

Emerging Human Rights Discourses in Post-Uprising Egypt

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Abstract: The uprisings in the Middle East and North Africa (MENA) region during 2011, which resulted in the demise of authoritarian rulers or gave rise to some political and economic reforms, proved the significance of human rights and moved that issue to the forefront of academic and political debates. As the protestors brought human rights references to the center of their political struggle, political actors used its rhetoric to claim legitimate authority or popularity. This article, which analyzes the human rights discourses and their use in legal and political action in post-uprising Egypt, focuses on the first two years of the transition process and surveys the main patterns of human rights discourses in post-uprising Egypt, and illustrates the multi-faceted and complex potential of human rights in the transitional post-uprising Egypt.

Analyzing the main patterns of human rights discourses during this period, the article demonstrates that human rights are not only used as an emancipatory tool by Egyptian citizens against their repressive authoritarian regimes, but also applied by key political actors from various and opposing ideological backgrounds. The article focuses on three significant documents issued during the constitution-making process (viz., the Al-Azhar Document, the National Council Document, and the Silmi Document) and illustrates how diverse opposing key political actors reflected their vision of human rights during the constitution-making process and tried to impose their ideological views on the country's legal, political, and social frameworks.

Keywords: Middle East and North Africa, Uprisings, Egypt, Human Rights, Discourses.

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Ayaklanma Sonrası Mısır'da Ortaya Çıkan İnsan Hakları Söylemleri

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Öz: Ortadoğu ve Kuzey Afrika bölgesinde 2011 yılında otoriter yöneticilerin yönetimden uzaklaştırılmasıyla sonuçlanan veya bazı siyasi ve ekonomik reformlara yol açan ayaklanmalar, insan haklarının önemini kanıtladı ve bu konuyu akademik ve siyasi tartışmaların merkezine taşıdı. Protestocular, siyasi mücadelelerinin merkezine insan hakları referanslarını getirdikçe, politik aktörler de bu retoriği meşru otorite veya popülerlik iddia etmek için kullandılar. Ayaklanma sonrası Mısır'da insan hakları söylemlerini ve bunların yasal ve siyasi eylemlerde kullanımlarını analiz eden bu makale, geçiş sürecinin ilk iki yılına odaklanarak ve ayaklanma sonrası Mısır'daki insan hakları söylemlerinin ana kalıplarını araştırıyor ve Mısır ayaklanmasının ardından geçiş döneminde insan haklarının çok yönlü ve karmaşık potansiyelini örneklendiriyor.

Ayaklanma sonrası dönemdeki insan hakları söylemlerinin ana kalıplarını analiz eden makale, insan haklarının Mısır vatandaşları tarafından baskıcı otoriter rejimlerine karşı sadece özgürleştirici bir araç olarak kullanılmadığını, aynı zamanda çeşitli ve karşıt ideolojik geçmişlere sahip kilit siyasi aktörler tarafından da kullanıldığını göstermektedir. Makale, anayasa yapım sürecinde yayınlanan üç önemli belgeye (diğer bir deyişle, el-Ezher Belgesi, Ulusal Konsey Belgesi ve Silmi Belgesi) odaklanıyor ve çeşitli muhalif siyasi aktörlerin, insan hakları vizyonlarını anayasa yapım sürecinde nasıl yansıttığını gösteriyor.

Anahtar Kelimeler: Ortadoğu ve Kuzey Afrika Bölgesi, Ayaklanmalar, İnsan Hakları, Söylemler.

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خطابات حقوق الإنسان التي ظهرت في مصر بعد الثورة

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الملخص

أدت الثورات التي اندلعت في منطقة الشرق الأوسط وشمال إفريقيا في العام 2011، إلى إزاحة الحكام المستبدين أو إلى بعض الإصلاحات السياسية والاقتصادية، وأثبتت هذه الثورات أهمية حقوق الإنسان وساهمت في وضع هذا الموضوع في قلب المناقشات الأكاديمية والسياسية. وكلما وضع المحتجون مراجع حقوق الإنسان في مركز نضالهم السياسي، استخدم الفاعلون السياسيون هذا الخطاب للدعاء بالسلطة الشرعية أو الشعبية. هذه المقالة تقوم بتحليل خطابات حقوق الإنسان واستخدامها في العمل القانوني والسياسي، في مصر ما بعد الثورة. كما تركز على العاملين الأولين من عملية الانتقال وتبحث الأنماط الرئيسية لخطابات حقوق الإنسان في مصر ما بعد الثورة. وتُعطي المقالة أمثلة على الفرص المعقدة ومتعددة الجوانب لحقوق الإنسان في المرحلة الانتقالية بعد الثورة المصرية.

المقالة التي تحلل الأنماط الرئيسية لخطاب حقوق الإنسان في فترة ما بعد الثورة، تشير إلى أن موضوع حقوق الإنسان لم يُستخدم كأداة للتحرير ضد الأنظمة الاستبدادية القمعية من قبل المواطنين المصريين فقط، بل تم استخدامه أيضا من قبل الفاعلين السياسيين ذوي الخلفيات الأيديولوجية المتنوعة والمتعارضة. المقالة تركز على ثلاث وثائق مهمة تم نشرها خلال مرحلة صياغة الدستور (وثيقة الأزهر ووثيقة المجلس الوطني ووثيقة سلمي). وتوضّح المقالة كيف سعى مختلف الفاعلون السياسيون المعارضون لعكس رؤاهم حول حقوق الإنسان خلال مرحلة صياغة الدستور.

الكلمات المفتاحية: منطقة الشرق الأوسط وشمال إفريقيا، الثورات، حقوق الإنسان، الخطابات.

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Introduction: Uprisings in Egypt and Human Rights

Since the adoption of the Universal Declaration of Human Rights in 1948, human rights have become an integral part of political, legal, and academic discourses and are widely recognized as essential components of democracy. The protection of human rights is assumed to have a strong correlation with peace and security for states and the international community.¹ Human rights are mostly regarded as an emancipatory tool that enable the weak and underprivileged to resist repressive authoritarian regimes in symbolic, discursive, and legal terms.² However, they are also criticized for their potential to be used as a tool by political actors for their specific oppositional struggle to force their legal, moral, and political practices upon others.³ These emancipatory and power-laden dynamics of human rights create a troubling contradiction: human rights can be applied to both challenge and further harmful power dynamics.⁴ As Joe Hoover points out, human rights are what we make of them and can be used as a tool of resistance or of power struggles of opposing interests.⁵

Following the uprisings in Tunisia, giving rise to the overthrow of President Zine El Abidine Ben Ali, large-scale demonstrations took place in Tahrir Square on January 25, 2011, eventually leading to President Mubarak's resignation. Human rights were at the heart of these protests. The main motive of the participants was to demand their basic rights. They brought human rights references to the center of their political struggle and articulated their demands largely using the language of international human rights.⁶ "Bread, freedom, human dignity" and "bread, freedom, and social justice" were the two main slogans of that particular demonstration.⁷ According to a study analyzing the slogans applied during the Tunisian and Egyptian uprisings,

- 1 David Beetham, *Democracy and Human Rights* (Cambridge, UK: Polity Press, 1999); Oskar N. Thoms and James Ron, "Do Human Rights Violations Cause Internal Conflict?" *Human Rights Quarterly* 29, no. 3 (2007): pp.674-705.
- 2 Louiza Odysseos and Anna Selmecezi, "The Power of Human Rights/the Human Rights of Power: An Introduction," *Third World Quarterly* 30, no. 6 (2015): pp.1033-35.
- 3 Joe Hoover, "Human Rights Contested," *Journal of Intervention and State Building*6, no. 2 (2012): pp.233-46; Odysseos, "The Power of Human Rights."
- 4 Shadi Mokhtari, "Human Rights and Power Amid Protest and Change in the Arab World," *Third World Quarterly* 36, no. 6 (2015): p.1208.
- 5 Joe Hoover, "The Human Right to Housing and Community Empowerment: Home Occupation, Eviction Defense, and Community Land Trusts," *Third World Quarterly* 36, no. 6 (2015): pp.1093-95.
- 6 Mahmood Monshipouri, *Democratic Uprisings in the New Middle East: Youth, Technology, Human Rights*, and US Foreign Policy (London: Paradigm Publishers, 2014), pp.63-64.
- 7 Nicola Pratt, "After the 25 January Revolution: Democracy or Authoritarianism in Egypt?" in *Revolutionary Egypt: Connecting Domestic and International Struggles*, ed. Reem Abou-El-Fadl (Abingdon: Routledge, 2015), p.45.

human rights were one of most frequently applied slogans.⁸ The slogans analyzed included the principles of expressing freedom, dignity, equality, and liberty. For instance, Egyptians shouted: “It is our right to live in peace” (min ḥāqqinā ‘an na’īsha fī salām).⁹

On the one hand, the uprisings were framed as a demand for human rights, and the state’s failure to respect, protect, and ensure those rights was a major catalyst for the uprisings against Mubarak’s regime. On the other hand, these uprisings raised high hopes for ensuring the basic rights and freedoms of the people in the region and were regarded as a turning point in terms of human rights in Egypt. However, human rights violations did not decrease after Mubarak re-signed, under the SCAF’s (Supreme Council of the Armed Forces) rule (the first 10 months after the uprising), or under the first democratically elected Muslim Brotherhood-led Muhammad Morsi government. In fact, several human rights organizations reported the same or even worse abuses of the basic rights and freedoms.¹⁰

Despite the failures of the SCAF and Morsi governments in meeting the people’s expectations regarding human rights, the same political actors used its rhetoric to claim legitimate authority or popularity. In the post uprising Egypt human rights continued to be at the center of the Egyptian politics and Egypt experienced an extensive and intense debate on human rights in the initial years of the post-uprisings period. At the same time Egyptian protestors continued to articulate their demands and expectations using the human rights discourses. Particularly, during the controversial constitution-making process, human rights discourses were frequently applied by diverse opposing political actors who used human rights as a tool to enforce their legal or moral interests upon the county’s legal, political, and social frameworks.

The constitution-making process and its outcome in the course of a political change receive significant attention by scholars and political actors because how constitutions are made, discussed and implemented, play a decisive role in the durability and stability of an established institutional framework.¹¹ In

8 Mokhtari, “Human Rights and Power”, p.1209.

9 Fawwaz Al-Abed Al-Haq and Abdullah Abdelhameed Hussein, “The Slogans of the Egyptian and Tunisian Revolutions,” *Issues in Political Discourse Analysis* 4, no. 1 (2013): p.40.

10 Human Rights Watch, “The Road Ahead: A Human Rights Agenda for Egypt’s New Parliament (2012); Cairo Institute for Human Rights Studies, “After President Mohamed Morsi’s First 100 Days: Worrying Indications for Future of Human Rights, Major Crises Remain Unresolved” (2012), www.cihrs.org/?p=4547&lang=en, *Cairo Institute for Human Rights Studies*, “Joint Appeal by Egyptian Human Rights Organizations to the UN OHNCHR” (2013), www.cihrs.org/?p=6479&lang=en

11 Philippe C. Schmitter, “Contrasting Approaches to Political Engineering: Constitutionalization & Democratization” (2001) *Fiesole: European University Institute*, p. 5; Tereza Jermanova, “Before Constitution-making: The Struggle for constitution-making design in post-revolutionary Egypt” *Acta Politica*. 55, no. 4 (2009), p. 651.

this context, diverse and opposing actors deal with the question of whether a constitution should be an ideal document guaranteeing international human rights or a compromise document reflecting diverse interest of different actors.¹² The analyses of constitutional change mostly deal with the late stage of a constitution-making process, focusing on the main constitution-making bodies and their characteristics. The early stages of constitution-making, including debates about the questions who should be included in the constitution-making and how the constitution should be made, are widely ignored.¹³ However, these early stages of constitution-making processes, where diverse actors are engaged in constitutional debates, have the potential to provide a meaningful window into the political realities.¹⁴ Thus, the analyses of the early stages of the constitution-making process in Egypt emerging from the uprisings is essential to identify the many-sided uses of human rights discourses in the initial years of the post-uprising period.

This article analyzes on the use of human rights arguments during the first two years of post-Mubarak Egypt and illustrates these rights' multifaceted and complex potential.¹⁵ In addition, it demonstrates that human rights arguments can be used in two ways: as an emancipatory tool by the weak and underprivileged against a repressive government, and to claim legitimacy or enforce the opposing political interest of the political actors. The article examines the discourses of secular, liberal, and Islamist actors during the SCAF and Muslim Brotherhood governments. It pays special attention to the controversial constitution-making process during this period and analyses the various documents proposed to shape the new constitution. These analyses illustrate how the diverse opposing key political actors reflected their vision of human rights during the constitution-making process and tried to impose their ideological views on the country's legal, political, and social frameworks.

After presenting a brief historical overview of human rights under Nasser, Sadat, and Mubarak, the focus will shift to an analysis of the emerging human rights discourses in post-uprising Egypt that looks at the legitimizing, emancipatory, and power-laden potential of human rights. The article uses primary and secondary data sources, such as books, periodicals, speeches of relevant political actors, media coverage regarding human rights during and after the uprisings, reports of international human rights organizations and focuses on three significant documents issued during the constitution-making

12 Anthony F. Lang, "From Revolutions to Constitutions: The Case of Egypt," *International Affairs*, 89, no. 2 (2003), pp. 345

13 Lang, *From Revolutions to Constitution*; Jermanova, *Before Constitution Making*.

14 Ibid.

15 Odysseos and Selmeczi, "The Power of Human Rights".

process (viz., the Al-Azhar Document, the National Council Document, and the Silmi Document).¹⁶

I. Human Rights in Egypt: A Brief Overview

Egypt participated in drafting, preparing, and adopting the Universal Declaration of Human Rights and joined the drafting of the International Covenant for Civil Political Rights, the International Covenant for Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the Rights of the Child.¹⁷ However, the authoritarian regimes of Gamal Abdel Nasser (1954-70), Anwar al-Sadat (1970- 81), and Hosni Mubarak (1981-2011) harshly violated the basic rights and freedoms of Egyptians. The authoritarian regimes of these three rules tolerated torture, repressed political opponents, denied full equality before the law and diminished the rule of law in the country.¹⁸ In other words, for the sake of ensuring the survival of authoritarian regimes, basic rights and freedoms of Egyptians were consistently violated.

Nasser's single party political system and highly centralized authoritarian civilian and military bureaucracy hindered the fulfilment and protection of human rights.¹⁹ During his rule, the most volatile human rights violations (e.g., torture and political coercion) were institutionalized, members of the Muslim Brotherhood were systematically tortured, and indigenous communists were collectively punished.²⁰ Sadat maintained the state's authoritarian structure but preferred "controlled" political liberalization. To counterbalance the Nasserists' influence in the political sphere, he tolerated genuine participation and opposition, which also gave rise to the development of political parties and the Brotherhood's growing political presence.²¹ Although Sadat aimed at establishing an image of a ruler promoting basic rights and freedoms,

16 The analysis in this short article cannot be assumed to describe the main patterns of human rights discourses in Egypt as a whole, but only to suggest some patterns that will help frame our understanding of the new developments within them.

17 Neil Hicks, "Transnational Human Rights Networks and Human Rights in Egypt," in *Human Rights in the Arab World: Independent Voices*, ed. Anthony T. Chase and Amr Hamzawy (Philadelphia: University of Pennsylvania Press, 2006): pp.66, 68.

18 Freedom House 2005. "Countries at the Crossroads: Egypt" <https://www.refworld.org/docid/4738690c2.html>

19 Abdelrahman M. Maha, *Civil Society Exposed: The Politics of NGOs in Egypt* (London: I.B. Tauris, 2004), p.93.

20 Osman Tarek, *Egypt on the Brink: From Nasser to the Muslim Brotherhood* (New Haven, CT: Yale University Press, 2013).

21 Omar A. Sheira, *Towards a Way out of the Egyptian Dilemma: New Lessons for an Old Regime* (Master's Thesis, Tilburg University, 2014), p.5; Curtis R. Ryan, "Political Strategies and Regime Survival in Egypt," *Journal of Third World Studies* 18, no. 2 (2001).

he became more repressive in the last year of his rule and launched mass arrests against secular and religious activists. In 1981, he cracked down on intellectuals and imprisoned about 1,600 communists, Nasserists, feminists, Islamists, homosexuals, Copts, journalists, students, and other individuals.²²

Throughout Mubarak's presidency following Sadat's assassination, political repression and human rights abuses became routine. Every category of rights, be these economic, political, civil, or cultural were regularly violated.²³ Although his primary target was the Brotherhood, his oppressive and restrictive policies targeted other politically motivated Muslims. His government also conducted policies to limit the activities of the human rights organizations other civil society organizations and made the forming, fundraising and other activities of civil society organizations more difficult.²⁴

Mubarak's government, which has never denied publicly the validity of international human rights norms, signed both the International Covenant on Civil and Political Rights in 1982 and the UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment of Punishment in 1986. Mubarak's government's commitment, however, remained no more than a tactical move to maintain a relatively benign international image.²⁵ In contradiction to his statements, many of the rights and freedoms were not applied or were violated in practice.²⁶ Through the mid and late 1990s, Cairo was under persistent local and international pressure to improve its human rights standards. To handle this pressure, the government made some tactical concessions (e.g., Mubarak's formal acceptance of the political reform agenda and the formation of the National Human Rights Council)²⁷ but continued routinely to violate Egyptian's basic rights and freedoms. Mubarak's forces also continued its traditional policies of torture and arbitrary detention.²⁸ According to the Human Rights Watch, Mubarak's government had not only abolished the main political opposition consisting of Islamists by imprisoning or exiling many of its leading figures but also widened its security net, further eroding basic civil rights by the mid-1990s.²⁹

22 Benjamin MacQueen, "The Reluctant Partnership between the Muslim Brotherhood and Human Rights NGOs in Egypt," in *Islam and Human Rights in Practice: Perspectives across the Ummah*, ed. Shahrām Akbarzadeh and Benjamin MacQueen (London and New York: Routledge, 2008), pp.76-77; David P. Forsythe, ed., *Encyclopedia of Human Rights* (Oxford: Oxford University Press, 2009), p.111.

23 See Freedom House, *Countries at the Crossroads 2005*, *Countries at the Crossroads 2007*, and *Countries at the Crossroads 2011*.

24 Freedom House, *Countries at the Crossroads 2005*.

25 Hicks, "Transnational Human Rights Networks," p.68.

26 Chase, "Human Rights", p.69; Hicks, "Transnational Human Rights Networks," pp.68-72.

27 Hicks, "Transnational Human Rights Networks," pp.68-69.

28 Human Rights Watch, October 2001. Egypt Human Rights Background, <https://www.hrw.org/legacy/backgrounder/mena/egypt-bck-1001.htm> ; and Freedom House 2007. *Countries at the Crossroads*. Egypt.

29 Human Rights Watch, "Egypt Human Rights Background," October 2001.

In particular, the consistently renewed state of emergency since 1981 worsened the domestic human rights situation.³⁰ As a 2001 Human Rights Watch Report states,³¹ the Egyptian state authorities arrested people and held them without charge for prolonged periods of time using the state of emergency. Moreover, civilian defendants were sent to the military courts which barely met international fair trial standards, such as the right to appeal. The same report also noted that, since 1992, the Mubarak government had referred hundreds of civilians to military courts, who were mostly Egyptians suspected of being members or supporters of Islamist groups such as al-Jihad, al-Jama'ah al-Islamiyyah, or the Brotherhood.³²

Moreover, Islamic principles have restricted the practice of human rights in the country. The practice and legislation of human rights is mostly restricted to religious and cultural norms. Statements of commitment to these rights are typically made with many qualifications by al-Azhar, the Brotherhood, and other Islamic actors. For instance, al-Azhar's³³ official approach is the protection of human rights within the context of Islam's principles. So, in the sensible areas like freedom of opinion, belief, and women's rights, al-Azhar makes explicitly clear the differences between western and eastern values and the necessity for human rights norms to accord with Islam. For instance, in a meeting with the European Delegate for Human Rights in February 2014, Imam El-Tayeb, the Grand Imam of al-Azhar, underlined the difference between western and eastern cultures and norms, which generates a contrast between rights and duties. He stated that the human rights in the West are linked to the nature of its societies and cannot be copied in the East. According to him, the East has its own culture, traditions, and rights and cannot accept any interference by

30 Emergency law (Law No. 162 of 1958) has been in operation in Egypt nearly constantly since 1967, and without interruption since Mubarak presidency from October 1981. The law enables the authorities to ban public gatherings, use indefinite detention without charge, and try individuals before special security. Human Rights Watch, "The Road Ahead: A Human Rights Agenda for Egypt's New Parliament," (2012) January 16, <https://www.hrw.org/report/2012/01/16/road-ahead/human-rights-agenda-egypts-new-parliament>

31 Human Rights Watch, "Egypt Human Rights Background," October 2001.

32 Ibid.

33 Al-Azhar is one of the world's most significant Sunni institutions and Egypt's largest religious institution. As a governmental institution, its head is appointed by the president and reports directly to the prime minister. In addition, this university possesses educational apparatuses, issues fatwas, and plays a legally ambiguous role in cultural censorship. Its status is regulated by a 1961 law that acknowledges it as the foremost Islamic academic institution that safeguards, studies, elucidates, and publicizes the Islamic heritage, but also places the entire institution under state control. See Nathan J. Brown, *Post-Revolutionary Al-Azhar: The Carnegie Papers* (2011), p.5, http://carnegieendowment.org/files/al_azhar.pdf, and Lis Dhundale, Bahey Eldin Hassan, and Rasmus Alenius Boserup, eds., *Human Rights across Cultural Dialogue* (Cairo and Copenhagen: The Danish Institute for Human Rights, 2010), p.49, <https://www.humanrights.dk/sites/humanrights.dk/files/media/migrated/human20rights20across20cultural20dialogue20book20english20final.pdf>

the West. He stressed that Egypt's constitution fully acknowledged human rights, but in the light of its own principles and traditions.³⁴

Consistent with this approach, in a 2011 statement he criticized the efforts trying to open up the region to the western ideas of human rights and on the grounds that “the Western understanding of human rights is against that which is sacred to us” and that “opening the door for human rights from a purely Western understanding would destroy our homes and clash with our beliefs.” Moreover, he emphasized that “not everything which is a right for the Western man is a right for the Arab or Muslim man.”³⁵

Likewise, the Brotherhood regards Islam as the main reference for the recognition and realization of human rights. For instance, its 2010 election program contained a special section on the question of freedom and human rights covering a broad range of rights. Freedom was described as God's gift and as principal and a goal of the Shari'a. This Shari'a-based definition made the recognition of freedom irrespective of religion (as stated in the same program) non-effective, limiting the freedom only to divine religions. The Brotherhood also declared its commitment to international treaties, but added the restriction of the principles of Shari'a:

“The Brotherhood strives through legislation and oversight to protect the freedoms and basic human rights of all Egyptians, and to amend all laws which contradict or constrain these freedoms, or which violate these rights. For freedom is God's gift to man, irrespective of his color, gender or religion. Freedom is an obligation and one of the greatest principals and goals of the sharia, which has granted man all forms of freedom, foremost among which is the freedom of belief. According to the Koran “there is no compulsion in religion.” Based on this, the complete freedom of the Egyptian person is a fundamental principal and a basic right. The Members of Parliament of the Brotherhood strive to guarantee and realize the basic rights of all Egyptians, which are indispensable in any modern society, and especially the rights that are mentioned in universal treaties and declarations – and within the context of the principles of the sharia which the Egyptian constitution recognizes as the principle source of legislation – in addition to the provision of political and

34 Muhammad Mukhtar Gomaa, “A Reading in the Thinking of the Grand Imam of Al-Azhar,” (2014), <https://azhargraduates.org/en/Makalat1.aspx?id=245>

35 Shaykh al-Azhar, “The Western Understanding of Human Rights is against That Which is Sacred to Us,” WikiIslam.

Dina Shehata, “Mapping Islamic Actors in Egypt” March 2012, *Netherlands-Flemish Institute in Cairo: Al-Ahram Center for Political and Strategic Studies*, p. 101, <https://web.archive.org/web/20150927043841/http://media.leidenuniv.nl/legacy/mapping-islamic-actors---version-2.2.pdf>

social freedoms, which are essential for the practice of these rights and for the progress of societies.”³⁶

In addition, Morsi’s 2012 presidential program promised respect for “human rights (but) as the Shari‘a prescribes,”³⁷ thereby opening the way for Shari‘a-based restrictions. Due to the existence of different interpretations of Islam and the lack of a unified Shari‘a law, Shari‘a-based restrictions of human rights cause arbitrary policies and discriminatory laws, particularly against women and religious minorities, that endanger their rights to participate in society and politics.

2. Patterns of Human Rights Discourses after the Uprising

2.1 Human Rights as a Legitimizing Force for Political Actors

Human rights, as the catalyst of the uprising, have been a central post-uprising issue. After Mubarak’s resignation on February 11, 2011, SCAF took power. Its first Constitutional Declaration, issued on February 13, stated that the country will be run by SCAF for the first six months or until the parliamentary and presidential elections are carried out. On 24 June 2012, when the Brotherhood presidential candidate Mohammed Morsi won the presidential elections and was inaugurated, military rule ended; however, it returned to power on July 3, 2013, when it removed him from office.

Although there was no significant decrease in the number of human rights abuses under the SCAF and Brotherhood governments, political actors from both groups tried to legitimize their authority or gain popular support by presenting themselves as the best guarantors of human rights. Several SCAF members indicated in their speeches that they recognize the protesters’ demands for human rights and would guarantee these rights. For instance, SCAF member Gen. Mohsen Al-Fanagry declared in a speech on February 12 that Egypt would obey its obligations under the international treaties which it signed.³⁸ Similarly Essam Sharaf, whom SCAF appointed as prime minister to replace Ahmad Shafiq on March 2011, promised in his first public speech in Tahrir Square to meet the demands of revolutionary people and concentrate on political rights and the freedom of opinion to make Egypt a free country

36 The Muslim Brotherhood, Program to the 2010 Parliamentary Elections (2010), as cited in Dina Shehata, “Mapping Islamic Actors in Egypt,” p. 101.

37 Morsi’s presidential program (2012), <http://dinwdawla.files.wordpress.com/2012/06/c692tc3a-1c2acdc692oc3b1-c692tc2acpc692c2bdn.pdf>.

38 Human Rights Watch, “The Road Ahead”, 45.

where freedom of opinion is guaranteed and security of the Egyptians is a top priority.³⁹ As reported by the Human Rights Watch, Essam Sharaf also stated on June 6, 2011, that human rights are one of the most significant issues for his government and his government will make a fresh start in promoting and protecting human rights.⁴⁰

However, this verbal commitment was not mirrored in the SCAF government's practice and policies. The Human Rights Watch report of 2012 states that during the first year of its rule, usual human rights abuses like use of force, torture, arbitrary detention continued, and Egyptians suffered harsh human rights violations that went on throughout Mubarak's authoritarian rule.⁴¹ The SCAF did also not keep its promise to lift the state of emergency when it took power. Rather, it justified its continuation by referring to the ongoing protests and expanded the use of military trials. According a 2012 Human Rights Watch Report,⁴² more than 12,000 civilians were prosecuted in military trials for ordinary criminal charges and the politically based arrests of protesters or critics of the military. During the first ten months of the revolution, hundreds of protesters were tortured in military courts.⁴³

Military rule ended on 24 June 2012, when Morsi assumed power. In his victory speech, broadcast on TV, human rights were a central issue and he vowed to respect both them and international law. He did not refer to the Shari'a as the basis of the rights in Egypt in any of his election victory speeches embracing all citizens, which differed from the Brotherhood's election program and Morsi's presidential program, as illustrated above. In his address to the nation, he stated:

*"We will respect agreements, and international law as well as Egyptian commitments and treaties with the rest of the world. We will work to establish the principals of Egyptians and its civil identity as well as human values especially freedom and respect of human rights, respect of women and family rights as well as children to do away with discrimination."*⁴⁴

This is a remarkable reference to human rights from the country's first democratically elected president, and thus the relatively most powerful

39 "Egypt PM addresses Tahrir rally," *Al Jazeera*, March 5, 2011, www.aljazeera.com/news/middle-east/2011/03/20113483827365222.html.

40 Human Rights Watch, "The Road Ahead," p.5.

41 *Ibid.*, 1.

42 *Ibid.*, 11.

43 *Ibid.* For instance, on February 26, military officers and at least eight others forcibly evicted protester Amr al-Beheiry from Tahrir Square. A military tribunal sentenced him to five years imprisonment.

44 "Morsy Vows to Respect Human Rights," *Reuters*, June 24, 2012, <https://jp.reuters.com/video/watch/morsy-vows-to-respect-human-rights-id236160148>

person in Egypt at that time. His reference to human rights and his promise to respect the rights of Egyptian citizens indicated that he tried to legitimize and strengthen his position by guaranteeing that he would meet the protesters' expectations and demands. Moreover, it illustrates the power of human rights rhetoric as a tool to legitimize power.

His subsequent speeches in Tahrir Square on the following Friday and at Cairo University on June 30, 2012, focused on democracy, freedom, and rights. At Cairo University, Morsi declared that he would work to achieve the revolution's remaining objectives and to attain freedom, justice, and human dignity.⁴⁵ The common element in these speeches is that Morsi represented himself as the guarantor of human rights. In this context, he did not mention Islamic law as a restriction to human rights, which differs from the Brotherhood's earlier declarations. These speeches are more inclusive, ensuring the "rights for all" and not mentioning any limitations on the exercise of those rights. In his victory speech, he particularly promised to respect women and family rights without mentioning any Shari'a based restrictions. This is noteworthy because, women's rights are one of the most controversial issues concerning human rights in Egypt within the context of the principles of Islam. For instance, the Brotherhood usually criticizes gender equality, as specified in international human rights treaties, for not corresponding to Islamic social values and morals.⁴⁶

Overall, through their stated commitment to human rights and international treaties, both SCAF members and Morsi sought to present themselves as the rightful holders of power who can meet the protesters' demands and to gain more legitimacy as the people's post-uprising ruler. However, neither group implemented this commitment, as the worsened human rights record of post-uprising Egypt proves.

2.2 Human Rights as a Tool for Power Struggles

Following Mubarak's overthrow, Egypt witnessed a controversial constitution-making process that produced three constitutional referenda and two constitutions. In this section, we will focus on the period starting with SCAF's constitutional declaration on February 13, 2011 and ending with the first short-lived constitution passed by the Brotherhood-dominated

45 Mohamed Morsi, "President Mohamed Morsi's Speech at Cairo University, Saturday, June 30, 2012, after Taking Oath of Office," www.ikhwanweb.com/article.php?id=30156.

46 Moataz El Fegiery, "A Tyranny for the Majority? Islamists' Ambivalence about Human Rights," *FRIDE Working Paper*. No 113. October (2012), p.15.

government during 2012 in a climate of intense political and legal debate.

During this period, political actors and civil society figures debated what form the new regime and the new constitution would take and issued documents setting out their vision. The main confrontations were over the role of religion and basic rights and freedoms in the new constitution, which also dominated the published documents. Two main population segments participated in this debate: the secularists and the Islamists. The first group, which included the nationalists, Nasserists, socialists, liberals, and most of the revolutionary youth, underlined the significance of the state's secular character as well as the human rights in the new constitution focusing on the international standards of human rights. They feared that the Islamists would establish a religious state and thereby compromise the state's secular character and constitutional legitimacy, which would endanger its citizens' basic rights and freedoms. They criticized and blamed Islamists for attempting to establish Islamic law, weakening human rights, and paving the way for a theocracy similar to the Iranian model.⁴⁷

The Islamists, including members of the Brotherhood, key figures from al-Jama'ah al-Islamiyyah, representatives of Sufi orders, and scholars from al-Azhar, wanted to protect Islam from the dangers of civil/secular forces and put more emphasis on religion's role in the constitution. They restricted the basic rights and freedoms to religious and cultural norms by referring to the Shari'a as the main restriction of human rights.⁴⁸

These two camps drafted several documents presenting their vision for the country, focusing on the components of the modern state and basic rights and freedoms of citizens to form a basis for the new constitution. In this section, we will review the documents drafted by al-Azhar ("Al-Azhar Document on the Future of Egypt"), the National Egyptian Council⁴⁹ ("National Council Document: The Declaration of the Principles of the Egyptian Constitution"), and the SCAF (the "Silmi Document").⁵⁰

47 Tahani Al Gebali, tr. Sonia Farid, "Constitutional Principles: Documents on Post-Revolution Egypt," *Journal of Comparative Poetics* 32 (2012).

48 Ragab Saad and Moataz El Fegiery, *Citizenship in Post-Awakening Egypt: Power Shifts and Conflict-ing Perceptions*. Cairo Institute for Human Rights, Policy Paper, 2014.

49 The National Egyptian Council was formed at the First Egypt Conference, held in May 2011. This conference gathered liberals, nationalists, socialists, Islamists, and other factions, among them dissident members of the Muslim Brotherhood, key figures from the al-Jama'ah al-Islamiyyah, representatives of Sufi orders, Egypt's former Grand Mufti Dr. Nasr Farid Wasel, and scholars from al-Azhar. See Gebaly, "Constitutional Principles," p.230.

50 For the documents, see *ibid.*; Al-Azhar, "Document on the Future of Egypt," (2011), retrieved August 10, 2014, www.sis.gov.eg/En/Templates/Articles/tmpArticles.aspx?ArtID=56424#.VfhjiZe2pKA

2.2.1 The al-Azhar Document

The “al-Azhar Document on the Future of Egypt”, which seeks to define the status of religion in the new constitution, was published by Al-Azhar on June 21, 2011. The Al-Azhar document was prepared by El-Tayeb, senior Al-Azhar clerics and several Egyptian intellectuals aiming at reforming the country as a modern democratic and constitutional nation-state. The document underlining the importance of separation of powers, equality of citizens before the law, protection of human rights and non-discrimination of citizens based on their religion⁵¹ was described by senior government officials as one of the most important documents in the history of Egypt’s ideological, political, and social life.⁵² Moreover, significant Egyptian political actors recognized it as a guiding framework for drafting the new constitution. Several movements and parties, among them the Brotherhood and its Freedom and Justice Party, al-Wafd, al-Karama, the Democratic Front, and al-Ghad, emphasized their commitment to the principles outlined therein.⁵³ It was criticized by Egypt’s secular camp for seeking to establish al-Azhar as the only authority on matters of Islam, for supporting al-Azhar’s autonomy from the regime, and for trying to make Egypt a more Islamic state.⁵⁴

This document might be considered a step forward for ensuring the adoption of basic human rights due to its statement in Article 1 that “Islam – unlike other cultures – has never known a theocratic state which controlled and occasionally oppressed people”⁵⁵ and in Article 3 that it is “abiding by the basic principles of freedom of thought and expression along with full respect for human rights in general and women and children’s rights in particular and for all religions, stressing the importance of diversity, and establishing citizenship as the main criterion governing the society.”⁵⁶ Moreover, Article 6 guarantees the

“full protection and respect for the houses of worship of the three monotheistic faiths; and ensuring the free practice of all (monotheistic) religious rituals without any obstructions, and respect for all forms of worship...utter diligence in defending freedom of expression and originality in artistic and literary

51 Al-Azhar, “Document on the Future of Egypt,”

52 L. Azuri, “Egypt’s Islamic Camp, Once Suppressed by Regime, Now Taking Part in Shaping New Egypt-Part I: The Al-Azhar Document,” Inquiry & Analysis Series Report, no. 734 (2011), p.2.

53 Ikhwanweb, “Muslim Brotherhood Endorses Al-Azhar Document on the Future of Egypt,” (2011), <https://www.ikhwanweb.com/article.php?id=28948>

54 L. Azuri, “Al-Azhar Document.”

55 Al-Azhar, “Document on the Future of Egypt.”

56 Ibid.

works, within the general framework of our steadfast cultural values.”⁵⁷

However, it does not represent a significant departure from al-Azhar’s previous position on human rights, for it also states that “Islam leaves people to administer their own societies, selecting institutions and mechanisms that serve their interests as long as they are in line with the basic principles of Islamic laws”. Thus, the Shari‘a remains the primary basis of legislation and framework of basic rights. Nevertheless, its reference to the Shari‘a’s general principles rather than its strict injunctions open the way for a modern interpretation of Islamic concepts that, in turn, opens the way for more progressive human rights protection.⁵⁸ In addition, the document provides the freedom of religious worship only to the “three monotheistic faiths,” thereby discriminating against all other beliefs and religions. The document does not meet the expectations for a stronger legal framework of basic rights, because it is limited to its goals of establishing al-Azhar as the only authority in matters of Islam and basing rights upon the Shari‘a.

2.2.2 The National Council Document

In July 2011 the National Egyptian Council, under the leadership of Supreme Constitutional Court of Justice Judge Tahani Al-Gebali, created a far-reaching document which contributed to the lively debate during the constitution-making process. The document contained thirty constitutional principles and listed twenty-one basic rights and freedoms to be protected, in addition to those already outlined in the 1971 constitution.⁵⁹ The document declares its commitment to writing the new constitution in accord with the revolution’s motto: “Freedom, social justice, and human dignity”.⁶⁰ It promotes freedom, social justice, and human dignity for Egyptian citizens as well as respect for plurality, diversity, and equal opportunity, and equality before the law without any discrimination based on origin, race, gender, language, religion, sect, or other affiliations.

Along with the other documents, this one states that “Islam is the official religion of the State, Arabic its official language, and the principles of Islamic

⁵⁷ Ibid.

⁵⁸ Adel Maged, “Commentary on al-Azhar Declaration in Support of the Arab Revolutions,” *Amsterdam Law Forum* 4, no. 3 (2012): p.70.

⁵⁹ Keith Harrington, “Egypt’s Constitutional Mess and Solutions from South Africa,” February 14, 2014, <https://publicseminar.org/2014/02/egypts-constitutional-mess-and-solutions-from-south-africa/>

⁶⁰ El Gebaly, “Constitutional Principles.”

law are the main source of legislation.”⁶¹ In this regard, it is no different from the 1971 constitution or the al-Azhar Document. However, as opposed to allowing only “the followers of the divine religions” to appeal to their religions on personal status matters, it uses the word “non-Muslims,” thereby including all religions and beliefs. The document also allows non-Muslims to apply the principles of their religious laws as the main source of their religious affairs and personal status. Moreover, only the legislators are allowed to employ Islamic law to control religion’s impact upon state and society.⁶² This document’s most important feature was its inclusive approach regarding basic rights, which addressed civil, political, economic, social, cultural, and environmental rights for all Egyptians and thus leaving no room for discrimination based upon national origin, race, gender, language, religion, sect, or other affiliations.⁶³ One could say that the document was a strong one in terms of basic rights, as it was written in accord with the revolution’s motto, “Freedom, social justice, and human dignity,” and differed in this respect from the al-Azhar and the Silmi documents. As illustrated below, the latter one sought mainly to promote the military’s interests and strengthen its position in the government, whereas the former sought to strengthen al-Azhar’s position. They guaranteed the basic rights only as long as they agreed with the Shari‘a or arbitrary legislation. Despite its strengths, the National Council Document failed because neither the Brotherhood nor the SCAF supported it.

2.2.3 The Silmi Document

The SCAF’s constitutional document, known as the “Silmi Document,” is the non-Islamist camp’s central document. Authored in November 2011 by Dr. Ali Al-Silmi, Deputy Prime Minister for Political Affairs, it described Egypt as a civil state in its first article: “The Arab Republic of Egypt is a unitary state based on a civil, democratic system, which is founded on citizenship, the rule of law, respect for pluralism, guaranteeing freedom, justice, and equality, and offering equal opportunities to all citizens without discrimination.”⁶⁴

The Silmi Document acknowledges Islam as the state’s official religion and the principles of Islamic law as the main source of legislation. However, Islamists objected to its definition of Egypt as a “civil state,” an entity that they perceived as conflicting with the implementation of Shari‘a law. Islamists suspected the Silmi Document of aiming at excluding religion from the

61 Ibid., p.237.

62 Ibid., p.238.

63 Ibid.

64 Ibid., p.248.

public sphere and thereby establish a secular state.⁶⁵ Moreover, the majority of political movements also criticized the document for giving the military excessive power, making the parliament useless, and thus turning the army into a state within a state. However, some liberal groups (e.g., the Wafd and the Tagammu) supported it because they hoped it would enable them to hinder an Islamist takeover, even if this meant granting a privileged status to the military establishment.⁶⁶

Compared to the National Council Document, the Silmi Document is rather weak in terms of granting human rights protections. Whereas the former stresses in several articles that basic rights and freedoms are granted to all citizens without discrimination or restriction, as well as the right of faith and practice to all religions and underlines full gender equality in all civil, political, economic, social, cultural, and environmental rights, the latter mentions only in its Article 11 the prohibition of discrimination on the basis of sex, origin, language, religion, and belief. Nowhere is gender equality stressed as explicitly as it is in the National Council Document. Furthermore, it neither grants the right of faith to all religions nor refers to the prohibition of discrimination when granting these rights. In addition, it allows rights to be restricted on the ground of court order and grants freedoms (e.g., of press, media, and movement) only if there is no reasoned court order.⁶⁷ In recognition of international treaties, both the Silmi and the National Council documents include explicit statements of respect for international human rights conventions and declare their open commitment to international treaties and universal human rights without any restriction based on religion and cultural values. The Silmi Document, for instance, states in Article 31-32:

“The principles and statutes stipulated in Human Rights treaties and agreements to which Egypt is signatory are to be considered in a higher status than regular legislation. It is strictly forbidden to interpret any of the articles in this document in a manner that contradicts the Universal Declaration of Human Rights or any other Human Rights charters ratified by Egypt or in a way that allows any of the State’s authorities or institutions or any groups or individuals to embark on actions that would violate or undermine the basic rights and freedoms stated in this document.”⁶⁸

65 L. Azuri, “*Egyptian Deputy PM’s Document of Constitutional Principles: An Attempt to Bolster Military Supremacy, Curb Islamists’ Influence on Constitution*,” Inquiry & Analysis Series Report No. 762 (2011).

66 Ibid.

67 El Gebaly, “Constitutional Principles,” pp.249-50.

68 Ibid., pp.251-52.

Similarly, the National Council Document states in Article 13: “Banning the interpretation of any article in the constitution in a way that violates any of the general rights and freedoms stated in it or in the Universal Declaration of Human Rights or that violates the principle of equality before the law.”⁶⁹ However, al-Azhar’s Document subordinates international conventions to the national legislative framework as well as to religious and cultural norms. Article 5 of the document refers to international charters as corresponding to the tolerant traditions of Islam as follows: “Stressing commitment to international charters and resolutions, and to cultural accomplishments in human relations – all of which correspond to the tolerant traditions of Islamic and Arab culture and is in line with Egypt’s history.”⁷⁰

These documents had no concrete success in forming Egypt’s new constitution and giving basic rights a strong presence therein. As mentioned above, Islamists, liberals, and leftists opposed the Silmi Document for ceding too much ground to the military; it eventually gave rise to mass protests demanding the document’s withdrawal and the government’s resignation. As a result, the government backed away from it and moved the presidential elections forward to June 2012.⁷¹

Although the al-Azhar Document could, to some extent, shape the drafting of the articles of the 2012 constitution, these articles were amended in the 2014 constitution. For instance, in accordance with the al-Azhar Document’s eleventh principle, which described Al-Azhar as the authorized body to be consulted in matters of Islam, the 2012 constitution introduced Article 4, which demanded that the Council of Senior Scholars be consulted in matters relating to the Shari‘a. This requirement was deleted from the 2014 constitution.⁷²

These documents, however, illustrate how opposing political actors with different visions of the new constitution instrumentalized the Shari‘a and human rights to promote their own ideologies. As the constitutional framework of human rights in Egypt is heavily impacted by the Shari‘a’s status as the principal source of legislation,⁷³ each of these documents dealt

69 Ibid., pp.247.

70 Al-Azhar, “Document on the Future of Egypt.”

71 Tamir Moustafa, “Drafting Egypt’s Constitution: Can a New Legal Framework Revive a Flawed Transition?” Brookings Doha Center 1 (March 2012): p.5.

72 Assem Hefny, “Religious Authorities and Constitutional Reform: The Case of Al-Azhar in Egypt,” in *Constitutionalism, Human Rights, and Islam after the Arab Spring*, ed. Rainer Grote and Tilmann J. Röder (Oxford: Oxford University Press, 2016), pp.103-05.

73 Li-Ann Thio, “Constitutionalism in Illiberal Polities,” in *The Oxford Handbook of Comparative Constitutional Law*, ed. Michel Rosenfeld and Andreas Sajó (Oxford: Oxford University Press, 2012), p.141. In 1971, Anwar Sadat introduced a new constitution to complete the separation of his era from that of Nasser. To counterbalance Nasserist and leftist groups, he strengthened the Islamist groups and increased the political participation of Muslim Brotherhood. Throughout 1970s, Egypt went through

with its position in the new constitution and defined it as the main source of legislation. These documents share substantial commonalities, such as defining Islam as the state's official religion, the Shari'a as the main source of legislation, and guaranteeing basic liberties and human rights.

However, they differ greatly about its scope, strength, and impact on the interpretation of basic rights and freedoms.⁷⁴ For instance, the al-Azhar Document restricted the basic rights by grounding them on Islamic principles and sought to obtain complete control over the Shari'a's interpretation, whereas the National Council Document counterbalanced its impact by allowing only the legislators to its interpretation. The main focus of the National Council Document was the rights demanded by the revolution, whereas the Silmi and al-Azhar documents only instrumentalized them as far as they are needed. The rights in both of these Shari'a documents are either restricted to the religion or to security or arbitrary legal regulations.

Conclusion

Egyptians have suffered decades of human rights abuses in every category of rights. The 1981 emergency law, which remained in force for thirty years, provided a basis for these abuses and gave the country's authoritarian governments the legal authority to violate these rights. Although Egyptian rulers have rarely officially denied human rights and have made them a center motive of their discourses, in practice they have been violated routinely. All authoritarian regimes – those of Nasser, Sadat, and Mubarak, as well as those of the SCAF and the democratically elected Brotherhood – objected to the prior lack of respect for human rights. They declared their commitment to protect Egyptian citizens' basic rights and even enacted laws as well by issuing constitutional regulations to further this commitment. However, in practice, they only provided and protected those human rights when they did not endanger their power or strengthen their political position.

an Islamisation which also reflected itself in government preparations to revise the Egyptian law in line with Islam. The strengthened position of religion enabled Egyptian Islamists to convince the government to mention explicitly Sharia in Egypt's constitution. Egypt's 1971 Constitution was the first constitution in the region which mention Islamic law and gives it an explicit role. Article 2 proclaimed: "The principles of the Islamic Shari'a are a chief source of legislation." Then in 1980, Sadat introduced an amendment to Article 2 to secure his position challenged by the secular left and get the support of the activist Muslims against these challenges. David S. Sorenson, *An Introduction to the Middle East: History, Religion, Political Economy, Politics* (Philadelphia: Westview Press: 2013); Jocelyne Cesari, *The Awakening of Muslim Democracy: Religion, Modernity, and the State* (New York: Cambridge University Press, 2014); Clark B. Lombardi and Nathan J. Brown, "Do Constitutions Requiring Adherence to Shari'a Threaten Human Rights? How Egypt's Constitutional Court Reconciles Islamic Law with the Liberal Rule of Law," *American University International Law Review* 21, no. 3 (2006).

74 Saad and El Fegier, *Citizenship*, p.3.

The uprisings raised high hopes for improving the country's human rights record and were regarded as a turning point. Although there was no significant decrease in the number of human rights abuses in course of the uprisings, those events definitely brought human rights to the center of Egyptian social and political life and proved the multifaceted and complex potential of human rights. The protesters' demands for human rights challenged the authoritarian regime. At the same time, diverse political actors (e.g., the Brotherhood and the SCAF) increasingly used human rights to claim legitimate authority or popularity regardless of their political background or former positions on the issue. In short, political actors sought to legitimize their authority by presenting themselves as the best guarantors of human rights.

In addition, opposing political actors used human rights as a tool to enforce their interests in the country's legal, political, and social frameworks, as seen in the documents issued by the SCAF, al-Azhar, and the Egyptian National Council following the SCAF's post-uprising constitutional declaration in 2011. These documents show that human rights were both utilized by the weak to claim their rights and by the powerful to manipulate the political process and promote their interests. Although they show how polarizing the process was and how political actors with opposing interests manipulated the process to force their legal and cultural principles as regards the Shari'a and basic rights into the new constitution, one should not forget that the discussion about basic rights and freedoms raised the Egyptians' political awareness and familiarized them with these issues.

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