



CENTRE FOR LAW
AND DEMOCRACY

Egypt

Comments on the Freedom of Expression and Information Clauses in the Draft Constitution

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Introduction¹

These Comments assess the proposed provisions on freedom of expression and information in the draft Constitution being prepared for Egypt by the Constituent Assembly. They are based on draft versions of two sections of the draft Constitution, namely the sections on Rights, Freedoms and Public Duties and on Essential Components of the Society. More specifically, they are based on the Centre for Law and Democracy's (CLD) informal translation of Arabic versions of these two sections, as published in Al-Watan newspaper on 17 September 2012.²

We noted that there is an ongoing and vibrant debate about these and other proposed constitutional provisions and, as a result, different versions have often been proposed. Where relevant, and to the extent possible, we have noted some of the different options that have been proposed as part of our analysis. After seeking public input, pursuant to its internal regulations, the Constituent Assembly is supposed to vote on each article separately.

Egypt's democratic transition began with the demonstrations which started in Egypt on 25 January 2011 and which led to the resignation of former Egyptian president Mubarak on 11 February. The Supreme Council of the Armed Forces (SCAF) took over responsibility for managing what they have referred to as the "transitional phase". The 1971 Constitution was suspended on 13 February and, on 19 March 2011, a referendum was held on nine new constitutional articles.

On 23 March, SCAF proclaimed the Constitutional Declaration which serves as Egypt's current constitution. The Constitutional Declaration includes the nine articles which had been voted on, 49 'rump' articles from among the over 200 in the 1971 Constitution, and three additional articles, namely Articles 56, 57 and 61. The nine new articles focus primarily on the political structures of government, including who is eligible to run for president, the presidential term of office (which was limited to two four-year terms), the conduct of elections, the Shura Council and the Constituent Assembly and the process of preparing a new constitution. The 49 rump articles mostly address human rights and other structures of the State, such as the parliament, judiciary and armed forces. The three new articles address the respective powers of the Supreme Council of the Armed Forces and the Council of Ministers, as well as the tenure of power of the former, which shall continue until such time as the "People's Assembly and Shura Council assume their responsibilities and the president of the republic is elected and assumes his position" (Article 61).

¹ This piece was prepared by Toby Mendel, Executive Director, Centre for Law and Democracy, working with Maha Al Aswad, Intern, Centre for Law and Democracy.

² Available at: <http://elwatannews.com/news/details/49628> and <http://www.elwatannews.com/news/details/43145>, respectively. Accessed on 17 September 2012.

Article 60 of the Constitutional Declaration provides for the drafting of a new constitution. Elected members of the People's Assembly and Shura Council are required to meet within six months of being elected themselves to elect a Constituent Assembly of 100 members to prepare a new draft constitution. The Constituent Assembly is given a further six months to draft the constitution, which is then to be approved by popular referendum.

This whole process has been wracked with problems. The People's Assembly, which was elected in late 2011 and early 2012, is dominated by the Democratic Alliance for Egypt, led by the Muslim Brotherhood's Freedom and Justice Party, with the Islamist Bloc, representing the various Salafist parties, being the second largest party. On 14 June 2012, before the presidential elections had been concluded, the Supreme Constitutional Court dissolved the People's Assembly for irregularities in the electoral process.

The Muslim Brotherhood's candidate, Mohamed Morsi, was elected President following run-off elections held on 24 June 2012. On 8 July, in his first decision after taking office, Morsi set the Court's decision aside and ordered the People's Assembly to be reconstituted. The Supreme Constitutional Court responded by nullifying Morsi's decision. Morsi eventually backed down, and the People's Assembly remains dissolved.

The People's Assembly and the Shura Council held three joint meetings to agree on the criteria for the selection of the 100-member Constituent Assembly. It was agreed that 50 members would come from among the members of both houses of parliament, while the other 50 members would be elected from a list of public figures. On 24 March 2012, elected members of both Houses voted on a list of a hundred members and a list of substitute names. This, however, created a storm of controversy because it was felt that the body was too dominated by Muslim Brotherhood representatives. Many independent figures and members of non-Islamic parties withdrew from the process, along with representatives of both the Orthodox Church and Al-Azhar

On 10 April, the Supreme Administrative Court dissolved the Constituent Assembly, stating that it was not legitimate for elected members of parliament to sit on the Assembly. This created a lot of controversy but, on 12 June 2012, a new set of members of the Constituent Assembly were elected. This was just two days before the People's Assembly was itself declared unconstitutional. The legality of the second Constituent Assembly has also been challenged, among other things because it will include a number of elected members of parliament. It is unclear how this matter will be resolved.

The Constituent Assembly has launched a website³ to publish draft constitution articles and receive comments, as well as a page on the social networking site Facebook,⁴ which

³ <http://dostour.eg/>

⁴ <http://www.facebook.com/Dostour.eg?ref=stream>

has some 11.7 million Egyptian users, representing over 14 per cent of the population.⁵ The Assembly has also organised several hearing sessions for advocacy and interest groups, and a list of ongoing hearings is available on their website, although the last one appears to have been on 18 September. Given the magnitude of the task of drafting a constitution, and the importance of this process, more needs to be done to engage with the public.

General Recommendation:

- The process of drafting the new Constitution should be more participatory and involve all sectors of society. In addition to the mechanisms noted above, the consultation should engage citizens more broadly, and in particular those who do not have access to the Internet. The Assembly should also provide those who have made comments with feedback regarding those comments and the rationale for their decisions to either accept or reject suggestions.

1. The Main Guarantee of Freedom of Expression

Articles 9 to 12 of the section on Rights, Freedoms and Public Duties provide for positive guarantees of freedom of expression. The only general provision on freedom of expression is Article 9, which states:

Freedom of thought and opinion is guaranteed, and everyone has the right to express their thoughts and their opinions orally, in writing, by photography or other means of publication and expression.

This may be contrasted with Article 47 of the 1971 Constitution, now found at Article 12 of the Constitutional Declaration, which states:

Freedom of opinion is guaranteed. Every individual has the right to express his opinion and to disseminate it verbally, in writing, by photographs or by other means within the limits of the law. Personal criticism and constructive criticism is a guarantee for the safety of the national structure.

It may also be contrasted with Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR),⁶ which states:

1. Everyone shall have the right to freedom of opinion.

⁵ See <http://www.socialbakers.com/facebook-statistics/?interval=last-6-months>.

⁶ Adopted by UN General Assembly Resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976.

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2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

Positive Guarantees

Article 9 contains a fairly strong positive guarantee for the right to freedom of expression. However, it falls short of the guarantees under the ICCPR in two ways. First, whereas Article 19 of the ICCPR makes it clear that all kinds of information and ideas are protected, the proposed Article 9 does not go this far. While it could be argued that this is implicit in the nature of the guarantee, it would still be useful to make this perfectly clear.

Second, and more importantly, the guarantee only extends to the expression of thoughts and opinions, or ‘imparting’ information and ideas under Article 19 of the ICCPR. The latter, however, goes beyond this by also protecting the rights to ‘seek’ and ‘receive’ information and ideas. This is a very important part of the overall right to freedom of expression. It underpins the central idea of media diversity, which is founded on the notion of citizens’ right to receive a diversity of information and ideas. It is also the grounding for the right to information, and several other important aspects of the right to freedom of expression.

Restrictions

The main difference between the current proposal and the existing provision is that the current proposal does not provide for any limitations to the right, whereas the existing provision allows the right to be restricted by law. The problem with the existing provision is that it does not place limits on laws which restrict freedom of expression. This was manifestly abused in the past, and Egypt has numerous pieces of legislation restricting freedom of expression and of the media which are oppressive and do not conform to international standards. To this extent the current proposal can be said to be an improvement.

A previous version of the proposed article did provide for limitations, by including the following phrase: “without touching the inviolability of private life or the rights of others”. A debate about this is still ongoing and the article might be changed again. The problem with this wording is that it provides for the right to privacy and other rights of others to overrule the right to freedom of expression, without providing for any sort of balancing test.

It might be superficially attractive to free speech advocates for the provision to remain as it is, apparently without any limitations. However, this is not realistic in practice, for every society places, and must place, some limitations on freedom of expression. In the absence of a clear test for such restrictions in the constitution, courts and others will look elsewhere to justify these restrictions. In the case of conflicts between privacy and freedom of expression, for example, they will need to find some way to reconcile these rights. It is preferable to set out the test for doing this in the constitution, rather than

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leaving it to be decided later on through judicial interpretation (which may result in widely differing standards being applied, among other problems).

The need for a clear test for restrictions to be incorporated into the constitution becomes even more imperative when one considers other constitutionally protected values, which go beyond protecting the rights of others. For example, Article 23 of the section on Rights, Freedoms and Public Duties states:

Preserving national unity and protecting national security of the state are the duties of every citizen.

Absent a clear constitutional test, it is very unclear how courts would treat an apparent conflict between this provision and the right to freedom of expression. Certainly in the past, the notion of national security was roundly abused to unduly limit freedom of expression. The current Egyptian penal code criminalises any publication which is a threat to “national unity”, which has been interpreted extremely broadly, including to send individuals belonging to religious minorities, bloggers and activists to jail.

Another example of this problem is Article 12 of the section on Essential Components of the Society, which provides:

Egyptian society commits to caring for and protecting its ethics and public morals and the empowerment of genuine Egyptian traditions; and taking into account the high level of education and religious and national values and scientific facts and Arab culture and historical and civil heritage of the people; and the maintenance of monuments and nature reserves, within the limits of the law, and the state is committed to following these principles and promoting them.

Once again, absent a clear test for balancing freedom of expression and other social interests, this provision could be used to unduly limit freedom of expression. For example, it is possible that an academic article challenging accepted ethical values could be deemed to be contrary to this provision, whereas under international law that would clearly be protected speech.

International law sets careful limitations or conditions on the scope of restrictions on freedom of expression, providing for a form of balancing when it comes into conflict with other rights, such as the right to privacy or reputation. The test for whether or not a restriction is legitimate is found in Article 19(3) of the ICCPR:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.

This has consistently been interpreted by international courts as imposing a three-part test for assessing whether or not restrictions on freedom of expression are legitimate. Only restrictions which meet all three parts of the test are deemed to be legitimate.

1. Provided by law

Only restrictions which are set out in law are legitimate, on the basis that only the legislature should have the power to restrict a fundamental right like freedom of expression. Other public actors – such as the police, individual MPs, senior officials or military personnel – may not limit freedom of expression unless they are acting pursuant to a law. Furthermore, laws which restrict freedom of expression must not be unduly vague: they must be “formulated with sufficient precision to enable an individual citizen to regulate his or her conduct accordingly.”⁷ This is both to be fair – i.e. to avoid punishing individuals without giving them fair warning – and to avoid a chilling effect – as individuals will be wary of speaking if they fear what they say might be deemed to fall within the scope of a vague prohibition on speech.

2. Legitimate interest

The list of interests in Article 19(3) – namely the rights and reputations of others, national security, public order, and public health and morals – is exclusive so that only restrictions which serve to protect these interests are legitimate. It is not enough for the restriction to serve one of these interests tangentially; this must be a primary objective of the restriction.

3. Necessity

The majority of international decisions on freedom of expression are decided on the basis of the last part of the test, which requires restrictions to be necessary. Although it sounds obvious – why impose a restriction if it is not necessary – there are a number of elements to this part of the test.

First, the measure must respond to a pressing social need. Restrictions on freedom of expression, even if they serve one of the legitimate aims noted above, are not warranted if the harm to the aim is minor, insignificant or speculative. Second, the restriction must be the least intrusive measure possible. If a measure which is less harmful to freedom of expression would effectively secure the legitimate aim, it is not necessary to employ the more intrusive measure. For example, reputations can adequately be protected by civil defamation laws, so it is not legitimate to employ criminal defamation laws.

Third, the restriction should not be overbroad, in the sense of ruling out legitimate as well as harmful speech. Thus, a prohibition on criticising others to protect reputation would not pass muster, because much criticism is legitimate. The prohibition should be limited to criticism involving false statements of fact which harm another’s reputation.

⁷ *The Sunday Times v. United Kingdom*, 26 April 1979, Application No. 6538/74 (European Court of Human Rights), para. 49.

Fourth, the restriction must be proportionate, in the sense that the benefits of protecting the legitimate aim outweigh the harm to freedom of expression. For example, large damage awards for defamatory statements have been held to breach this rule, because they create a chilling effect on others, who may then not make perfectly legitimate statements out of fear of being required to pay such a large award. It is this part of the test that most obviously allows for a balancing when other rights or interests come into conflict with freedom of expression.

Recommendations:

- The guarantee of the right to freedom of expression should apply to all kinds of information and ideas, and should protect not only the right to express, but also to seek and receive information and ideas.
- The primary guarantee of freedom of expression should set out clearly the circumstances under which freedom of expression may be restricted. This should, among other things, include a requirement that restrictions be provided by law, provide a list of legitimate grounds for restricting freedom of expression which does not go beyond the list provided for in Article 19(3) of the ICCPR, and require restrictions to meet some sort of necessity or analogous test, which includes a proportionality component.

2. Freedom of the Media

Articles 10-12 of the section on Rights, Freedoms and Public Duties address issues relating to freedom of the media. They provide as follows:

Article 10

Freedom of the press, printing, publishing and that of other media is guaranteed; and censorship is prohibited; and there may be an exception in the case of a declaration of war to impose limited censorship on them.

Article 11

Freedom of publishing and owning of newspapers of all kinds, is guaranteed for natural and legal persons as per notification. The law regulates the establishment of radio and television broadcasting stations and digital media without restricting their freedom and independence.

Article 12

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It is not permissible to charge anyone in publishing crimes except by “direct prosecution/litigation and there shall be no deprivation of liberty punishment in these crimes.”⁸

Another article, quoted below, was not included in the semi-final drafts published in Al-Watan newspaper, but it was mentioned several times by the official spokesperson of the Constituent Assembly, Waheed Abdul Megeid, and was published in different news sources.⁹ It is not clear at this point whether it will be included or not.

Article XXX

The State shall guarantee the independence of newspapers and media it owns or supports as a platform for national dialogue between the various political views and trends and social interests. The law regulates their administration on good professional, democratic and economic foundations.

The positive protections for media freedom in Article 10 are welcome. We note that an earlier proposal for Article 10 prohibited censorship only of newspapers, which is obviously less robust than the current proposal, which would cover all media.

Article 10 allows for censorship in case of a “declaration of war”. This represents an improvement over Article 48 of the 1971 Constitution, where both emergency status and war were listed as justifying prior censorship. This is particularly sensitive in the Egyptian context, given that a state of emergency was in place for the entire 30 years of the Mubarak regime and beyond, from 1981 until 31 May 2012.

Under international law, prior censorship of any form of expression is only permitted in the most exceptional circumstances and prior censorship of the media is not justified.¹⁰ International law does allow for limited derogations from certain rights, including the right to freedom of expression, in times of an emergency which “threatens the life of the nation”, provided that such derogations must be limited to what is “strictly required by the exigencies of the situation” (Article 4(1) of the ICCPR). Even in the context of such an emergency, prior censorship of the media would almost never be justified. Such systems were not, for example, imposed in either the United Kingdom or United States even during the height of World War II.

Instead of specifically authorising prior censorship in a provision dealing with media freedom, the Constitution should recognise, in its provisions dealing with declarations of war, that rights may need to be restricted in such cases, and allow for such restrictions as

⁸ This provision has been removed in more recent versions of this section of the draft Constitution, with some Constituent Assembly members apparently stating that they believe this sort of rule should go in the law and not the constitution.

⁹ See, for example, <http://www.gn4me.com/gn4me/details.jsp?artId=4148345&catId=54163&sec=news> (in Arabic).

¹⁰ See, for example, UN Human Rights Committee, General Comment No. 34, 12 September 2011, CCPR/C/GC/34, para. 14.

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are “strictly required by the exigencies of the situation”, in accordance with international standards.

Furthermore, the Constitution should include a clear definition of what constitutes a declaration of war, as well as the conditions under which such a declaration may be made. In the past, for example, the idea of a war on terror was introduced into Article 179 of the 1971 Constitution by amendments during the Mubarak regime, and this was used against opposition groups and individuals.

Article 11 is welcome inasmuch as it guarantees the right to publish newspapers simply upon providing a notification of this, and without the need to get permission from authorities, unlike under the 1971 Constitution.¹¹

It is not inappropriate for the Constitution to allow for legal regulation of radio and television broadcasting, which is done in all democracies, among other things to ensure order in the use of the airwaves. The last part of the article, stating: “without restricting their freedom and independence”, was not included in certain versions of this article. It is very important to retain this reference, given that otherwise it would be possible to impose unreasonable limitations on broadcasting, such as was the case in the past.

Furthermore, it would be useful to add in here a reference to the idea of independent regulation of the broadcast media. It is well established under international law that only independent bodies should have the power to regulate broadcasters. Thus, for example, in their 2007 Joint Declaration, the The UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media, the OAS Special Rapporteur on Freedom of Expression and the ACHPR (African Commission on Human and Peoples’ Rights) Special Rapporteur on Freedom of Expression and Access to Information stated:

Regulation of the media to promote diversity, including governance of public media, is legitimate only if it is undertaken by a body which is protected against political and other forms of unwarranted interference, in accordance with international human rights standards.¹²

Protecting the independence of the broadcast regulator in the Constitution is an important way of ensuring that this core international standard will be met.

Article 11 goes beyond authorising regulation of the broadcast media, however, and also authorises the regulation of “digital media”. Digital media is an extremely broad concept which might be understood as applying to a lot of platforms, including websites, social

¹¹ Article 209 of the Egyptian constitution, which required permission from authorities before one might issue a newspaper, was used to control the media and prevent opposition voices from having access to this medium.

¹² Adopted 12 December 2007.

media, user generated content, newspapers which also publish online and forms of activity that more closely resemble broadcasting. Online communications and social media tools work as an effective means of enabling freedom of expression and sharing of news and views by citizens. The role these forms of communication played in the Arab Spring is widely recognised.

It is clear that the Internet and the digital media that it enables cannot simply be regulated in the same way as broadcasting. As the special international mandates for freedom of expression stated in their 2011 Joint Declaration:

Approaches to regulation developed for other means of communication – such as telephony or broadcasting – cannot simply be transferred to the Internet but, rather, need to be specifically designed for it.¹³

In practice, democracies do not impose structural regulation on the Internet such as Article 11 would authorise, while they do recognise that it may be legitimate to adapt certain content restrictions – for example relating to child pornography or incitement – to apply to the Internet.

Article 12 purports to provide some protection against being charged for “publishing crimes” by allowing these cases to proceed only by direct prosecution (i.e. at the request of the person who has been wronged, rather than being initiated directly by the prosecutor) and by ensuring that there shall be no deprivation of liberty in these cases.

There are, however, some problems with this provision. First, it is extremely unclear as to its scope. It is not clear what types of crimes are included within the reference to a publishing crime. It is assumed that this covers defamation, which has become an issue recently in Egypt,¹⁴ and probably also other offences. It is also not clear which types of actors are included within its scope; would it, for example cover a blogger? The author of a book? Of a pamphlet? Lack of clarity in human rights provisions is a serious problem even if these provisions are positive in nature.

Second, the proposal to do away with imprisonment for defamation, while welcome, does not go far enough. Pursuant to international standards, defamation should not be treated as a criminal offence. Rather, there should only be civil liability in such cases. As the special international mandates on freedom of expression stated in their Joint Declaration of 10 December 2002:

¹³ Adopted 1 June 2011. See also General Comment No. 34, para. 43.

¹⁴ See for example, Centre for Law and Democracy, *Statement on Criminal Defamation in Egypt*, August 2012, available at: <http://www.law-democracy.org/live/egypt-need-for-real-reform-of-defamation-laws/>. See also a recently Amnesty International statement on this, available at: <http://www.amnesty.org/en/library/asset/MDE12/030/2012/en/2d24d9e6-2645-40ef-ba17-abf695d1bd70/mde120302012en.html>.

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Criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.

The provisions of what is titled Article XXX above seek to provide for guarantees of the independence of what it calls the State media. Historically, the State media in Egypt, which form an important part of not only the broadcasting but also the print media sector, have been subject to extensive government control, rather than operating in the public interest. While the degree of control has certainly diminished, there are widespread complaints that these media are insufficiently independent of government. There is thus an urgent need to transform these media into independent public service bodies.

There are a few problems with Article XXX. First, as a matter of terminology, it should refer to public rather than State media. This is the accepted term internationally. Second, it would be useful if it were more specific about how the State should ensure the independence of these media. This should include, for example, establishing independent governing boards for these media, which are representative of society as a whole, rather than simply the government or powerful political interests. It should also include references to the idea of editorial independence, by which is meant the right of professional editors and staff at each public media outlet to make editorial decisions in the public interest.

Recommendations:

- The broad prohibition on prior censorship of all media, as found in the current Article 10, should be retained.
- The Constitution should permit restrictions on freedom of expression following a declaration of war, but only such restrictions as are “strictly required by the exigencies of the situation”. It should, furthermore, define clearly what constitutes a declaration of war, when it is permitted and who is allowed to make it.
- The Constitution should retain the reference in Article 11 to: “without restricting their freedom and independence”.
- Consideration should be given to requiring any body which regulates the broadcast media to be independent of political or commercial interference.
- The reference to regulating digital media alongside broadcast media, in Article 11, should be removed.
- The scope of the term ‘publishing crimes’ should be clarified and defamation and related offences should be fully decriminalised and replaced with appropriate civil law provisions.
- The Constitution should refer to public rather than State media and should include far more specific measures to promote the independence of these media, including by requiring them to be overseen by independent governing boards and by protecting their editorial independence.

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3. The Right to Information

Article 20 of the section on Rights, Freedoms and Public Duties provides as follows:

Freedom of access to information and data, statistics, and documents, whatever is their source and location is a right guaranteed to citizens, the State is committed to enabling its citizens to enjoy that right without barriers, without infringing national state security or violating the inviolability of private life.

The law regulates the procedures for obtaining such information freely, and how to appeal against refusal of disclosing them, and the appropriate punishment for those who do otherwise.

The right to access information held by public bodies (right to information) has been widely recognised as a fundamental human right under international law, as part of the wider right to freedom of expression, and so it is welcome that the proposed Constitution also recognises this right. One problem with this guarantee is that it is vague in terms of the actual right being protected. Specifically, it is not clear from the wording that it guarantees the right to access all information held by public bodies. This may be confused with the wider idea of protecting the free flow of information and ideas in society, which is not what this right refers to.

Article 20 is also unduly limited inasmuch as it protects only the right of Egyptian citizens to access information. Foreigners are excluded, even though, under international law, the right applies to everyone. Another problem with this section is that it provides for limitations, but without establishing an appropriate test. Instead, it simply refers to infringements of national security and private life. As with the more general guarantee of freedom of expression, the Constitution should only recognise limited restrictions on the right to information, which should include such elements as proportionality, so as to ensure an appropriate balance between the right of access and other social interests.

Recommendations:

- The Constitutional guarantee of the right to information should protect the right to access information held by public bodies, rather than using the more general formulation found in the current proposals.
- The right should apply to everyone, not just citizens, and there should be a clear test for exceptions to the right to information which include necessity and balancing tests, so that they apply only where the harm from disclosure of the information outweighs the general public interest in disclosure.

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4. Religion and Freedom of Expression

Several articles in the two sections of the constitutional proposals considered here address the issue of religion. The following articles, from the section on Essential Components of the Society, raise issues regarding freedom of expression:

Article 8

The divine being is inviolable and it is prohibited to deride or prejudice the divine being; or to deride the prophets and messengers of God as well as the mothers of the believers (Prophet Mohammed wives) and the Caliphs.

Article 31

Moral and national symbols are due to reverence and respect and their defamation is prohibited in accordance with the law.

Neither of these two articles were found in the 1971 Constitution. Both of them restrict freedom of expression when it comes to religious and moral and national symbols. The current Egyptian Penal Code provides for criminal penalties for insulting religions and a number of Egyptians have been convicted under these articles, including several since the revolution.

Under international law, it is prohibited to incite to hatred against individuals on the basis of their religious beliefs, pursuant to Article 20(2) of the ICCPR, which states:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

However, as the UN Human Rights Committee, the body which oversees implementation of the ICCPR, has made clear, restrictions on freedom of expression to protect religious symbols or leaders are not permissible:

Prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant. Such prohibitions must also comply with the strict requirements of article 19, paragraph 3, as well as such articles as 2, 5, 17, 18 and 26. Thus, for instance, it would be impermissible for any such laws to discriminate in favour of or against one or certain religions or belief systems, or their adherents over another, or religious believers over non-believers. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.¹⁵

¹⁵ General Comment No. 34, para. 48.

It is clear that the rules in Articles 8 and 31 do not meet these standards.

Recommendation:

- Articles 8 and 31 should be removed from the constitutional proposals.