaps 7 percent. This corresponds with Youssef Courbage and Philippe Fargues, *Christians and Jews Under Islam*, I.B. Taurus Publishers London, New York, 1998. The entire book is about well documented demographics of Christians in the Middle East. See also Cornelis Hulsman. "Interview with Dr. Philippe Fargues about Coptic Statistics," *Arab-West Report*, 2008, Week 52, Art. 17.

<sup>9</sup> Article II of the Egyptian Constitution; towards new paths, Center for Intercultural Dialogue and Translation, 2012 (Arabic).

The arguments of Islamists and non-Islamists are not unprecedented, but since the Revolution, Islamists' political influence has greatly increased.

Discussions about revising the Constitution began immediately after President Mubārak stepped down on February 11, 2011. The old Constitution was frozen, Parliament was sent home, and the military stepped in. On February 16, the SCAF formed a committee consisting of Islamists and non-Islamists under the chairmanship of Tāriq al-Bishrī to formulate amendments to the Constitution that would ease the transfer from a military government to a civilian government over a six month period. Al-Bishrī is a widely respected judge with Islamist sympathies, but he was also a friend of the prominent late Christian jurist, William Qilādah (1924–1999), a personal friend of mine who encouraged us to start the *Religious News Service of the Arab World* that later became *Arab-West Report*. Qilādah spoke highly of his friend Tāriq, who had written a popular book about the Copts.

The SCAF announced on February 26, 2011 several constitutional amendments that eased restrictions on eligibility conditions for presidential elections, limited the number of presidential terms to two four-year periods, and ensured full judicial monitoring of elections.<sup>10</sup>

The amendments favored Parliamentary elections before writing the Constitution, which was immediately opposed by liberals who argued that the Constitution would need to be written first since that Constitution would set the boundaries for powers of both the Parliament and the President. Liberals also feared that the Muslim Brothers were much better organized and thus would need less time to prepare themselves for elections than they would. Islamists, in turn, actively campaigned for an approval of the amendments in the referendum of March 19. More than 14.1 million voters, or 77.2 percent, approved the constitutional amendments; 4 million, or 22.8 percent, voted against them.<sup>11</sup> With an electorate of around 50 million these numbers also mean that a large part of population did not vote. It is interesting to compare these figures with the opinion poll of Dr. El-Zanaty and Muhammad Al-Ghazālī, as this reflects the outcome of this referendum.

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<sup>10</sup> Mona El-Hennawy, "Commission announces proposed changes to Egyptian Constitution," *Egypt Independent*, February 28, 2011, <http://www.egyptindependent.com/news/commission-announces-proposed-changes-egyptian-constitution>.

<sup>11</sup> Neil MacFarquhar, "Egyptian Voters Approve Constitutional Changes," *New York Times*, March 20, 2011, <http://www.nytimes.com/2011/03/21/world/middleeast/21egypt.html?pagewanted=all>.

The March 19 referendum was followed by a Constitutional Declaration by the SCAF.<sup>12</sup> This prepared the road for the formation of political parties and Parliamentary elections in December 2011-January 2012, which resulted in a massive victory for Islamist parties. Clashes followed between the Islamist-dominated Parliament and the SCAF about the formation of the Constitutional Assembly as no consensus could be reached over the proportions allotted to Parliament and major groups in society.<sup>13</sup> Parliament wanted more representatives in the assembly, while the SCAF opted for fewer representatives from Parliament and more representatives from major organizations in society such as trade unions, the Azhar, churches, and a host of other organizations.

The constitutionality of the Parliamentary elections had been disputed in court since members of political parties had also been running as independents while the purpose was to reserve two-thirds of the seats in Parliament for representatives of political parties and one-third for independents. No one had expected Egypt's Supreme Constitutional Court to rule on June 14, only two days before the beginning of the Presidential elections, that one-third of the seats in Parliament were invalid, which in turn resulted in the dissolution of the Parliament. It was believed that the SCAF had been behind this ruling. Whether that is true or not is impossible to say, but this belief has certainly motivated large numbers of non-Islamists to oppose a vote for Ahmad Shafīq, an air force general-turned-politician.

Muhammad Mursī, chairman of the Freedom and Justice Party founded by the Muslim Brotherhood, won in the second round on June 16 and 17 with a narrow majority of 51.7 percent of the vote. His rival, Ahmad Shafiq received 48.3%. Turnout in the poll was numbered at 51%.<sup>14</sup> Certainly not all who voted for Mursī were Islamists; he also received support of non-Islamists who rejected a return to an army-led government.

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<sup>12</sup> <http://www.egypt.gov.eg/english/laws/constitution/default.aspx>.

<sup>13</sup> "Egypt parliamentary committee rejects SCAF criteria for constituent assembly," *Al Ahram Online*, April 28, 2012, <http://english.ahram.org.eg/NewsContent/1/0/40418/Egypt/0/Egypt-parliamentary-committee-rejects-SCAF-criteri.aspx>.

<sup>14</sup> Cornelis Hulsman. "Engagement, not Fear Needed with Egyptian President Mursī, Muslim Brotherhood candidate Muhammad Mursī wins the second round of Egypt's presidential elections," *Arab-West Report* newsletter, June 25, 2012.

The dissolution of Parliament by the Supreme Constitutional Court and the election of President Mursī led the SCAF to make amendments to their March 2011 Constitutional Declaration on June 17, 2012. These amendments limited the powers of the president and expand the military's role, notably giving it a heavy influence over the writing of the country's next constitution.<sup>15</sup> The fighting about the nomination of members of the Constitutional Assembly had ended. Since Parliament was dissolved, the SCAF now had a free hand to nominate the members of their choice.

After only one week in office, President Mursī picked his first fight – he issued a decree to reinstate the dissolved parliament.<sup>16</sup> The Supreme Constitutional Court, however, immediately overturned his decision on July 10, 2012.<sup>17</sup> New Parliamentary elections are expected to take place later in 2012, but it may also be postponed until 2013.

Egypt is still in a period of transition. Elections have produced unexpected outcomes, which are also due to a large segment of the electorate remaining indecisive until the last moment. Decisions have been made that no one expected. This might continue for some time to come.

In this transition period the discussion about Article II continues to play a role. Would support for the Islamist experiment in power decline as many liberals hope? Or would they turn out to be more successful than expected? No one knows, but it is certain that the struggle for power between the three main blocs in society continues.

Within this context it is interesting to read about the arguments and debates taking place in Egypt about Egypt's identity. It is obvious that the texts of Nabīl Ahmad Hilmī and Hānī Labīb were written for an Egyptian audience. Hilmī begins his essay with a basic introduction to the Constitution, but then proceeds to arguments to convince his audience to amend the current constitution. Since much of his information was very basic, statistics were used to serve a political goal and many references were lacking I have chosen, in consultation with the publisher, to make a review of his text.

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<sup>15</sup> "SCAF expands its power with constitutional amendments," *Egypt Independent*, June 17, 2012, <http://www.egyptindependent.com/news/scaf-expands-its-power-constitutional-amendments>.

<sup>16</sup> Jayson Casper, "Mursī Reinstates Egypt's Parliament," *Arab-West Report*, 2012, Week 28, Art. 46, July 8, 2012, <http://arabwestreport.info/year-2012/week-28/46-mursi-reinstates-egypts-parliament>.

<sup>17</sup> "Egypt court overturns President Mursi parliament order," *BBC News*, July 10, 2012, <http://www.bbc.co.uk/news/world-middle-east-18789992>.

Nabīl Ahmad Hilmī correctly states:

[...] a sharp split took place at the level of intellectuals in the society, between those of western education and culture and others of Arab and traditional Islamic culture, which led to a conflict between the two sides and which had negative impacts on democratic development and constitutional reform.<sup>18</sup>

It is this sharp split that is so well reflected in the discussions about Article II of the Constitution, but the same split is much less evident among the masses of the Egyptian population as the poll by El-Zanaty and Al-Ghazālī shows.

This divide among Egyptian intellectuals has also resulted in intense discussions whereby participants do not hesitate to make overstatements. Hilmī argues,

This article has not made a radical change in the Egyptian legal system, it does not pose a threat to the civil state that has existed in Egypt for some two hundred years ago and it does not pave the way for the creation of a religious state.<sup>19</sup>

During the Mubārak years fear and support for this article has also been manipulated but, says Hilmī, "in contrast to what is widely believed, is mostly done by the state, not Islamic movements".

Hilmī sees many errors in drafting and (mis)using Article II and thus suggests to amend it. He does not see removal as an option since it is not possible

to require the Egyptian people, both Muslims and Christians, to renounce their cultural identity most true-expressed by Article II of the Constitution.<sup>20</sup>

The production of this book would not have been possible without the support of many people. This book is based on a thoroughly edited translation of *Article II of the Egyptian Constitution; towards new paths*, Center for Intercultural Dialogue and Translation, 2012 (Arabic) to which new chapters have been added. The Arabic book was initiated by Hānī Labīb and funded by the Middle East Project Initiative (MEPI). We are grateful MEPI allowed us to use the text they supported for this book.

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<sup>18</sup> Nabīl Ahmad Hilmī, "Legal Study: Dilemma of Article II of the Egyptian Constitution," in: *Article II of the Egyptian Constitution; towards new paths*, Center for Intercultural Dialogue and Translation, 2012 (Arabic), p. 97.

<sup>19</sup> Hilmī, "Legal Study," 113.

<sup>20</sup> Ibid., 130.

I am grateful for the work done by translators Muná 'Abd al-Wahāb, Mahā 'Abd al-Qādir, Amr Sherif Ahmed ('Amr Sharīf Ahmad) and Usama Wadia (Usāmah Wadī') and language editors Doug May and Jenna Ferrecchia, who have spent a great deal of time with the translators to make sure that the texts matched the Arabic original without sacrificing readability. Jenna has also played a major role in copy editing and formatting citations. Nevine Naguib Botros (Nivīn Najīb Butrus) and Diana Maher Ghali (Diana Māhir Ghālī) have provided invaluable assistance with tables, transliteration, and searching for information to complete references from the Arabic book. Authors Hānī Labīb, Fatma El-Zanaty (Fātimah al-Zanātī), Muhammad al-Ghazālī, Usāmah Salāmah and Jayson Casper had to bear with me for the many questions that I had about their texts during the editing process. Prof. Dr. Nabīl Ahmad Hilmī, a board member of the Center for Arab-West Understanding, responded to questions per email. Patricia Prentice and Nushin Atmaca agreed to have their texts placed in this book. Prof. Dr. Hoda Awad (Hudá 'Awad), board member of the Center for Arab-West Understanding, read through the entire text and provided her academic expertise.

Prof. Dr. Wolfram Reiss invited me to publish the book in his series "Anwendungsorientierte Religionswissenschaft," revised the entire text several times and provided continuous encouragement and advice in the editing process. His assistant Mrs. Sanna Plieschnegger and Mrs. Heike Amthor from the publishing house Tectum completed the final formatting.

# 1 Discussions on Article II of the Constitution in Egypt need a calm approach<sup>21</sup>

Hānī Labīb

Article II of the 1971 Constitution of Egypt and the current Constitutional Declaration stipulates that Islam is the religion of the State and that the Arabic language is its official language. That the principles of Islamic law are the primary source of legislation is considered the most controversial of the constitutional articles which raises a debate whenever there is a discussion about religious freedom in Egyptian society or about the concerns of Egyptian Christians and their problems to the extent that it made some people limit a major part of the discussion about the 2007 constitutional amendments only to Article II of the Constitution as an extension of a former debate about constitutional amendments.<sup>22</sup>

In the discussion about Article II of the Constitution one finds several tendencies:

- The tendency to demand its elimination entirely from the Constitution.
- The opposite tendency which stresses that any infringement of this article means the beginning of real discord in Egyptian society.
- A third tendency calls for the amendment of the constitutional article. Different alternative formulations have been suggested.
- A fourth tendency affirms that the actual problem does not lie in the constitutional texts themselves, but it is the political usage of such an article and its enforcement.

I believe it to be important to study the various tendencies with an emphasis on the last two in order to reach a better, less polarized, atmosphere in the country.

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<sup>21</sup> This chapter was the introduction to the Arabic book, *Article II of the Egyptian Constitution; towards new paths*, Center for Intercultural Dialogue and Translation, 2012 (Arabic). This text was edited; the references to authors and Center for Intercultural Dialogue were removed from the English text.

<sup>22</sup> Nushin Atmaca, "Arguments, Alternatives and Amendments: Article two of the Egyptian Constitution," Paper No. 2, *Arab-West Report*, 2007, <http://www.arabwestreport.info/arguments-alternatives-and-amendments-article-two-egyptian-constitution>.



This discussion is important because of the discussions about the new constitution in Egypt. Intense discussions might lead to a direct clash between Egyptian political and national forces. Different scenarios need to be carefully analyzed. This is the aim of our project in Egypt which has resulted in a number of texts that were published in book form in Egypt.<sup>23</sup>

Whoever follows the religious debate taking place in Egypt will notice that Christian citizens of Egypt do not fear the application of the Islamic *sharī'ah* (Islamic law) as much as they are concerned about the practices of certain political Islamic groups that reduced the application of the Islamic *sharī'ah* to just the *hudūd* (penalties in Islam).

Also, whoever follows sectarian tensions in Egypt will notice that the issue of changing religion, whether from Christianity to Islam or vice versa, has been one of the most important reasons for the occurrence of tensions and *fitnah tā'ifiyah* (sectarian strife) over the past ten years. Therefore, some people have linked such tensions to the text of Article II of the Constitution.

It was important for me<sup>24</sup> to reach conclusions: To determine the proposed scenarios for dealing with the problem of Article II. This has been done through holding an expanded conference in which a number of intellectuals and men of law were invited to discuss the multiple scenarios involving Article II and, as a result, state the most important aspects of the project that could be referred to as a final proposal in the form of a book to each member of the People's Assembly and Shūrā Council and the committee that is preparing a new constitution, all people who participated in this project and anyone interested in the issue of Article II of the Constitution.

The importance of this book is that it presents a vision based on the general tendencies of the society whether through public opinion or the opinions of intellectuals.<sup>25</sup> This has really helped to present various proposals for drafting Article II of the Egyptian Constitution.

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<sup>23</sup> *Article II of the Egyptian Constitution; towards new paths*, Center for Intercultural Dialogue and Translation, 2012 (Arabic).

<sup>24</sup> Hānī Labīb.

<sup>25</sup> *Article II of the Egyptian Constitution; towards new paths*, Center for Intercultural Dialogue and Translation, 2012 (Arabic).

## **2 Opinion poll on canceling or keeping Article II of the Egyptian Constitution**

Fatma El-Zanaty<sup>26</sup> and Muhammad al-Ghazālī

### **2.1 The objectives of the opinion poll**

This study aims to explore citizen opinions concerning the Constitution and whether there are articles, particularly Article II, that in their opinion might need to be amended.

The objectives are:

- Determining the awareness of the people concerning the Constitution and its different articles and items.
- Attempting to assess how far citizens participated in the referendum of March 19, 2011, or any other previous elections.
- Learning citizens' opinions regarding whether Article II of the Constitution should be abolished or kept intact and the required amendments.
- Exploring other articles citizens may wish to have changed.

### **2.2 Organization of the Report**

This study provides the results of the opinion poll on the Constitution in four sections. The first section offers an explanation of the methodology of the study and characteristics of the samples. The second section deals with the awareness of the respondents concerning the Constitution and its different articles and items. The third section will deal with the respondents' opinions about Article II and whether it should be abolished or amended. This is followed by a conclusion and recommendations.

### **2.3 The Survey Methodology and Sample Design**

This chapter reviews the used methodology in this survey and the techniques used to select the sample for this study as well as households and respondents. CIDT launched an initiative to get first-hand opinions by citizens regarding the Constitution and particularly Article II. The survey, which was conducted by El-Zanaty Office, was originally

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<sup>26</sup> In transliteration: Fātimah al-Zanātī. Dr. El-Zanaty prefers her name to be spelled differently.

designed to obtain information about Egyptian street-awareness of the Constitution and political participation as well as that of Article II.<sup>27</sup>

The survey relied on the quantitative approach to collect data by designing a questionnaire and selecting a representative sample of the population in all Egyptian governorates. The study was carried out over several stages for four months.

The first stage covered preparatory activities – designing and selecting the sample, questionnaire design and conducting a pretest. The second stage included the training of all data collection teams and interviewing households and eligible respondents for individual interviews. The third one focused on all data processing activities (editing, coding, entry, verification of data, and assuring data consistency). The fourth and last stage focuses on data analysis and preparation of reports.

**The following is a detailed explanation of all activities within the survey:**

\* Sample design and selection:

The size of the target sample was set at nearly 5,000 individuals, 18 years old and more, which required a sampling of 5,000 households. The age of 18 years was set because it is the age at which an individual may cast his/her vote in the elections. Due to the high costs of taking a sample for any survey, it turned out that reliance on a national sample as a framework for taking a sample for this survey would save a lot of time and money. Accordingly, the sample of the 2008 demographic and health-survey was sought as a sample for this survey, being a recent one at the national level and representative of all governorates of the country. It also relied on the latest census of Egypt's population in 2006. Taking into consideration an average of 10% non-response, the selected sample was identified to cover 5,500 households.

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<sup>27</sup> For more information about the El-Zanaty Office see: <http://www.elzanaty.com/>