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Fouad Aalouane and Ahmed Rebbouj

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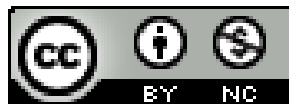
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# **The Rights of Religious Minorities in Muslim-Majority States: A Comparative Study of Egyptian Copts and Iraqi Christians**

Fouad Aalouane and Ahmed Rebbouj

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## **Abstract**

This paper takes up the constitutional recognition of individual and collective rights for religious minorities in Muslim-majority states, discussing how constitutions in such states approach the question of legal protection for minorities in order to foster a climate conducive to coexistence between its constituent religious groups. It also examines the claims that Arab and Islamic states deny religious diversity, offering a comparative analytical study of the rights of Copts under the 2014 Egyptian constitution and the rights of Iraqi Christian minorities under the 2005 constitution. The study concludes that the constitutional provisions for the protection of the rights of religious minorities in these two states are relatively progressive compared to the constitutions of other Islamic states. This is particularly true of the Iraqi constitution, which generally has a better approach to the protections offered religious minorities than its Egyptian counterpart, especially when it comes to combatting discrimination and providing for political participation. Nevertheless, the study asserts that the real problem lies in the application of constitutional provisions on the ground due to the failure of the two states, particularly Egypt, to institute explicit procedural measures to guarantee genuine protection for minority religious rights.

**Keywords:** Muslim Majority; Religious Minorities; Constitution; Egypt; Iraq

## **Introduction**

Most countries around the world are home to various minorities who differ from the majority of the population in terms of origins, culture, or religion. No country is devoid of diversity of some kind, and it difficult to even imagine a monolingual or mono-religious country existing in our contemporary world. Given this reality, the international community has been clear in its affirmation of the need to comprehensively protect the individual and collective rights of these vulnerable groups, which have historically faced various forms of discrimination and persecution. The International Covenant on Civil and Political Rights (ICCPR) of 1966 states, 'In those States

in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language'.<sup>1</sup>

Respect for and the promotion of minority rights are among the most important areas of human rights, a gateway to security, development, and democracy and an essential means of ensuring domestic, regional, and international political stability. In this regard, Mwayila Tshiyembe believes that minority-related domestic tensions and conflicts not only pose a real threat to political stability, but represent the true, profound origin of wars between states.<sup>2</sup> In the same context, Abd al-Salam Ibrahim Baghdadi believes that ensuring the rights of minorities and promoting unity and coexistence between different ethnic groups within the political borders of a single state, which in most cases do not coincide with the borders between ethnic groups, is the principal pathway to security and stability.<sup>3</sup>

If ethnic conflicts between minority and majority groups are a deeply rooted part of history, they are more pressing than ever today, as religiously motivated conflicts and global events have again made the question of religious minorities an international issue. Burhan Ghalioun believes that although no society, no matter how rarefied its civilisation, is free of such conflicts, they are a persistent feature in the most traditional societies given these societies' relatively simple structural composition and poor integration.<sup>4</sup> This obviously applies to the Middle East and North Africa. Because these societies, together with the modern nation-state itself, are a contemporary product of an artificial cultural homogeneity, their governments typically ignore diversity and pursue strategies to contain it while attempting to equate unity with homogeneity.

The study of issues related to religious minorities is important because they are closely associated with respect for human rights and effective, rational state management. Moreover, there is currently unprecedented international interest in protecting religious minorities in order to preserve human diversity resulting from the multiplicity of religions, cultures, and languages, especially in the face of threats to this diversity from persistent and growing violations of religious rights and freedoms. This is the context in which religious minorities, more than other minorities, have come to the fore in Arab and international events.<sup>5</sup> Indeed, religious minority issues have not been raised in any period of Arab history as seriously as they are today because of the systematic discrimination and official and popular persecution they face from the majority religion. In many states, including Muslim-majority states, citizens belonging to a particular religious minority are treated as second-class citizens.<sup>6</sup>

In light of the above, this paper takes up the constitutional recognition of the civil and political rights of religious minorities in Muslim-majority countries, looking at how the constitutions of these countries treat legal protection for these groups. In fact, the question of minorities, especially religious minorities, occupied an important place in the discussions that preceded the drafting of the constitutions of the third millennium. The biggest test faced by the framers of these constitutions was resolving the determinants of national belonging, the issue of the civil state, and the place of Islamic law in legislation.

In this context, we present an analytical study comparing the rights of Coptic Egyptians and Christian Iraqis enshrined in their national constitutions, adopted in 2014 and 2005 respectively, while also looking at how the constitution has been applied and the outcome for the respect and promotion of religious minority rights in the two countries. The selection of these minorities was not arbitrary. Both communities are an integral part of their societies, with a long-standing presence. Indeed, they lived in the territory of these countries long before the arrival of the majority group, which lends greater legitimacy to their demands for constitutional rights and protection. These communities are a common heritage of humanity and some researchers accordingly call them ‘historical minorities’.<sup>7</sup> In addition, the two minorities belong to the same religion (Christianity), which means the study addresses the relationship between religious groups (the majority and minorities) belonging to the world’s most prevalent revealed religions. We further chose Egypt and Iraq because they both have a Muslim Arab majority and are both located in the Middle East and North Africa region, which is characterised by severe sectarian conflicts. Egypt is distinctive for the presence of a prominent religious minority (Copts), the largest Christian community in the Middle East,<sup>8</sup> while Iraq is the very model of a pluralist country given the number of religious minorities, Christian in particular, coexisting in it.<sup>9</sup>

The focus of this study can be reduced to the following question: To what extent have the constitutions of Muslim-majority countries—Egypt and Iraq in particular—succeeded in protecting the civil and political rights of their religious minorities, thereby fostering a healthy climate for coexistence between the various religious groups that make up these countries? To tease out the various dimensions of the issue, we must ask a series of sub-questions: Do the constitutions of these two states provide an environment conducive to minorities’ genuine participation in political and public life? Have these constitutions made a break with discriminatory practices against minorities? Have these constitutions responded to the main demand of minorities, which is recognition of their community as an essential component of the identity and entity of the state? To what extent have the two states succeeded in codifying minority rights in their constitutions, thereby guaranteeing the conditions for integration and coexistence between sundry religious groups?

The thesis of the study, which we will verify through an exploration of the main research question, is that in regards to respect for and promotion of the rights of Christian minorities in Iraq and Egypt, the outcome of the constitution’s application is not encouraging. This is especially pertinent when it comes to participation in political and public life, due to the failure of both constitutions to adopt procedural measures sufficient to protect the individual and collective rights of these minorities. The study finds that the Iraqi constitution is better than its Egyptian counterpart at achieving equality, ensuring equal opportunities, and recognising the identity of religious minorities, as stipulated in the United Nations Declaration on the Rights of Minorities, which asserts the need to protect the existence of religious minorities and strengthen their identity.

A set of approaches was adopted to achieve the aims of this study. The case-study approach will enable us to read the political conditions and constitutional rights of Christian minorities in both Iraq and Egypt. Understanding the relations between these minorities and the political

systems of the two countries in different time periods dictates a historical approach. Finally, a comparative approach is needed to observe and analyse similarities and differences between the two experiences of the constitutional and institutional protection of religious minorities, in particular the provisions of the 2014 Egyptian constitution and the 2005 Iraqi constitution, as well to understand the status of human rights for the religious minority under different governments in the same state.

The study is divided into three main parts. Understanding the dimensions of the subject necessitates a review of the period before the adoption of new constitutions in both Iraq and Egypt, when religious minorities experienced a long history of marginalisation and discrimination in many areas of life; this is part one. In part two, we compare the constitutional approach to the rights of religious minorities in both countries, especially with regard to the recognition of the presence and identity of religious minorities, equality, non-discrimination, and the promotion of religious rights and freedoms. The last section addresses the application of the constitution as concerns respect for the rights of religious minorities in the two states and the extent to which the states are able to carry through on their constitutional and legal obligations and translate them into concrete practice on the ground.

### **Egyptian Copts and Iraqi Christians: Forced Assimilation and Weak Protection**

In order to understand the reality of the constitutional protection of religious minorities in both Egypt and Iraq, it is necessary to examine the political, social and cultural status of these minorities in the decades before the adoption of new constitutions following the recent reforms in both countries. This was a period that witnessed a broad Arab social movement generated by conditions of social, economic, and political injustice. Although this injustice touched both the majority and the minority, the latter suffered a double burden due to persecution by both the state and the majority group.

#### ***Egyptian Copts: between official discrimination and security concerns***

At the outset, it must be noted that religious diversity has been a main feature of the Egyptian polity since 640 CE.<sup>10</sup> Any analysis of the problematic relationship between the Coptic community and the state must therefore be placed in the historical context of the movement of Egyptian citizens, Muslims and Copts, and its consequences for relations with the state and society as a whole.

Copts' long-standing presence in Egypt would suggest an objectively high level of coexistence among various groups in a nation allowing for a balance between respect for religion and the social order. Nevertheless, the reality was the opposite. Successive Egyptian governments often treated Copts, Shiites, and other religious minorities as inferior citizens,<sup>11</sup> a status that compromised their fundamental rights and civil liberties. As the largest minority in the country, making up some ten per cent of the population, Copts came in for the lion's share of the marginalisation.<sup>12</sup>

In addition to their numerical strength, Copts constitute an important economic and financial force, which has made them a top security concern of the Egyptian political regime. Historically, the Coptic issue has posed a security challenge to most governments, and successive regimes have adopted a largely security-oriented approach to the community, with the exception of the eras of President Abdel Nasser and President El-Sisi, which witnessed a slight improvement in the treatment of the issue, even if only at a rhetorical level, because of these presidents' desire to highlight the non-religious nature of the state administration. Generally, this resulted in many policies that harmed Copts and showed a systematic disregard for their history, which is also the history of the Egyptian state. Copts were intentionally omitted from Ministry of Education curricula, as were Christian religious teachings.<sup>13</sup> For example, posters adorning the facade of school buildings feature Quranic verses and prophetic hadith that reflect purely Islamic values. Although these typically encourage cooperation, brotherhood, and love, they nevertheless venerate a single religious identity, making the Christian Other lesser. Arabic-language curricula studied by all students include Quranic texts and Islamic religious history and stories, which are reluctantly memorised by Christian students in order to excel and succeed in examinations.<sup>14</sup> Coptic pupils thus know quite a bit about Islam, while Muslim pupils are ignorant of almost everything about the principles and values of Christianity. This contributes to the growth of intolerance and sectarian violence.<sup>15</sup> It also runs counter to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which stipulates in Article 4(4) that states should take measures in the field of education to promote knowledge of the history, traditions, and language of minorities within their territories.

In the absence of serious state action to address sectarian tensions and approach the Coptic issue not as a security question but a national issue, Copts have lived with conflict and constant tension, fuelled by the conditions of national belonging and religious identity, political and social demands, and demands related to the construction of churches and personal status laws. Interestingly, the official discourse still refuses to describe Egyptian Copts as a 'minority' and denies the existence of any particular problems related to the community. Yet, statistics show that there were more than 180 violent sectarian incidents requiring large-scale security interventions between 1972 and 2015<sup>16</sup>—that is, over four every year—as well as more limited confrontations.<sup>17</sup>

In addition, there are many illustrations of the violation of Copts' civil and political rights in the Egyptian historical record. For example, Copts are not considered for positions of sovereign responsibility: no Copt has ever headed the armed forces, the security services, or the Ministry of Interior.<sup>18</sup> Other senior positions are conventionally, though not officially, off limits to Copts as well; they are not appointed to the position of university president or dean of a faculty of literature, on the grounds that they do not memorise the Quran.<sup>19</sup> In a historical precedent, recent years have seen the appointment of the first female Coptic governor, Dr. Manal Awad Mikhail, in Damietta.<sup>20</sup> The slot for religion on the national identity card may have exacerbated religious discrimination. According to the Coptic church adviser, lawyer Naguib Gibrail, this has had the effect of excluding religious minorities, Copts in particular, not only from many senior state positions but also some public positions, such as those in sports clubs.<sup>21</sup>

Copts are often marginalised in local and national representative councils as well. Until the 2011 revolution, in many cases Coptic candidates for elected assemblies were rejected by the ruling National Democratic Party, and only a handful of Copts received the party nomination. In 2005, for example, the ruling party fielded only four Copts for the People's Assembly elections, only one of whom, Finance Minister Youssef Boutros Ghali, won a seat.<sup>22</sup>

Religious discrimination was more clearly manifested under President Anwar Sadat, who intentionally sought to eliminate his Nasserist and leftist opponents by exploiting Islamic fundamentalism. This adversely affected the conditions of the Copts and widened the gap between them and the state, especially after the constitutional amendment of 1980 recognised Islamic law (*shari'a*) as the main source of legislation and set 'ten conditions' for the construction or restoration of churches.<sup>23</sup> In Egypt, the construction or even renovation of a church requires a presidential decree. A good illustration of religious discrimination is the case of Coptic lawyer Adly Doss, who in the late 1990s donated a plot of land for the construction of a church in Minya and pledged to finance it. But the project depended on the president's approval and is pending to this very day, still a dream for the town's Copts. On the same date, Doss also donated a plot of land of the same size for a mosque for the Muslim residents; that project was completed only a few months later.<sup>24</sup>

In short, for most of its history, the Coptic community has lived with discrimination and marginalisation in many areas of political and public life. While the community is ever-present in the political regime's mind, its treatment is selective and inconsistent. Sometimes Copts are held to be unbelievers in both religious pronouncements and the popular imagination, and in times of tolerance they may be placed in positions where they can be described as citizens and partners in the nation. This selective treatment has long been the main reason for Copts' sense of anxiety and mistrust towards both the regime and the Muslim majority.

### ***Iraqi Christians: a long history of marginalisation***

If Iraq is a multicultural, multi-ethnic country, it has also witnessed throughout its history inhumane ways of dealing with communities and nationalities in its territory, especially after the US invasion and occupation of Iraq in 2003. Christian minorities have experienced much of this inhumane treatment.

Christians have had a presence in Iraq since ancient times, predating the advent of Islam in the seventh century CE. The majority of Iraq's inhabitants converted to Christianity under the Sassanid state in the first and second century CE due to the efforts of missionary saints and Romans taken prisoner in the Persian-Roman wars, who were deployed by the Sassanid Persians in the territory of Iraq, as well as to the Yemeni Christian Arab tribes who emigrated to Iraq after the collapse of the Marib Dam.<sup>25</sup> Christians of all denominations are therefore indigenous to Iraq and have shaped Iraqi civilisation as the descendants of the Babylonians, Assyrians, and Chaldeans who inhabited the region thousands of years ago.<sup>26</sup>

The many divisions between Christians compounds their plight. There are fifteen Christian minority communities in Iraq, including the Catholic Chaldean Church, whose adherents make up

the majority of the larger Christian minority. But all these communities face the same problems, whether before the era of President Saddam Hussein, during his tenure, or after him, though to different degrees.<sup>27</sup>

With the entry of Islam into Iraq, the majority of Christians lived in peace, and many of them excelled and innovated in the sciences and the administration of the Umayyad and Abbasid states. They were ministers, doctors, and poets, and many of clergymen enjoyed some status with the Umayyad and Abbasid caliphs.<sup>28</sup> In some critical stages, Christians and other religious groups were persecuted by rulers based on fatwas issued by fanatical clerics. In the era of the Abbasid Caliph al-Mutawakkil (235 AH/839 CE), for example, many Christians were forced to convert to Islam; others faced restrictions on their clothing and were prohibited from walking on the road with Muslims and wearing crucifixes on their chests. The Caliph al-Muqtadir later followed in his footsteps, ordering that Jews and Christians be consulted only in the fields of medicine and science.<sup>29</sup>

After the establishment of the monarchy in modern Iraq in 1921, minorities helped to build the state. Jewish and Christian figures played important political and economic roles, among them the most renowned finance minister in the history of Iraq, Sassoon Eskell, and politician, writer and economist Yousef Ghanima, who headed the Ministry of Finance for six consecutive terms and twice led the Ministry of Supply (1929–1947).<sup>30</sup>

Nevertheless, there were periods of discrimination under the monarchy. Assyrians who converted to Syriac Christianity were subjected to ethnic cleansing and killing in 1933, when Iraqi security forces, in cooperation with some Kurdish tribes, killed hundreds of them, in what is known as the Simele massacre. The event is still commemorated annually by Assyrian Christians on Assyrian Martyr's Day, in remembrance of a dark era in their history in Iraq.

It is fair to say that the Simele massacre was instigated by British forces, which formed an auxiliary force of Assyrian Christians who had fled to Iraq from Turkey during and after the First World War. The militia was trained to suppress the Arab and Kurdish tribes that participated in the Great Revolt of 1920 and to assassinate nationalist activists opposed to the British presence in Iraq. After rising complaints from the Arab and Kurdish tribes in Diyala and Sulaymaniyah, Iraqi forces, along with the Kurdish tribes, acting on an ill-considered, hasty order from Prince Ghazi and Minister of Defence Bakr Sidqi, moved to eliminate the Levies.<sup>31</sup> Hundreds of Christians were killed and hundreds more arrested, even as the Assyrian Christian tribes were opposed to the actions of the Levies.<sup>32</sup>

With the establishment of the republic after the July 1958 coup, the conditions of Christians began to decline, especially under successive military coups and the general sense of injustice and inequality felt by all Iraqis. With the coming of the Baath Party in 1968 and the promulgation of the 1970 constitution, fears began to mount. Article 4 of the constitution recognised Islam as the state religion,<sup>33</sup> and this was not coupled with any serious affirmation of the right of Christians to learn the Syriac language, publish their literary works, and open cultural forums. Discrimination manifested in other areas as well, in particular the personal status law. A marriage between a Christian and a Muslim would be governed by general Islamic precepts—that is, the law of the



majority—because Islam was the most prominent source of the civil status law. Moreover, a bequest from a Christian to a Muslim was legitimate, but the opposite was not.<sup>34</sup>

The plight of the Christian minority worsened starting in 1991 because of the political repercussions of the second Gulf war. The Baathist regime retreated from secularism, abandoning the ideology of Arabism in favour of religious ideology due to Saddam Hussein's desire to placate Muslim religious authorities. This explains the issuance of directives prohibiting the giving of 'foreign names' to new-borns.<sup>35</sup>

As a result, the Christian minority in Iraq has been persistently shrinking. Several factors have spurred Christians to emigrate, most prominently the continuing violations of their rights. The situation has been exacerbated by the dangerous practices and actions of extremist Islamist movements emerging after the American occupation of Iraq in 2003. These movements believe that there is no place for religious diversity and that specific areas should be reserved for Muslims alone. They have sought to convert individuals by forcing them to pay a special tax,<sup>36</sup> and have carried out terrorist attacks with the goal of encouraging Christians to emigrate. Tens of thousands of Christians were expelled from their homes by the Islamic State (Daesh), which took control of Mosul in 2014. Even after the defeat of Daesh in Iraq, their culture and civilisation were threatened with extinction by Iranian-backed forces.<sup>37</sup>

Thus, Iraqi Christians currently number some 200,000 people, down from about 1.5 million before the invasion and occupation of Iraq in 2003,<sup>38</sup> a decline of more than eighty per cent. Due to the lack of security, most of them emigrated to western Europe, the United States, Canada, Australia, and New Zealand. Chicago and Detroit, for example, are each home to some 80,000 Chaldean and Assyrian Christians from the Middle East, especially Iraq. There were nearly 200,000 Iraqi Christians in Europe in 2005, 50,000 in Canada, and 30,000 in Australia. The wave of emigration is especially serious because the majority of migrants are young and the most educated.<sup>39</sup>

Yet despite rising persecution and the concomitant increase in the number of emigrants, the Christian minority in Iraq will not go extinct; it will continue to exist because religious minorities always cleave to their identity regardless of circumstances. This is demonstrated by the response to Laurent Fabius's assertion of France's readiness to grant visas to any Iraqi Christians who wish to leave.<sup>40</sup> The church rejected his initiative and asked instead for him to help Christians stay in their country, on the land of their ancestors.<sup>41</sup>

### **Rights of Religious Minorities in the Constitutions of Egypt and Iraq**

A genuine, sound democracy cannot be sustained without the construction of an institutional and legal structure for the rights of religious minorities reflective of a constitutional recognition and articulation of these rights, which some categorise as within the supreme category of the inviolable peremptory norms of international law.<sup>42</sup>

Although Article 27 of the ICCPR provides for only some of these rights, such as the right to enjoy culture, the right to profess and practise one's religion, and the right to use one's language,

while providing for individual and collective enjoyment of these rights, even guarantees for this minimum threshold of rights remain elusive in constitutions.

States' recognition of the identity of religious minorities as a key component of the state and their affirmation of the value of the principle of non-discrimination, which is the foundation of the UN perspective on the protection of minorities,<sup>43</sup> is an essential condition for inclusion in constitutions to guarantee the most important collective rights necessary for the survival of the religious minority as a distinct entity. To avoid their obligations to these groups, many states contend that these rights are incompatible with the principle of equality, but there is no contradiction between the recognition of the collective rights of religious minorities and the principle of equality enshrined in the Universal Declaration of Human Rights and affirmed in Article 8 of the UN Declaration on Minorities.

### ***Enshrining recognition of Christian component as constituent element of the state***

The enduring principles and values that make every identity distinct are an essential driver of human behaviour. According to researchers and jurists of international law, identity and minorities will soon be at the centre of events around the world.<sup>44</sup> Cultural identity with its religious component forms the basis of conflicts in society, as it is a major element of the intangible psychological needs of groups.<sup>45</sup> It is 'the only appeal that attracts the schooled and the unschooled and makes them strive after it in a spontaneous way'.<sup>46</sup> Many human relations and values are organised within the framework of religio-cultural identity, which lends priority to the cultural demands of religious minority movements over their economic and social demands.

Explicit constitutional and legal recognition of the identity and existence of religious groups cannot be achieved without a genuine, practical translation of Article 1 of the UN Declaration on Minorities, which emphasises states' obligation to protect the presence and religious identity of minorities and to create conditions for the promotion of that identity. Assuming that the new constitutions in both Iraq and Egypt are democratic constitutions following from the democratic transition, the aim was that they should break with past constitutional practices, namely the lack of recognition of religious minorities as an essential component of the state and its identity.

In Iraq, despite the 2005 constitution's affirmation of religious pluralism,<sup>47</sup> the preamble avoided referring explicitly to Christian minorities. In recapitulating the suffering endured by the Iraqi people due to the practices of the previous regime, the preamble states, 'Recalling the pains of sectarian oppression by the despotic dictatorship and inspired by the ordeals of the martyrs of Iraq, Shiite and Sunni, Arab and Kurd and Turkman, and all components of the people...'.<sup>48</sup> If the reference to the Sunni, Shiite and Kurdish communities is acceptable considering they are the main groups in the country, the reference to the ethnic Turkmen and the disregard for the Christian minority, which experienced various forms of persecution in different eras, seems illogical, especially since the preamble refers to the Turkmen on a second occasion, where it refers to the 'tragedies of the Turkmen in Bashir'.<sup>49</sup> This raises more than one question, especially considering that roughly equal numbers of Christians and Turkmen were involved in drafting the 2005

constitution.<sup>50</sup> The explanation may be related to the religion of the Turkmen, most of whom are Muslims.

However, the Iraqi constitution explicitly recognises the Christian minority when addressing the question of religious rights. Article 2 affirms that the constitution guarantees ‘the full religious rights of freedom of belief and religious practice to all individuals such as Christians, Yazidis and Mandaean Sabaeans’. This is an important change from the 1970 constitution, which, despite its explicit recognition of minorities—refers to them specifically as ‘minorities’, in contrast to many current Arab-Islamic constitutions and even constitutions in the developed world that avoid the term—does not specifically name Christians and other minorities. The 1970 constitution states, ‘The Iraqi people consists of two major nationalities: the Arab nation and the Kurdish nation, and this constitution affirms the national rights of the Kurdish people and the legitimate rights of all minorities within the Iraqi union’.<sup>51</sup>

The current Iraqi constitution cements its recognition of Iraqi Christians by affirming their linguistic rights. Article 4 upholds their right to educate their children in Syriac and Armenian in governmental educational institutions.<sup>52</sup> Moreover, the same article asserts that Syriac, the language of the majority of Christians, is an official language in areas where Syriac Christians are concentrated. This is an important recognition that Christianity, with its own languages, is a fundamental component of the identity of modern Iraq.

Nevertheless, the Iraqi constitution affirms the Islamic identity of the state in Article 2, which states, ‘Islam is the official religion of the state’. It is important to note that the addition of the word ‘official’ is an implicit recognition of other religions, first and foremost Christianity. This is a positive development on the interim constitution of 1970, which stated in Article 4, ‘Islam is the religion of the state’. It is moreover a significant development when seen in light of the constitutions of many Islamic countries, including the 2014 Egyptian constitution, Article 2 of which states, ‘Islam is the religion of the state’.<sup>53</sup> To affirm the Islamic identity of Iraq, Article 2(2), states that the constitution of 2005 guarantees ‘the preservation of the Islamic identity of the majority of the Iraqi people’. The use of the word ‘majority’ in this provision is significant because it conveys an affirmation of religious diversity and a recognition that Islamic identity is not the only one in modern Iraq.

The Egyptian constitution’s recognition of Copts is somewhat similar to its Iraqi counterpart insofar as it recognises the Christian presence and identity as a basic component of the state. The preamble refers specifically to Christian history (‘On its land, Egyptians harboured the Virgin and her infant son’) and the role of Christians in the Egyptian revolution (‘The revolution of 25 January-30 June is unique among the major revolutions in the history of humanity for its intense popular participation...and its blessing by the noble al-Azhar and the national church’). This is a significant development considering the absence of the Christian component in the preamble to the suspended 2012 constitution<sup>54</sup> and the disregard for it in the preamble to the 1971 constitution and its amendments until 2007.

This recognition was further affirmed in Article 50 of the Egyptian constitution which explicitly refers to the role of the Coptic component, constituting a recognition of Coptic identity as a

constituent element of Egyptian civilisation: ‘Egypt’s civilisational and cultural heritage, material and moral, in all its major varieties and eras, ancient Egyptian, Coptic, and Islamic, is a national and human treasure’. At the same time, the Arab-Islamic identity of the state retained its prominent position in the 2014 constitution. Article 1 states, ‘The Egyptian people are part of the Arab nation working for its integration and unity, and Egypt is part of the Islamic world’.

***Between the affirmation of equality and the persistence of discrimination***

Article 19 (2) of the Vienna Declaration of 25 June 1993 affirmed that persons belonging to minorities should enjoy effectively and without discrimination all human rights and fundamental freedoms, and it recognised states’ responsibility to ensure and promote them. The basis for this is found in the Universal Declaration of Human Rights, in particular Article 1 on equal rights<sup>55</sup> and Article 2, which prohibits all forms of discrimination<sup>56</sup> on the basis of race, colour, sex, language or religion. This articulates the UN view on the subject of minorities.

With regard to Iraq, the preamble to the 2005 constitution emphasises equal opportunity for all, the achievement of equality, and the promotion of a culture of diversity,<sup>57</sup> which was made evident by the absence of any reference in the preamble to the promotion of the Islamic religion despite its centrality to Iraqi identity, unlike the Egyptian constitution. However, the preferential status of Islam is made clear in Article 2, which states, ‘Islam is a foundational source of legislation’<sup>58</sup> and ‘no law may be enacted that contradicts the established provisions of Islam’. The same article, however, also affirms that no law may be enacted that contradicts the principles of democracy<sup>59</sup> or the fundamental rights and freedoms enumerated in the constitution. This clearly reflects the consensus and accommodations that governed the drafting of the 2005 constitution.

In keeping with Article 16 of the constitution, which guarantees the right to equal opportunities for all Iraqis, Article 9 states, ‘The Iraqi armed forces and security services shall consist of the components of the Iraqi people, with due regard for their balance and representation without discrimination or exclusion’. This is crucial, as ensuring that all military and security positions on every level may be held by all ethnic and religious minorities, including Christians, helps to build mutual trust and foster a healthy climate for coexistence.

In contrast to the Egyptian constitution, which prohibits the establishment of parties on a religious basis,<sup>60</sup> there is nothing in the Iraqi constitution that prevents the establishment of religious parties.<sup>61</sup> This has allowed the emergence of a group of Christian parties, most notably the Assyrian Patriotic Party, the Chaldean Syriac Assyrian Popular Council, the Chaldean Democratic Union, the Assyrian Democratic Movement, and the Chaldean National Congress.<sup>62</sup>

Despite some people’s reservations about religious parties as political entities that derive their existence and permanence from primary loyalties and whose demands are largely limited to ethnic, historical and personal matters,<sup>63</sup> and admitting that most Christian parties are small and of a sectarian and ethnic nature, they have nevertheless enabled representation for the Christian minority in the Iraqi parliament. In the 2018 parliamentary elections, the Assyrian Democratic Movement won three seats and the Chaldean Syriac Assyrian Popular Council two seats. This is fully in line with Article 49 of the Iraqi constitution, which affirms the need to consider

representation for all components of the people in the composition of the Council of Representatives, and with the content of Article 27 of the 1993 Vienna Declaration, which requires states to take the measures necessary to facilitate the participation of persons belonging to minorities in all areas of political life.

To enable religious minorities to participate effectively in political life and political decision-making, the constitution does not require presidential candidates to be Muslim,<sup>64</sup> which sets the Iraqi constitution apart from those of Islamic countries like Tunisia, which does require presidential candidates to belong to the majority religion.<sup>65</sup> It also makes it possible in the future, if only in theory, for a member of the Christian minority to become the president, which would give concrete expression to the principles of equality and non-discrimination set forth in the Iraqi constitution.

The Egyptian constitution does not differ from its Iraqi counterpart in its prohibition of all forms of discrimination. The Egyptian constitution, including the 2012 constitution, which was written under President Mohammed Morsi of the Muslim Brotherhood, does not make Islam a condition of eligibility for the post of head of state.<sup>66</sup> This is consistent with its preamble and articles 4 and 53, which refer to the equality of rights and duties and affirm equal opportunity and the right to hold office without discrimination of any kind.<sup>67</sup>

The Egyptian constitution, however, is not without references to the preferential status of the majority religion. The preamble explicitly states, ‘When the seal of the messengers was sent...our hearts and minds opened to the light of Islam. We were the best soldiers on earth fighting for God’s cause, and we spread the message of truth’. This is firmly enshrined in Article 2, which explicitly limits the main sources of legislation to the principles of Islamic law, as does the Iraqi constitution, in contrast to the constitutions of Morocco and Tunisia, for example, which define the sources of legislation more expansively.

Despite this, and evincing a sort of flexibility, the preamble of the Egyptian constitution reflects an Islamic-liberal consensus in that it provides for the civil interpretation of Islamic law, affirming the need to interpret the principles of Islamic law based on the rulings of the Supreme Constitutional Court. This is a positive development for Copts and other religious minorities and represents an important departure from the 2012 constitution, Article 219 of which stated, ‘The principles of Islamic law include its general evidence, its foundational rules and jurisprudence, and credible sources accepted in the orthodox Sunni schools of law’.

In another example of elevating the status of the majority religion, Chapter Two of the constitution on the social components of society designates al-Azhar as an independent Islamic scientific body that the state is obligated to support financially as adequate to achieve its purposes.<sup>68</sup> This demonstrates a clear preference for Islam and an explicit disregard for Christian bodies.<sup>69</sup>

### ***Religious freedoms: towards greater constitutional acknowledgement***

Enshrining religious rights and freedoms in the constitution is of great importance. It is a fundamental right enumerated in Article 27 of the ICCPR, which clearly provides for the right of

religious minorities to profess and practise religion, individually and collectively, as evident in the phrase ‘or in community with others’.<sup>70</sup>

Within the framework of the basic collective rights of religious minorities in Egypt, the 2014 constitution affirmed that freedom of belief is absolute and recognised the right to worship and establish places of worship, providing for the issuance of a law to regulate this right.<sup>71</sup> Article 235 of the Egyptian constitution requires the House of Representatives to pass a law regulating the construction and restoration of churches that guarantees Christians’ freedom to practise their religion. The law was not passed until 2016, and although it is a sign of progress, the scope of religious freedom for Christians did not expand as much as they had hoped. Regarding the regulation of religious affairs, Article 3 of the Egyptian constitution gives Copts the freedom to manage and organise all matters related to their religious affairs and to choose their spiritual leaders. This, too, is an important gain in the protection of religious rights and freedoms.

Much the same is true for Iraq. Article 2 of the Iraqi constitution guarantees ‘the full religious rights of freedom of belief and religious practice to all individuals such as Christians, Yazidis and Mandaean Sabaeans’. The use of the phrase ‘full religious rights’ is important to emphasise the safeguarding of religious freedoms. The article is also an improvement on Article 25 of the 1970 constitution, which indirectly restricted religious freedoms. Although it contained almost the same content as Article 2 of the 2005 constitution, it made guarantees for freedom of belief and worship conditional on not infringing morals and public order.<sup>72</sup>

Unlike the Egyptian constitution, which does not explicitly provide for the state’s responsibility to protect places of worship, Article 10 of the 2005 Iraqi constitution obliges the state to safeguard the sanctity of the holy spaces and religious shrines and to guarantee the free exercise of religion in them. Article 43 expressly provides for this: ‘The state shall guarantee freedom of worship and the protection of places of worship’. There is no doubt that the sectarian violence in Iraq after the 2003 occupation, of which Christians and other religious minorities were the most prominent victims, prompted the government to give effect to the constitutional provisions affirming the inviolability of places of worship, in order to prevent the terrorist acts against Christians and their places of worship that have impacted their very existence.

On the whole, the constitutional treatment of religious freedoms is acceptable in Egypt and even better in Iraq compared to other Arab and Islamic countries such as Morocco. In light of the small numbers of the country’s religious minorities, the 2011 Moroccan constitution seems reluctant to address the issue of religious freedoms. This is evident in the wording of Article 3, which states, ‘Islam is the state religion. The state shall guarantee to everyone the free exercise of religion’. In this way, the article avoids enumerating collective religious freedoms like the right to practise religion or the right to establish places of worship, limiting itself to a guarantee of individual freedom (‘guarantees to everyone’) to practise one’s religion. This is vaguer wording than that used in the Egyptian and Iraqi constitutions.<sup>73</sup>

## **Constitutional Affirmation vs Narrow Exercise**

Disregard for the issue of minorities, the lack of recognition of their legitimate rights so as to ensure a decent life for them, and attempts to piggyback off their situation without offering realistic solutions all exacerbate the harsh conditions of their lives, creating a tragic situation. Narrow-minded, bigoted policies and attempts to forcibly assimilate minorities are generally counterproductive, contributing to a growing sense of their own identity and separatist tendencies. However much Egyptian and Iraqi societies appear to be open and accepting of others, they have not totally shed deep-seated biases and exclusionary perceptions. While it is true that they remain among the societies with religious minorities that best address minority issues in the constitution in an affirmative, positive way, close-mindedness still has an influence, even if they are the closest to overcoming the practices of racism, intolerance and exclusion. This ultimately precludes the concrete enactment of constitutional provisions ensuring the protection of religious minorities and respecting and promoting their rights.

Despite the positive aspects of the constitutions of Egypt and Iraq in their treatment of the issue at hand, they have fallen short of the aspirations of their religious minorities, who continue to face harassment from the ruling authority and the closed-minded majority, and suffer from weak legal protections or the failure to translate theoretical protection into reality. This means that the constitutional and legal code—however open and accommodating of the other it is in writing, and however democratic it appears to be as an instrument for managing integration, openness and acceptance of the other and ensuring a fair apportionment of available opportunities—has been unable to pierce the intolerance fuelled by monolithic identity. Rather, it is the material reality of the homogenous components of society, devoid of diversity and difference, that ultimately guides and governs the interaction of regulations and laws. By looking closely at these facts and taking them into account, it is possible to construct a balanced, clear outlook that will put an end to the ineffectual flailing around this chronic, complex problem in countries with ethnic, religious, sectarian, and linguistic minorities.

In order to assess the rights acquired by these groups in the framework of democratic transitions and to clarify the impact of these constitutions, it is necessary to examine and evaluate the application in practice of their provisions for respect and the promotion of the rights of religious minorities. To what extent have the constitutions of Egypt and Iraq succeeded in achieving effective protection for their societies' religious minorities? Have the constitutional provisions for the religious rights and freedoms of Christians been successfully implemented and translated into practice?

### ***Limitations of constitutional protection***

Although the constitutions of Egypt and Iraq contain progressive provisions guaranteeing the civil and political rights of Christian minorities, the protection of religious minorities on the ground is not encouraging, especially when it comes to participation in political and public life. This is

largely due to the fact that neither constitution adopted procedural measures adequate to protect the rights of persons belonging to religious minorities as have other democratic constitutions.

The failure of the Egyptian constitution to provide for explicit measures empowering religious minorities to participate in political and public life and hold public office has further entrenched discrimination against Copts in the public sector and the courts, and by the security services.<sup>74</sup> This neither precludes nor detracts from the state's commitment to achieve equal opportunities for all citizens without discrimination<sup>75</sup> and its affirmation of the freedom to practise religion. Article 11, for example, provides for specific measures to ensure representation for women in elected assemblies and guarantee their right to hold public office. Yet the recognition of Copts as a constituent element of state identity remains a feature of this constitution.

As in Egypt, the Iraqi constitution, whose sophisticated approach to the protection of the rights of religious minorities, including Christianity, must be acknowledged, provides for no procedural measures to ensure effective political participation for these groups. This hinders their representatives from contributing to political decision-making, especially at the executive level (government formation) and thus conflicts with the power-sharing model,<sup>76</sup> or what is known as consociationalism, which requires the inclusion of all sectors of society<sup>77</sup> to consolidate democratic governance in divided societies like Iraq.

The consociational model was observed under the transitional government,<sup>78</sup> which consisted of thirty-three members: seventeen Shiite ministers (including the prime minister), seven ministers each from the Sunni and Kurdish communities, one Christian minister, and one Turkmen minister. But the constitution of 2005 made a break with consociationalism and contained no explicit provision for representation of each of these communities, making the Christian minority vulnerable to political accommodations and compromises and threatening to permanently exclude it from political decision making, much like the Copts of Egypt.<sup>79</sup> Fortunately for the Iraqi Christian minority, the new elections law issued in 2019 set a quota of five seats for Christians in the governorates of Baghdad, Nineveh, Kirkuk, Duhok, and Erbil. If the electoral quota gives fair representation to Christians and other communities, especially for political freedoms and rights, it also spurs intra-community conflict over the right to represent the community, as evidenced by the interactions between the fifteen Christian sects, as well as between Yazidis loyal to the Kurdish parties and the non-loyalists and between Sunni and Shiite Shabaks.<sup>80</sup>

Additionally, the Iraqi constitution omitted any reference to proportional representation in appointments to the civil service. Even the provision in Article 9 for balanced representation for all the constituent communities of people in the armed forces and security services is difficult to apply absent accurate data on the true size of Iraqi minority communities, especially Christians. The lack of such data precludes proportional representation even in the armed forces as stipulated in the constitution.<sup>81</sup>

### ***The challenge of implementing constitutional provisions***

The rights of religious minorities can only be ensured by making constitutional provisions a reality on the ground and then enacting legislation that comports with and complements the spirit of the



constitution. This is impossible absent genuine desire and a clear political will, coupled with a good faith intention to change the status of these groups for the better. In fact, in Egypt and Iraq alike, the implementation of constitutional provisions related to Christians' religious rights and liberties does not meet the aspirations of members of these minorities.

In Egypt, the conditions for obtaining a permit to build or restore churches have provoked much controversy, not only because they violate the right to practise religion collectively, but also because they infringe the principle of equal rights and non-discrimination between religious groups. The law regulating the construction and restoration of churches issued by the president in September 2016, pursuant to Article 235 of the 2014 constitution, is an achievement long awaited by everyone to resolve the tensions around the issue, and it is a significant measure that responded to some extent to the most important religious demands of the Christian minority. Even so, the mere issuance of the law entailed discrimination against Christians. What is required is a general law regulating the construction of places of worship that places all citizens on equal footing; it is senseless for each religion to have its own law for the construction and renovation of its houses of worship. Nevertheless, we should not underestimate the value of this effort: the law is the only thing that places limits on the interference of the authorities in church construction, although the executive has supreme power to restrict the right to build and renovate Coptic places of worship.<sup>82</sup>

If the law provides greater freedom to worship, Egyptian Copts are still waiting for the application of Article 3 of the constitution, which states, 'The principles of the religious laws of Egyptian Christian and Jews are the main source of legislation regulating their personal status and religious affairs'. The issuance of a personal status law for Copts would resolve the arduous issue of inheritance rights.<sup>83</sup> Although most Copts belong to the Orthodox rite, in which matters of marriage and divorce are adjudicated according to the Coptic Orthodox statute issued in 1938, this statute is often ignored by judges when it comes to the division of inheritance; because the statute does not rise to the level of law, judges adjudicate inheritance cases for Christians under the provisions of Islamic law.<sup>84</sup> Many Copts reject this situation, among them lawyer Hoda Nasrallah, who wanted to see her father's estate divided based on canon law: 'We demanded, my brothers and I, that the judge apply Christian teachings that treat men and women equally in inheritance'. The judge denied her request, dividing the legacy on the basis of Islamic law, which gives men twice the share of women. Considering the decision to be a violation of her religious rights, Nasrallah said, 'I demand no more than my right as an Egyptian citizen. I want to enjoy my rights as a woman and as a Christian'.<sup>85</sup> And after the rejection of Nasrallah's case in front of two courts, the Egyptian judiciary has finally accepted the lawyer's contestation and allowed her family to divide the inheritance according to Coptic teachings.<sup>86</sup>

The situation of Iraqi Christians differs little from that of their Egyptian counterparts. Although the 2005 constitution recognises the right of Iraqi Christians to be governed by their own personal status law,<sup>87</sup> there is still no such law on the horizon. This offends many members of the Christian minority, among them the Chaldean patriarch, Cardinal Louis Raphael Sako, who believes that modern Iraqi governments are obliged to respect and protect the identity of Iraqi Christians and other religious minorities and to ensure that they are able to regulate their personal status affairs.

He affirms the need to amend the Iraqi personal status law in line with the requirements of the Iraqi constitution on freedom of conscience and belief.<sup>88</sup>

On the other hand, in 2012 the president of Iraq promulgated a law establishing the Endowment Office of the Christian, Yazidi and Mandaean Sabaeen Religions pursuant to Article 43 of the constitution. Under Article 1 of the law, which affords Christians significant representation, the office is directly linked to the Cabinet and enjoys legal personhood. This positive measure highlights, in principle, the interest of the executive in the religious affairs of religious minorities. The Endowment Office oversees matters of worship and houses of worship, and manages all affairs related to clerics and religious institutes and institutions. It also administers and invests endowment funds and contributes to the opening of schools, orphanages, elder homes, and hospitals. In addition, the Endowment Office helps strengthen ties between the Christian minority and other religious minorities within the Muslim world.<sup>89</sup>

## **Conclusion**

The substantive content of constitutional provisions for the protection of the rights of religious minorities in both Iraq and Egypt is a response to claims that the constitutions of Muslim-majority countries deny religious diversity and a rebuttal to alleged violations of the individual and collective rights of religious minorities. The constitutions of both countries are relatively sophisticated compared to those of other Islamic countries, which, despite their openness to modern democratic constitutions, contain no reference to religious minorities and affirm Arab-Islamic identity as the sole identity.

Nevertheless, this study concludes that real constitutional outcomes on the ground in both Iraq and Egypt do not meet the aspirations of members of their religious minorities for the respect and promotion of their individual and collective rights. This is due to the failure of the two countries—especially Egypt—to institute explicit procedural measures and specific mechanisms that foster a climate conducive to coexistence between the various religious groups constituting the state and help ensure genuine protection for the rights of individuals belonging to religious minorities and their active participation in public and political life. This failure explains the continued marginalisation of members of Christian minorities and the increasing incidents of sectarian violence.

Although the Christian minority in Egypt is a prominent minority, larger and more influential than its peer in Iraq, this study finds that the Iraqi constitution's treatment of the rights of religious minorities is generally better than its Egyptian counterpart, especially in recognising the Christian component and the identity of Christian minorities, combating discrimination, and ensuring equal opportunities, political participation, and access to public positions. The Iraqi constitution, drafted by an elected national assembly during the occupation, is superior by dint of its clear affirmation of religious pluralism and its explicit recognition that Islam represents the identity of the majority of the people, not all of them.

Yet despite its adoption of the majority religion as a source of legislation, the Egyptian constitution of 2014, which was drafted in undemocratic circumstances, contains many positive aspects. These include its explicit recognition of Copts as a constituent element of Egyptian identity, its affirmation of more freedoms related to the practice of religion, and its provision for equality and the prohibition of religious discrimination, despite the clear preference shown for the Islamic religion. The constitutional outcome in Egypt would have been better had Copts not been forced to pay the price of the accommodation between conservatives and liberals. Instead, invoking the primacy of national interest, a policy of ‘constructive ambiguity’ was pursued, which entailed drafting a set of imprecise constitutional provisions - relevant to the matter at hand- that are open to more than one interpretation, which is the case with most constitutions of Muslim-majority countries.

If the constitutions of the countries under study do not overall meet the aspirations of their religious minorities, the lack of political will and the authorities’ refusal to enact new legislation in keeping with the constitution in a timely fashion mean that religious minorities do not enjoy full constitutional protection. Some members of these minorities have expressed their dissatisfaction cynically, observing that religious rights and freedoms are constitutionally guaranteed provided they are not actually applied. Iraq and Egypt are therefore urged to expedite the implementation of provisions related to participation in public life and Christian personal status matters, which pose a real problem for these communities.

Nevertheless, this does not preclude a recognition of these countries’ efforts to implement the constitutional protection of religious minorities. The political landscape in Iraq is studded by several Christian parties, and the new election law passed by the House of Representatives in 2019 guaranteed Christian minorities five seats in the assembly. In 2012, an Endowment Office was established for the Christian, Yazidi, and Mandaean Sabaeen religions, while in 2014, the Ministry of National Education began—albeit in a limited fashion—to introduce Syriac into the public-school curriculum in governorates with high concentrations of Christians. In Egypt, a law on the construction and restoration of churches was passed in 2016, granting Copts greater freedom to practise their religion.

Considering all of the above, despite the progress in recognising ethnic diversity and providing protection for religious minorities, the constitutions of Iraq and Egypt still have a long way to go to bring their minorities security and avoid the extinction of these communities, which are first and foremost a human legacy, as is the case with the rapidly dwindling community of Christians in Iraq.

Rights granted to religious minorities should not be limited solely to religious freedoms, but should include all civil and political rights without discrimination, as well as collective rights, which are crucial given their direct association with the survival and continuity of the religious community as a distinct entity. In this context, the call of the Egyptian Wafd Party in the 1920s is revolutionary in its implications for the rights of religious minorities, asserting the need for Copts’ political engagement, expressed in its famed motto, ‘Religion belongs to God and the nation to all’. With rare courage, the party also called for an Egyptian national flag emblazoned with a

crescent and a cross to represent everyone. These positions represent an explicit appeal for equality between the Muslim majority and the Christian and other religious minorities, for the sake of genuine social unity and genuine, durable political stability.

### About the Authors

**Fouad Aalouane** is a professor of political sciences at the Faculty of Legal, Economic and Social Sciences, Sidi Mohamed Ben Abdellah University in Fez, Morocco.

**Ahmed Rebbouj** is a visiting professor at the Faculty of Legal, Economic and Social Sciences, Sidi Mohamed Ben Abdellah University in Fez, Morocco.

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<sup>1</sup> Article 27 of the ICCPR.

<sup>2</sup> Tshiyembe, Mwayila (2010) *Le droit de la sécurité internationale* (Paris: L'Harmattan), p. 12.

<sup>3</sup> Baghdadi, Abd al-Salam Ibrahim (2000) *al-Wihda al-Wataniya wa-Mushkil al-Aqalliyat fi Afriqiya* [Arab Unity and the Minority Problem in Africa] (Beirut: Centre for Arab Unity Studies), p. 18.

<sup>4</sup> Ghalioun, Burhan (2012) *al-Mas'ala al-Ta'ifiya wa-Mushkil al-Aqalliyat* [The Sectarian Issue and the Problem of Minorities] (Beirut: al-Dar al-Arabiya li-l-Ulum), pp. 104–105.

<sup>5</sup> Jami, Asma, and Attar Abd al-Majid (2021) 'Mas'alat al-Aqalliyat fi al-'Alam al-'Arabi bayn al-Waq'i wa-l-Ma'mul' [The Issue of Minorities in the Arab World between Reality and Aspiration], *Majallat Illizi li-l-Buhuth wa-l-Dirasat* 6 (2), p. 524.

<sup>6</sup> Quattrini, Sylvia (2020) 'Religion, Identity and Ethnicity: The Quest of Tunisian Minorities for Full Citizenship', *Rowaq Arabi*, 21 July, accessed 9 August 2022, <https://urlz.fr/iX4m>.

<sup>7</sup> Polère, Cédric (2002) 'Minorité ethnique', *Millénaire* 3, 3 January, accessed 7 August 2022, <https://urlz.fr/iX4C>.

<sup>8</sup> Abu Seif, Youssef (2011) *al-Aqbat wa-l-Qawmiya al-'Arabiya: Dirasa Istitla'iya* [Copts and Arab Nationalism: A Survey] (Beirut: Centre for Arab Unity Studies), pp. 15–19.

<sup>9</sup> Sallum, Saad (2013) *al-Aqalliyat fi al-'Iraq: al-Dhakira, al-Tahaddiyat* [Minorities in Iraq: Memory, Challenges] (Baghdad: Masarat for Cultural and Media Development), p. 14.

<sup>10</sup> Musaad, May (2001) *al-Tamayyuz al-Qibti wa-Istib'ad al-Dawla fi Misr* [Coptic Distinction and State Exclusion in Egypt] (Doha: Arab Centre for Research and Policy Studies), p. 15.

<sup>11</sup> Abdel Ghafar, Adel, and Bill Hess (2018) 'Islamist Parties in North Africa: A Comparative Analysis of Morocco, Tunisia, and Egypt', Brookings Doha Centre, July, p. 21.

<sup>12</sup> Mohammed, Ghada (2018) *al-Aqbat fi Misr al-Haditha* [Copts in Modern Egypt] (Alexandria: al-Maraya for Cultural Production), p. 27.

<sup>13</sup> Al-Dawi, Abd al-Razzaq (2007) 'al-Khitab 'an Harb al-Thiqafat fi al-Fikr al-Gharbi: Namadhij min al-Fikr al-Amriki al-Mu'asir' [The Discourse on the War of Cultures in Western Thought: Examples from Contemporary American Thought], *Majallat 'Alam al-Fikr* 2, pp. 115–128.

<sup>14</sup> Shafiq, Karim (2019) 'Hissat al-Din fi Madaris Misr: Nafi al-Masihiyin wa-Ghalabat "al-Mu'minin"' [Religion Class in Egyptian Schools: Denial of Christians and the Ascendency of "Believers"], *Daraj*, 12 August, accessed 10 August 2022, <https://daraj.com/20575>.

<sup>15</sup> Al-Shuqayri, Abd al-Moneim (2021) *al-'Aqlana 'ind Maks Fibar* [Max Weber's Concept of Rationalism] (Doha: Arab Centre for Research and Policy Studies), p. 167.

- <sup>16</sup> Al-Sayyid, Alaa al-Din (2015) ‘Abraz al-Hawadith al-Ta’ifiya fi Misr Khilal Khamsin ‘Aman’ [Most Significant Sectarian Incidents in Egypt over Fifty Years], *Sasa*, 9 April, accessed 5 August 2022, <https://urlz.fr/iX4J>.
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- <sup>22</sup> Ibrahim, Saad Eddin, p. 6.
- <sup>23</sup> Bishara, Azmi (2012) *Hal min Mas’ala Qibtiya fi Misr?* [Is There a Coptic Question in Egypt?] (Beirut: Arab Centre for Research and Policy Studies), p. 28.
- <sup>24</sup> Alwan, Fouad, p. 16.
- <sup>25</sup> Al-Azawi, Daham Mohammed (2012) *Masihiyu al-‘Iraq: Mihnat al-Hadir wa-Qalaq al-Mustaqbal* [The Christians of Iraq: Present Plight and Anxiety for the Future] (Doha: Al Jazeera Centre for Studies), p. 25.
- <sup>26</sup> Dumont, Gérard-François (2005) ‘La mosaïque des chrétiens’, *Géostratégiques* 7, p. 177.
- <sup>27</sup> *Ibid.*, pp. 177–183.
- <sup>28</sup> Al-Azawi, Daham Mohammed, pp. 74–75.
- <sup>29</sup> Qasha, Suhayl (2010) *Tarikh Nasara al-‘Iraq* [The History of Iraq’s Christians] (Beirut: Dar al-Rafidayn), p. 579.
- <sup>30</sup> Al-Azawi, Daham Mohammed, p. 132.
- <sup>31</sup> The Iraqi or Assyrian Levies were an Iraqi force formed by the British in Iraq to serve the crown and combat the Iraqi resistance.
- <sup>32</sup> Al-Qaysi, Abd al-Majid Hasib (2007) *al-Tarikh al-Siyasi wa-l-‘Askari li-l-Ashuriyin fi al-‘Iraq* [The Political and Military History of the Assyrians in Iraq] (Beirut: al-Dar al-Arabiya li-l-Mawsuat), p. 35.
- <sup>33</sup> This was amended in the 2005 constitution, Article 2 of which states, ‘Islam is the official religion of the state’, an implicit recognition of the existence of other religious minorities.
- <sup>34</sup> Dumont, Gérard-François, p. 184.
- <sup>35</sup> Barbiche, Jean-Paul, and Ludmila Ommundsen (2008) *Sociétés réconciliées: Des peuples à la recherche d’un* (Paris: L’Harmattan), p. 18.
- <sup>36</sup> The same practices have been used with the Yazidi and Shabak religious minorities as well.
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- <sup>38</sup> Yégavian, Tigrane (2019) *Chrétien d’Orient: vers une disparation programmée? Al-Siyasat al-Dawliya* 163, accessed 10 June 2022, <https://urlz.fr/jbt0>.
- <sup>39</sup> Dumont, Gérard-François, p. 187.
- <sup>40</sup> Fabius is a French politician and diplomat who has held several high state posts. He was the foreign minister in President Hollande’s government in 2012 and served as prime minister; he was twice the president of the National Assembly.
- <sup>41</sup> Laham, Grégoire III (2014–2015) *Syrie: Les chrétiens dans la tourmente*, an interview with Frédéric Pichon, *al-Siyasa al-Dawliya* 146, p. 53.
- <sup>42</sup> Recommendations made by the arbitration committee growing out of the Peace Conference in Yugoslavia in 1992.
- <sup>43</sup> Waldheim, Kurt (1978) *al-Umam al-Muttahida wa-Huquq al-Insan* [The UN and Human Rights] (Cairo: al-Shaab Press), pp. 64–65.
- <sup>44</sup> Yakub, Joseph (2004) *Ma Ba’d al-Aqalliyat: Badil ‘an Takathur al-Duwal* [After Minorities: An Alternative to the Proliferation of States], trans. Omar Hussein (Beirut: Arab Cultural Centre), p. 14.
- <sup>45</sup> According to Samuel Huntington, there are four elements of national cultural identity: ethnicity, language, religious rite, and culture. He adds a fifth element as well—animosity to the other—which he considers a factor that supports identity.

<sup>46</sup> Al-Manjara, al-Mahdi (1991) *al-Harb al-Hidariya al-Ula: Mustaqbal al-Madi wa-Madi al-Mustaqbal* [The First Civilisational War: The Future of the Past and the Past of the Future] (Rabat: al-Uyun Publishers), pp. 269–270.

<sup>47</sup> Relatedly, Article 3 of the 2005 Iraqi constitution states, ‘Iraq is a multinational, multi-religious, and multi-communal country’.

<sup>48</sup> Turkmen are considered the third largest ethnic community in Iraq, but it is difficult to obtain an accurate count of the community. Originating from the Turkish-speaking peoples of Central Asia, they are concentrated in the geographic areas separating Arabs and Kurds, including the cities of Jalawla, al-Saadiya, Kifri, Sulaiman Bek, al-Tuz, Yankjah, Kirkuk, Daquq, and Tel Afar, located in the governorates of Diyala, Kirkuk, and Nineveh north and northeast of Baghdad. For more, see: al-Khitab, Faris (2020) ‘al-Aqalliyat al-Diniya wa-l-‘Irqiya fi al-Mu’adala al-Siysiya al-‘Iraqiya’ [Religious and Ethnic Minorities in the Iraq Political Equation], *Al Jazeera Centre for Studies*, 4 June, accessed 23 May 2022, <https://urlz.fr/geq4>.

<sup>49</sup> According to the preamble of the 2005 Iraqi constitution, Turkmen are mentioned a second time in connection with the city of Bashir because the city is home to Shiite Turkmen.

<sup>50</sup> In 2003, before the size of the Iraqi Christian community declined by some eighty per cent due to security instability and killing and expulsion by extremist Islamist groups, there were some 1.5 million Christians in Iraq. For more, see: A.-B. H. (2014) ‘L’Irak autorise l’enseignement du syriaque et de la religion chrétienne dans 152 écoles’, *La Croix*, 4 March, accessed 11 June 2022, <https://urlz.fr/geq5>.

<sup>51</sup> Article 5 of the interim Iraqi constitution of 1970.

<sup>52</sup> Syriac is the mother tongue of the Assyrian, Syrian, and Chaldean rites. Since most Iraqi Christians belong to Syriac churches, it is also a liturgical language of great religious and historical import to the Christian minority. Syriac is still the language of everyday use in areas with Syriac and Chaldean majorities.

<sup>53</sup> Article 3 of the Moroccan constitution of 2011 similarly states, ‘Islam is the state religion’. Although the same article then affirms, ‘The state shall guarantee to everyone the free exercise of religion’, it does not provide for the same religious pluralism implicitly established by Article 2 of the Iraqi constitution.

<sup>54</sup> The 2012 constitution was only in force for six months after the military coup welcomed by segments of the populace. A committee of ten constitutional experts and judges was subsequently formed, which recommended a constitution with major changes. Its work was forwarded to the fifty-member constituent assembly. For more, see: Zwitter, Andrej (2014) ‘Le Printemps arabe: Etat d’urgence et réforme constitutionnelle’, *ASPJ Afrique & Francophonie* (2), pp. 57–58.

<sup>55</sup> Equality here means guarantees for an equal level of protection and rights and liberties for both individuals and groups.

<sup>56</sup> Discrimination refers to differential treatment entailing the denial of recognised individual or collective rights and liberties.

<sup>57</sup> Article 14 of the 2005 Iraqi constitution states, ‘Iraqis are equal before the law and without discrimination regardless of belief or religion’.

<sup>58</sup> The specification of Islam as a major source of legislation reflects the content of Article 92 on the composition of the Supreme Federal Court, which states, ‘The Supreme Federal Court shall comprise a number of judges, experts in Islamic jurisprudence, and legal scholars’. The provision for the inclusion of Islamic jurists on the court coupled with the lack of any representation for Christians or other religious minorities constitutes discrimination on the basis of religion.

<sup>59</sup> Although Islam is the main source of legislation, in keeping with the principle of equality—the most important democratic principle—Article 41 of the Iraqi constitution states, ‘Iraqis are free in their observance of their personal status in accordance with their religions, rites, beliefs, or choices, and the law shall regulate this’. This clause gives Christians the right to their own personal status law.

<sup>60</sup> Article 74 of the 2014 Egyptian constitution states, ‘Citizens shall have the right to form political parties by notification as regulated by law. No political activity may be practised or political party established on the basis of religion’.

<sup>61</sup> Article 39 of the Iraqi constitution states, ‘The freedom to establish or join associations and political parties shall be guaranteed and shall be regulated by law’.

<sup>62</sup> Independent High Electoral Commission in Iraq, schedule of approved political parties, 4 March 2021, accessed 8 June 2022, [urlr.me/2sTLY](http://urlr.me/2sTLY).

<sup>63</sup> Al-Kabisi, Yehia (2013) ‘al-‘Iraq: al-Ihtijajat wa-Azmat al-Nizam al-Siyasi’ [Iraq: The Protests and the Crisis of the Political System], *Siyasat Arabiya* 2, p. 85.

<sup>64</sup> Article 68 of the 2005 Iraqi constitution.

<sup>65</sup> The ostensibly progressive Tunisian constitution has one glaring flaw: on one hand, it affirms equality and non-discrimination while on the other it requires the president to be a Muslim. Article 74 states, ‘Running for the office of

president is the right of every female and male Tunisian voter who has held citizenship since birth and whose religion is Islam'. Although there is no prominent religious minority in Tunisia, this clause is still senseless, especially since the constitution explicitly states that Tunisia is a civil state.

<sup>66</sup> Article 141 of the Egyptian constitution states, 'A candidate for president must be an Egyptian born to Egyptian parents; neither he nor his parents nor his spouse may have held any other nationality'.

<sup>67</sup> Article 14 of the Egyptian constitution states, 'Public offices are the right of citizens on the basis of competence'.

<sup>68</sup> Article 7 of the 2014 Egyptian constitution.

<sup>69</sup> Alwan, Fouad, p. 24.

<sup>70</sup> Provisions for religious freedoms are also made in Article 18 of the International Covenant on Civil and Political Rights of 1966, and in Article 2 of the UN Declaration on Minorities of 1992.

<sup>71</sup> Article 64 of the 2014 Egyptian constitution.

<sup>72</sup> Article 25 of the Iraqi constitution of 1970 stated, 'Freedom of religion, belief, and worship are guaranteed, provided they comport with the provisions of the constitution and law and do not contravene morals and the public order'.

<sup>73</sup> Alwan, Fouad, pp. 25–26.

<sup>74</sup> Abdel Ghafar, Adel, and Bill Hess, p. 21.

<sup>75</sup> Article 9 of the 2014 Egyptian constitution.

<sup>76</sup> Lijphart, Arend (2013) 'al-Takhtit al-Dusturi fi Mujtama'at Munqasima' [Constitutional Design for Divided Societies], *Tabayyun* 1 (4), p. 34.

<sup>77</sup> Al-Kabisi, Yehia, p. 88.

<sup>78</sup> The transitional government was formed following elections in January 2005. One of its main missions was to make the Iraqi constitution drafted by the National Assembly a reality.

<sup>79</sup> The Christian minority is represented in the government, ratified by the parliament on 6 June 2020, by Migration Minister Evan Jabro. See: Agenzia Fides (2020) 'Une chrétienne à la tête du Ministère chargé de réfugiés et des migrants', 8 May, accessed 17 June 2022, [url.me/CMHnh](http://url.me/CMHnh).

<sup>80</sup> Article 13 of the legislative elections law, approved by the Iraqi parliament on 4 December 2019, gives nine of 328 seats to ethnic and religious minorities, in addition to the five seats set aside for the Christian community, the Yazidi, Mandaean Sabaeans, Kurdish Feyli, and Shabak communities each received one seat.

<sup>81</sup> Al-Kabisi, Yehia, pp. 88–89.

<sup>82</sup> Alam al-Din, Muntasir (2017) 'Qanun Tanzim Bina' wa-Tarmim al-Kana'is fi Misr' [Law Regulating the Construction and Renovation of Churches in Egypt], *Arab Organisation for Constitutional Law*, accessed 29 May 2022, <https://aacl-mena.or/>.

<sup>83</sup> The law is currently ready to be submitted to the Cabinet and then to the House of Representatives after the three main Christian churches—Orthodox, Evangelical, and Catholic—approved it.

<sup>84</sup> Given this situation, many Copts resort to a consensual division, avoiding the courts altogether.

<sup>85</sup> Nabil, Sally (2019) 'Aqbat fi Misr Yatasa'alun bi-Sha'n Tatbiq al-Shari'a al-Islamiya 'alayhim fi al-Mirath' [Egyptian Copts Question the Application of Islamic Law in Their Inheritance Affairs], *BBC Arabic*, 18 July, accessed 4 June 2022, <https://urlz.fr/ger0>.

<sup>86</sup> BBC (2019) 'Inheritance in Egypt: Coptic Woman Wins Judicial Battle for Equality with Her Male Brothers in Inheritance', 26 November, accessed 14 September 2022, <https://urlz.fr/jbWh>.

<sup>87</sup> Article 41 of the 2005 Iraqi constitution.

<sup>88</sup> Agenzia Fides (2020) 'al-Batriyark Saku Yatlub min al-Hukuma Qanun li-l-Ahwal al-Shakhsiya Yahtarim Huwiyat al-Masihiyin' [Patriarch Sako Demands from Government a Personal Status Law That Respects Christians' Identity], 17 July, accessed 27 May 2022, <https://urlz.fr/ger1>.

<sup>89</sup> Article 2 of the law regulating Endowment Office, Presidential Decree 58/2012.