

Problems on hold

Fixing the constitution

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Efforts are ongoing to shed light on the flaws in Egypt's new constitution, and to crystallise alternative formulations for the articles under fire. The aim is to reassure Egyptians that the constitution is no Islamist snare, and includes no elastic articles that allow the Islamists to pounce upon legislation and ram whatever law they wish down Egypt's throat. Fears are rampant among Egyptian seculars that the new constitution represents a flagrant attempt to trifle with Egypt's legendary moderation, freedom of thought, and pluralistic culture.

The purpose of the efforts is also to place President Mursi before the pledge he had made to launch a national dialogue that would draft a document citing the constitutional amendments required, which he would then sign and forward to the legislative council once that is elected shortly.

In this context the Orthodox, Catholic, and Evangelical Churches in Egypt jointly issued a document that expressed a unified vision regarding the articles in the new constitution which many sectors of Egyptians deem alarming. The document included the constitutional texts in question, the objections against it, and the alternatives proposed. This document was handed on 24 December to Judge Mahmoud Mekki, who was then the Vice President of Egypt, in order for him to refer it to the national dialogue. A reading of the document yields the following:

On founding an Islamic State

- Article 219: This article reads: "The principles of Islamic *sharia* include its comprehensive credentials, the rules of its fundamentals and *fiqh* (the science of translating Islamic principles into rules), and the recognised sources among the Sunna and Muslim assembly. The document demands that this article should be abolished, since it represents an amendment to Article 2 which states that Islamic *sharia* is the main source of legislation. This contradicts the general consensus and the constitutional tradition that no interpretative articles may be included in the constitution. Whereas the 'principles' of Islamic *sharia* traditionally constitute its well-defined and agreed-upon sources and credentials, the 'rules' of *sharia* change according to conditions in time and place, and are therefore stipulated differently by the various Islamic scholars. In its current form, Article 219 raises serious fears of how the institutions of a democratic State may fare under the rule or custodianship of Islamic scholars, and threatens legal and social stability in a manner that contradicts the requisites of a State of law and democracy.
- Article 81 states that "the principles, rights, and freedoms which pertain to an individual may in no way be curtailed or delayed. No law that governs the practice of these rights and freedoms may restrict them so as to affect their origin and content. ***These rights and freedoms are practised so that they do not contradict the rules and principles cited in the chapter on the State and society in the constitution.***"

The document demanded that the last clause—the one in bold italics—should be deleted, since the condition mentioned opens the door towards backtracking on the rights and freedoms cited in the previous clause of the same article. The matter becomes more grave when seen in light of the Article 219 which implies the possibility of using controversial opinions by Islamic scholars, instead of the rule of law, to restrict freedoms and rights. The gravity of such a prospect lies in the potential of imposing on Egypt a culture alien to the authentic, moderate, open Egyptian culture. I add that the Article 81 is just one among several others which claim to secure rights and freedoms but which, in effect, include some clause that prohibits, hinders, or outright abolishes them.

On the sway of mono-dimensional culture

- Article 10 reads: "The family is the basis of the community. It is founded upon values of religion, ethics, and patriotism. The State and the community are committed to preserve the genuine character of the Egyptian family and its integrity and stability, as well as to root its ethical values and defend them as stipulated by the law."

The document called for deleting the word "community" from the clause "The State and the community are committed to preserve the genuine character of the Egyptian family..." Even though the term appears acceptable, it holds the potential of a time bomb ready to go off any minute. The fact that the constitution allows the community, in addition to the State, to intervene to defend the genuine character and ethical values of the family, carries hazards. Whereas the State plays its role through the rule of law, the "community" may do so through such groups as the extremist *Al-Amr bil-Maarouf wal-Nahy an al-Munkar* (Imposing Virtue and Combatting Vice), otherwise famous as the vice police. Such groups coin for themselves whatever rules or legislation they see fit, and use them to chase members of the community, judge them, and penalise them.

The above were a few of the constitutional articles which the document deemed flawed, and the measures proposed to tackle them. Other articles will be reviewed in upcoming issues.