



EGYPT

Prohibited Identities

State Interference with Religious Freedom

HUMAN
RIGHTS
WATCH





Prohibited Identities State Interference with Religious Freedom

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I. Summary and Introduction

I tried to obtain the national ID card. In the application, I wrote that my religion was Baha'i. The officer refused to accept the application and asked me to present my birth certificate. I showed it to him. It stated that I was Baha'i and so were my parents. He still refused to accept the application and asked me to apply in Cairo. When I went to Cairo, I met an officer called Wa'il who opened a drawer in his desk and pulled out a big pile of documents and said, "You see, all these applications are from Baha'i who want IDs. You will never ever get them." – Nayir Nabil

He said I'd committed a sin against God. He asked why I wanted to go back to Christianity. "If you had bad luck with your first husband, you should have found another Muslim man." He offered me assistance and favors. "I can find you a good Muslim man," he said. "If it's financial, we can help you find a job. If you went back to your family for lack of any alternative, we'll help you find an apartment." When I insisted on staying a Christian, he said, "Well, we have to start an investigation into the forgery." – Golsen Sobhi Kamil

All Egyptians upon reaching 16 years of age must, by law, obtain a national identification document that includes a national identification number (*raqam qawmi*) assigned at birth. A national ID is essential to obtain access to post-secondary schooling, get a job, vote, travel abroad or within Egypt, and conduct the most basic financial and administrative transactions.

The Civil Status Department (CSD) of Egypt's Ministry of Interior is responsible for administering and providing to Egyptian citizens these national ID cards, as well as identification documents such as birth certificates, death certificates, marriage certificates, and other vital records. These documents record, among other things, a person's religious identity.

In assigning or recording religious identity, the Egyptian government recognizes only what it refers to as the three "heavenly" or "revealed" religions – Islam, Christianity, and Judaism – and requires Egyptians to pick one of these religions for their

identification documents. This limited choice is not based on any Egyptian law, but rather on the Ministry of Interior's interpretation of Shari`a, or Islamic law. An Egyptian citizen has no option to request a religious identification different from one of these, or to identify him or herself as having no religion. If he or she insists on doing so, authorities refuse to issue a national ID or related document reflecting the requested religious identification.

These policies and practices violate the right of many Egyptians to religious freedom. Because having an ID card is essential in many areas of public life, the policies also effectively deny these citizens a wide range of civil and political as well as economic and social rights. As detailed below, the consequences at times reach deeply into affected individuals' personal lives.

While the Egyptian government's approach adversely affects anyone who is not Muslim, Christian, or Jewish, and anyone who would prefer to keep their convictions private, in Egypt today the greatest impact has been on adherents of the Baha'i faith and on persons who convert or wish to convert from Islam to Christianity. Their experience is the focus of this report.

Egypt's Baha'i community, while small, is the largest and perhaps only unrecognized independent religious community in Egypt. Approximately 90 percent of Egypt's population identify themselves or are identified as Sunni Muslim, with Coptic Christians comprising most of the rest. While there is some diversity within those two major religions, people belonging to minority Muslim or Christian communities have no problem listing themselves as Muslim or Christian for official identity purposes. The second affected group, converts from Islam to Christianity (or to any other religion), are denied documents not on the basis of any Egyptian law prohibiting such conversion but on what officials understand to be the prohibition in Shari`a against conversion from Islam as a form of apostasy. In contrast, Egyptians who convert from Christianity (or any other religion) to Islam have rarely had any difficulty amending their identification documents to reflect the change.

People without national IDs forfeit, among other things, the ability to carry out even the simplest monetary transactions at banks and other financial institutions. Other basic daily activities — engaging in a property transaction, acquiring a driver's license, obtaining a pension check — also require a national ID. Employers, both public and private, by law cannot hire someone without an ID, and academic

institutions require IDs for admission. Obtaining a marriage license or a passport requires a birth certificate; inheritance, pensions, and death benefits are contingent on death certificates. The Ministry of Health has even refused to provide immunizations to some Baha'i children because the Interior Ministry would not issue them birth certificates accurately listing their Baha'i religion.

Because the consequences of not having an ID card are so far-ranging, some converts from Islam feel compelled to resort to forged documents that reflect their actual religious identity. This constitutes a criminal offense and puts them at risk of heavy fines and years in prison.

Modern technology has made the problem more acute. In the past, when national identity documents were filled out by hand, Baha'is, for example, were sometimes able to get a local civil registry office to leave the religion line blank, or enter "other." Converts might count on a sympathetic local official to reflect their change of religion, which often also involves a change of name, on identity documents. The government, however, has increasingly removed that option. Since 1995, all persons needing to acquire or replace such documents have had to acquire a computer-generated document from the central Civil Registry office in the Ministry of Interior, whose officials are using this requirement to compel all Baha'is to identify themselves and their children as Muslim or Christian. In the near future, perhaps as soon as early 2008, all persons will have to acquire computerized IDs, even if they now possess a valid paper ID.

Many Egyptians interviewed for this report recounted how Ministry of Interior officials had attempted to pressure and intimidate them into assuming a religious identity not of their choosing. In some cases, officials have confiscated valid identity documents in order to compel individuals to acquire computer-generated ones for themselves or their children. Several Christian women who had converted to Islam and subsequently attempted to "re-convert" back to Christianity testified that a high-ranking officer within the Criminal Intelligence Unit of the CSD alternately threatened and attempted to bribe them in order to pressure them to maintain their Muslim identity. In some instances, this official intolerance of conversion (or re-conversion) to Christianity led to the dissolution of marriages and destruction of families.

Egyptian Law and International Law

These policies and practices violate Egyptian as well as international law. Article 40 of Egypt's constitution guarantees equal rights to all citizens and prohibits discrimination based on religion (as well as other factors). Article 46 states that "the State shall guarantee freedom of belief and the freedom to practice religious rites." The Civil Status Law of 1994 allows citizens to change or correct information, including religious affiliation, in their identification documents simply by registering the new information, without requiring approval by the CSD.

As a party to the International Covenant on Civil and Political Rights (ICCPR), Egypt is obligated to respect the rights to freedom of thought and religion (Article 18), and specifically the right to manifest one's religion in practice (or to hold no religion). The ICCPR specifies Article 18 as one from which no derogation is possible, even in times of national emergencies, and Article 151 of Egypt's constitution states that international treaties have the force of law. Egypt's Supreme Constitutional Court has ruled that the constitutional protection of religious freedom includes the right not to be coerced into disclosing one's beliefs.

While freedom of belief may not be limited under any circumstances, Article 18 states that the right "to manifest" one's religion or belief "may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." The Egyptian government, with support from some domestic courts, has argued that identifying oneself as a Baha'i or changing one's identity from Muslim to another religion "manifests" a belief that is considered forbidden by Islam, and thus may be restricted on "public order" grounds. According to the Human Rights Committee, however, a state may not limit a person's right to manifest his or her religion on "public order" or "public morals" grounds that are based on a single religious tradition, even if it has decreed that religion to be the religion of the state.

Article 18 also protects the right of parents and legal guardians to impart to their children the religious belief of their choice. Egypt's constitution mandates religious education as a "principal subject" in the curricula of public education. Students are assigned to study the religion that is registered in their birth certificates. Converts from Islam to Christianity who are unable to have their conversion recognized by the state must register their children as Muslims, and those children must study Islam

throughout their schooling. Baha'i parents or guardians must sign a "consent form" stating that their children "have no objection to studying" Islam or Christianity in public schools. This is contrary to the authoritative opinion of the Human Rights Committee that public education in a particular religion is "inconsistent" with the right to freedom of religion as guaranteed by the ICCPR "unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents and guardians."¹

When Egypt ratified the ICCPR in 1982, it issued an understanding that it intended to comply with the Covenant's provisions "to the extent that they do not conflict with" Shari`a. In court proceedings, it has justified discriminatory policies against converts from Islam and Baha'is as based on a prevailing understanding that Shari`a regards these persons as apostates, and noting that Article 2 of the constitution stipulates that Islamic law is the principal source of legislation in the country.

Egyptian courts have historically supported the official stance that Islamic law, or at least those elements considered fixed and undisputed, constitutes an essential part of public order and that recognizing "apostasy" or registering any religion other than the three "recognized" religions in public records would violate the principles of public order. How the Egyptian government applies Shari`a in matters relating to personal identification documents, however, is not fixed and undisputed as a matter of religious law. As set forth in greater detail below, the government has a choice in how to apply the strictures of Shari`a. Rather than adopting an approach which upholds the basic principles of justice and equality and reconciles Shari`a and international human rights law, it is using an approach which directly violates the internationally recognized rights of its citizens.

In addition, international law does not permit reservations to a treaty that are "incompatible with the object and purpose" of the treaty. Reservations to the ICCPR that effectively deny fundamental customary law rights, such as Egypt's use of Shari`a to justify restrictions on freedom of religious belief, are considered incompatible.

¹ Human Rights Committee, General Comment No. 22 [ICCPR Article 18], CCPR/C/21/Rev.1/Add.4, July 20, 1993, <http://www.ohchr.org/english/bodies/hrc/comments.htm>, para. 6.

As documented in this report, the government’s arbitrary practice with regards to listing religious affiliation in identification documents interferes with the fundamental right to “have or to adopt” a belief, for which both the constitution and international law allow no limitations on any grounds.

The government’s contention, that converting from Islam or adhering to a non-recognized religion in themselves constitute the “manifestation” or practice of religious beliefs (rather than the mere holding of such beliefs), fails both as a matter of logic and on the facts.

Logically, it makes no sense for the government to say to citizens that they are free to believe what they like and then deem it unacceptable when citizens respond honestly when the government requires them to state what they believe. It is one thing for a government to say to citizens: “You can believe in whatever religion you want, but the state does not have to recognize it.” It is another thing entirely for the government to say: “If you do not lie when we ask you what religion you follow, we will deny you identification documents critical to daily life in this society.”

Even assuming that truthfully stating one’s religion when required to do so constitutes “manifestation” of belief, the government’s “public order” justification fails on the facts. The government has consistently failed to demonstrate how public order would be harmed by allowing citizens to list their true religious affiliation in their identification documents. Furthermore, the limitations imposed by the government are clearly discriminatory against specific religions and the ensuing limitations on affected individuals’ access to health care, education, employment, and other services outweigh the putative public order interest served by the government’s approach. In a 1996 ruling on a case involving Greece, the European Court of Human Rights found that “[t]he right to freedom of religion... excludes any discretion of the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.”²

The government has repeatedly argued that requiring citizens to identify their religious beliefs in identification documents is necessary in order to identify the individual’s applicable family law system, since all personal status laws in Egypt are

² *Manoussakis and Others v. Greece*, (18748/91) WCHR 41 (26 September 1996), para. 47. The case concerned Greece’s refusal to authorize a new church on grounds of maintaining public order.

faith-based. The same purpose could be achieved, however, without burdening freedom of religion or other rights: a person's religion is maintained with other data in the central Civil Registry and the registry could be consulted, as the need arises, to determine or confirm the proper jurisdiction for resolution of personal status issues. The government's argument also fails to explain its decision to cease the practice of granting Baha'is identification documents with the word "other" inserted in the religion entry, or its insistence on arbitrarily subjecting converts to Christianity to the rules of Muslim personal status law.

Shari`a and Egypt's Plural Legal System

The government's assertion that its policies are the only ones consistent with Shari`a are also without merit. As noted above and discussed at greater length below, there are various interpretations of how Shari`a defines apostasy and its implications, and courts in Egypt have taken different approaches to such questions over the years. While Muslim scholars agree that converting from Islam is a sin that is not permitted from a religious point of view, no such agreement exists as to whether the state can or should mete out a worldly or civil law punishment to converts from Islam to Christianity or any other religion.

Similarly, while Islamic jurists and scholars concur that Baha'i faith is an apostate deviation from Islam, the Qur'an does not restrict religious freedom to the three "recognized" religions, and the jurists and scholars do not claim, for example, that the Prophet Muhammad or his followers allowed or practiced co-existence only among Muslims, Jews, and Christians, even in the early days of Islam. Furthermore, neither Egypt's government nor its judiciary have provided any jurisprudential basis to support forcing converts or Baha'is to proclaim themselves as Muslim, or to misidentify their true religion, as an appropriate remedy for apostasy.

The Supreme Constitutional Court (SCC), in a May 1996 ruling, rejected a challenge to the Ministry of Education's restrictions on girls wearing veils in state schools. The court's reasoning in that case, particularly its approach to Shari`a, has direct relevance to the government's attempt to use the dictates of Shari`a to justify its policies on religious identification for ID card purposes. In its 1996 decision, the court found that the government was obliged to adopt the religious interpretation most conducive to preserving people's interests (*masalih al-nas*) in accordance with changing circumstances, regardless of the jurisprudential weight of that

interpretation, as long as it did not contradict fixed and undisputed rules of Islam. While the SCC has the mandate to issue binding interpretations of constitutional provisions, and its reasoning is considered authoritative, that reasoning is not legally binding on other courts.

In addition, Egypt's legal system is "plural" – that is, it applies religious law as well as civil law. Egyptian statutory law nowhere addresses the matter of apostasy. In practice, the legal repercussions of apostasy generally have been limited to matters of personal status, where religious law – Shari`a or canon law for almost all Egyptians – rather than civil law governs. Matters governed by religious law include marriage and divorce, child custody, inheritance, and so forth. While this arrangement in itself has discriminatory consequences for Baha'is and converts from Islam that lie outside the scope of this report, where assertions of apostasy are used to deny people the right to proper identification cards the consequences extend to a much broader range of civil, political, economic, social, and cultural rights.

Some Egyptians have battled these abusive policies by filing complaints against officials in Egypt's Court of Administrative Justice. In some cases they have secured favorable rulings, but officials have resisted complying with those rulings and the government has appealed a number of them. In April 2006, the Court of Administrative Justice ordered the CSD to issue ID cards and birth certificates to a Baha'i family, arguing that Shari`a in fact required mentioning the plaintiffs' Baha'i faith in order to regulate the rights and duties of distinct religious communities. The government appealed the ruling, however, and the Supreme Administrative Court overturned the decision, agreeing that the government may restrict the mention of the Baha'i faith in identity documents on grounds of preserving "public order." In doing so, the court improperly equated the freedom to practice religious rites, which may be limited in some compelling cases, and the freedom to adopt and adhere to religious beliefs, which is absolute and may not be restricted for any reasons.

Religious Conversion

Egyptians who are born Muslim but convert to Christianity face considerable social opprobrium as well as official harassment. For these reasons, very few if any Muslim converts to Christianity have initiated the necessary formal steps to revise their identification documents to reflect their change in religion, as permitted by the Civil Status Law. An undetermined number have emigrated to other countries, or live

anonymously and surreptitiously with forged documents. As discussed below, some who nonetheless have made their conversion public say that security officials have detained them on charges of violating public order and, in some cases, have subjected them to torture.

In a country of 79 million people where approximately 90 percent identify themselves or are identified as Muslims and most of the rest as Christians, it is not surprising that a small number of people each year wish to convert from one religion to the other. We found many cases in which Coptic Christian Egyptians converted to Islam, often at the time of their marriage to a Muslim (Muslim women cannot marry non-Muslim men, according to Islamic law) or in seeking divorce from a Christian spouse (the Coptic Orthodox Church restricts divorce to exceptional circumstances), and subsequently wished to return to Christianity. They typically faced no difficulties whatsoever when converting to Islam and acquiring identity documents recognizing their new religion, but attempts to return to Christianity met with official refusal and harassment.

At least 211 Egyptians wishing to reconvert to Christianity have appealed the CSD's decisions before the Cairo Court of Administrative Justice. Between 2004 and early 2007, the court ruled in favor of a number of these plaintiffs, and the Interior Ministry, usually after long delay, eventually implemented the rulings. But with the retirement in September 2006 of the judge responsible for these favorable rulings, the court has since reverted to its earlier position that re-conversion to Christianity also constitutes apostasy. This development means that the administrative courts appear no longer to be acting as a check on these discriminatory policies of the Ministry of Interior.

The government's systematic refusal to accommodate persons wishing to change their official religious identity to reflect their actual beliefs extends further to a distinct category of Egyptian Christians: those whom the state categorizes as Muslims without their knowledge or against their will. In most of these cases, their fathers were Christians who converted to Islam when they were still children. When this occurred, the children were automatically "converted" as well, without regard to their actual religious practices, without regard to their or their mothers' wishes, and frequently without their even being aware that this had happened. Indeed, many individuals in this category only learned they were "Muslim" when they applied for their own national ID cards upon reaching their sixteenth birthday: when they

applied for their card, they found the government had officially registered them as Muslims, and that in many cases had changed their names, without their knowledge, from Christian to Muslim ones. CSD officials base this arbitrary policy on a prevailing interpretation of Islamic law, supported by Egyptian court rulings, that in cases where one parent is Muslim and the other not, children should automatically follow “the parent with the better religion” – that is, Islam.

When these Egyptians attempt to assert their Christianity, typically fortified with documents from the Coptic Orthodox Patriarchy proving that they have lived their entire lives as Christians, they face the same discrimination and obstruction from CSD officials as Egyptians who have converted or reconverted from Islam to Christianity. At least 89 Egyptians in these circumstances have brought complaints in the Court of Administrative Justice. Defense briefs by government lawyers insist that these persons are “apostates” under Shari`a and, as such, the state can properly refrain from acknowledging their actual religious affiliation or any rights related to their conversion. At this writing, the court had ruled in seven of the cases before it, all in favor of the plaintiffs; the government, after arbitrary and extensive delays, eventually implemented the court’s rulings by ordering officials to provide the individuals with documents identifying them as Christians. There have been no rulings on these issues since April 2007, however, following the retirement of the president of the court several months earlier.

Remedies

At least one quasi-official agency has attempted to address Egypt’s consistent failure to protect the religious freedom of Egyptian converts and Baha’is. The government-created National Council for Human Rights (NCHR) submitted a memorandum to Prime Minister Ahmed Nazif on December 26, 2006, outlining the difficulties faced by Egypt’s Baha’i community and proposed removing religious affiliation from ID cards or reinstating the policy of entering “other” in the line reserved for religion. In August 2007, the NCHR announced its intention to draft an anti-discrimination bill that it would ask the government to present to parliament in order to introduce criminal penalties for violating the constitutional prohibition against discrimination.

Abolishing the mention of religion in identification documents would undoubtedly constitute a positive measure, as it would signal the state's neutrality vis-à-vis the religious affiliations of citizens in everyday dealings. Yet the numerous accounts

included in this report show that the root cause of the issue goes far deeper than what appears or does not appear on identification documents. The serious problems faced by Baha'is and converts to Christianity in areas such as accessing basic services are the consequence of the government's insistence on misidentifying these citizens in CSD files in the Civil Registry, an issue that the NCHR's recommendations do not address.

The government of Egypt should therefore take immediate steps to ensure that a person's religious identity in CSD files, as well as any religious identification listed on vital documents, accurately reflects their religious belief and the faith to which they adhere in practice without any negative civil or criminal consequences. The government should also instruct officials to cease pressuring individuals to convert to Islam, or to accept any religious identity against their wishes.

II. Recommendations

To the government of Egypt

- Implement the recommendation of the government-created National Council for Human Rights to eliminate the requirement to list religion on official identification documents.
- Take immediate steps to ensure that any required religious identity in the Civil Registry, and any religious identity that the government continues to require on essential identification documents, accurately reflect an individual's actual religious belief, whatever that belief may be, without unfavorable civil or criminal consequences and in accordance with Egypt's obligations to respect the rights to freedom of religion under Egyptian and international law.
- Exonerate any persons who were criminally convicted for having obtained forged identity documents solely because of the government's refusal to allow them to identify themselves as converts from Islam.
- Instruct officials of the Ministry of Interior to cease pressuring individuals to convert to Islam or to accept an official religious identity against their wishes, and discipline officials who engage in such unacceptable practices.
- Conduct media and public awareness campaigns, with participation from civil society, to promote religious tolerance and equal citizenship rights, and clarify that changing one's religion from Islam or publicly adhering to a religion other than Islam, Christianity, or Judaism should have no punitive civil or criminal consequences.
- Adopt laws and other appropriate measures to fulfill the international legal obligation to uphold the rights of all individuals against discrimination, including on the basis of religion and belief. Ensure that individuals whose rights to freedom of religion or belief are violated shall have an effective remedy.

- Grant the request, standing since 2005, of the UN Special Rapporteur on freedom of religion and belief to conduct a mission to Egypt to assess the situation of religious freedoms and formulate recommendations for combating religious discrimination and intolerance.

III. Religious and National Identity in Egypt

Identity Documents and Religion

The Civil Status Department (CSD, *maslahat al-ahwal al-madaniyya*) of Egypt's Ministry of Interior is responsible for administering and providing identity cards, birth certificates, death certificates, marriage certificates, and other vital records. All of these documents record, among other things, a person's religious identity.³ Of these, the most vital for everyday life is the national identity card that all Egyptians 16 years of age must, by law, obtain. This card includes a national identification number (*raqam qawmi*) assigned at birth.⁴ A national ID is essential to have access to post-secondary schooling, to get a job, to vote, to travel, and to conduct the most basic financial or administrative transactions. Not to have one's national ID when requested by a law enforcement official is an offense punishable by a fine of between LE 100-200 (US\$18-35).

In assigning or recording religious identity, the Egyptian government recognizes only what it refers to as the three "heavenly" (*samawiyya*) or "recognized" (*mo`taraf biha*) religions – Islam, Christianity, and Judaism. An Egyptian has no option to request a religious identification different from one of these, or to identify him or herself as having no religion. This restriction mainly affects Egypt's Baha'i community because these identification documents do not distinguish among sects of Islam or Christianity (persons belonging to heterodox or non-recognized Muslim or Christian sects have no problem listing themselves as Muslim or Christian for official identity purposes), and because there are few Egyptians who identify themselves as non-Muslim and non-Christian apart from Baha'is.

In addition, government officials responsible for administering vital documents regularly deny Egyptians the option of changing their religious identity from Islam to Christianity (or any other religion). They limit religious identification to the three

³ While Egypt is not the only country that requires a person to list their religion on national identity cards, many countries in the Middle East do not, among them Algeria, Bahrain, Iraq, Kuwait, Lebanon, Oman, Qatar, Tunisia, and the United Arab Emirates. See <http://www.uscirf.org/mediaroom/press/2006/december/20061219EgyptCardPolicy.htm> (accessed on September 25, 2007).

⁴ The current Civil Status law, Law 143 of 1994, provides each citizen at birth with a national identification number. Article 48 requires that those 16 years and older possess and carry national identity cards. This has been a requirement since the promulgation of Law 181/1955 on Personal Cards.

religions and refuse to permit conversions away from Islam. They do so not on the basis of any Egyptian law but on the basis of what they understand to be the prohibition in Shari`a against apostasy. Egyptian courts for the most part have supported these policies on the grounds that, because Egypt is an overwhelmingly Muslim society and Islam is the official religion of the state according to the constitution, any sanctioning of “apostasy” would constitute a potential offense against public order.

The requirement that Egyptians list their religion (limited to three permitted ones) on all identification documents is itself a questionable practice. International human rights law protects the right of individuals not to disclose their religious beliefs.⁵ Similarly, Egypt’s Supreme Constitutional Court has interpreted the right to freedom of religion in the constitution to include freedom from coercion to disclose one’s beliefs.⁶

Egyptian officials maintain that requiring citizens to identify their religious affiliation in official records, including ID cards, is necessary because family courts apply religious laws (Muslim, Christian, and Jewish) in personal status matters, and a person’s religious identity determines under which court’s jurisdiction he or she would fall in such matters. In addition, officials argue, religious identification on national IDs and birth certificates is necessary to determine which religious instruction (which is mandatory in public schools) a child receives. While this may justify the state’s recording of a person’s religion in its central statistical bank, it does not constitute a valid reason for including religion as a category in identification documents, much less for requiring persons who are not Muslim, Christian, or Jewish to register as such, or for requiring people who convert from Islam to another religion to register as Muslims.

The UN Special Rapporteur on freedom of religion and belief, in commenting on Egypt’s administrative practice, concluded that:

The mention of religion on an identity card is a controversial issue and appears to be somewhat at variance with the freedom of religion or

⁵ The Human Rights Committee, in its General Comment No. 22, regarding Article 18, wrote that “no one may be compelled to reveal his thoughts or adherence to a religion or belief.”

⁶ Decision of the Supreme Constitutional Court in Case no. 56/18, issued on November 15, 1997.

belief that is internationally recognized and protected. Moreover, even supposing that it was acceptable to mention religion on an identity card, it could only be claimed that the practice had any legitimacy whatsoever if it was non-discriminatory: to exclude any mention of religions other than Islam, Christianity or Judaism would appear to be a violation of international law.⁷

This report documents how Egyptian state officials use the requirement to list one's religious affiliation in official identification documents to effectively deny the right of some citizens – namely, those who convert or wish to convert from Islam to Christianity and those who adhere to the Baha'i faith – to hold a religious belief and practice a religion of their choice. With the computerization of Egyptian vital records, this violation is about to become even more systematic. In the past, Egyptian Baha'is facing this problem were sometimes able to get a local CSD office to leave the religion line blank, or enter "other." The government has now removed that option by requiring all persons to have computerized IDs, perhaps as soon as early 2008, which officials insist cannot be processed unless one fills in the religion entry with one of the three "heavenly" religions.

Unless the government remedies its intolerance regarding conversions from Islam and adherence to Baha'i faith, and allows Egyptians to determine their religious identity freely for official purposes, thousands of Egyptians will continue to have to choose between identifying their actual religious belief and exercising their right to freedom of religion as well as a host of other rights, including access to education, freedom of movement, and a wide range of entitlements such as pensions and essential services. The government's policies of forcing Egyptians to identify their religion, limited to one of three permitted religions on national identification documents, will also continue to violate the freedom not to identify one's religion.

In March 2006, the Court of Administrative Justice dismissed a lawsuit brought by lawyer Mamduh Nakhla in 1997 seeking to end the practice of requiring an entry for religion on Egyptian national identity cards. The court did not consider the substance of the lawsuit and declared it inadmissible on procedural grounds because it did not

⁷ Report submitted by Mr. Abdelfattah Amor, Special Rapporteur on freedom of religion or belief, to the Commission on Human Rights, 60th session, January 16, 2004, UN doc. E/CN.4/2004/63, para. 42.

meet the time limits specified by law.⁸ In August 2006, the government-created National Council for Human Rights (NCHR) conducted a workshop around its proposal to remove religion from national ID cards. Some 80 speakers, representing government officials, civil society, academics, and religious communities, spoke for or against the proposal. The workshop's final report identified a third option: making the religious affiliation line in ID cards an optional entry and allowing individuals to enter "non-recognized" religions.⁹ The NCHR subsequently went a step further and submitted a memorandum to Prime Minister Ahmed Nazif on December 26, 2006, outlining the difficulties that Egypt's Baha'i community faces and proposing that the government remove religious affiliation from ID cards or reinstate the policy of entering "other" in the line reserved for religion.¹⁰ In August 2007, the NCHR announced its intention to draft an anti-discrimination bill and recommend that the government present it to parliament in order to introduce criminal penalties for violating the constitutional prohibition against discrimination.¹¹

"Recognized" Religions and Public Order

As noted above, the government's discriminatory policies have had particularly negative impact on Egyptians who adhere to the Baha'i faith, a community estimated to number around 2,000.¹² The Baha'i faith originated in the mid-nineteenth century in Iran. Although in its doctrines and practices it is quite distinct from Shi'a or Sunni Islam, because it emerged in a Muslim milieu, most orthodox Muslim leaders regard the Baha'i faith, in contrast to Christianity or Judaism, to be a heretical deviation from Islam, and its practitioners to be apostates.¹³

A Baha'i community began to flourish in Egypt in the early twentieth century and, in December 1924, was able to register in Cairo a Central Spiritual Assembly of Baha'is

⁸ Administrative decrees, in this case the Implementing Regulations of Law 143/ 1994 on Civil Status, may only be challenged before an administrative court within 60 days of their issuance.

⁹ The Fourth Forum of the National Council for Human Rights and Civil Associations [to discuss the proposal of removing religion from national number cards], *Final Report*, August 8, 2006, available (in Arabic) at http://www.nchr.org.eg/other_reports.html. The NCHR organized a follow-up workshop on "religion entry in identification documents" in September 2007 which reached a similar conclusion.

¹⁰ National Council for Human Rights, "Annual Report," January 18, 2007, English translation, p. 44.

¹¹ Al-Masry Al-Youm, August 1, 2007, available at <http://www.almasry-alyoum.com/article.aspx?ArticleID=70816>

¹² See US Department of State, *International Religious Freedom Report 2007* (Egypt chapter) www.state.gov/g/drl/rls/irf/2007/ (accessed on September 20, 2007).

¹³ See Juan Cole, *Modernity and the Millennium: The Genesis of the Baha'i Faith in the Nineteenth-Century Middle East* (New York: Columbia University Press, 1988).

in the Egyptian State. Adherents acquired buildings to house their spiritual assemblies, and the group's publishing house disseminated printed materials through libraries and bookstores. The community's situation worsened, however, in the 1950s; it did not help that the Baha'is' international headquarters was located in the Palestinian city of Haifa, which had been incorporated into the new state of Israel in 1948. In 1960, then-President Gamal `Abd al-Nasir issued a decree (Law 263/1960) revoking the community's corporate status and confiscating Baha'i properties.¹⁴

Egypt's Supreme Court in 1975 ruled that Law 263/1960 was constitutional, and it remains in effect.¹⁵ The Supreme Court's ruling held that the decree did not prevent anyone from believing in Baha'i precepts, but that only adherents of the three "revealed" religions enjoyed constitutional protection to practice their beliefs. The ruling accepted the government's position that the practice of the Baha'i faith represented a "threat to public order" and therefore fell outside the constitutional protection for freedom of religion.¹⁶

Today, with the computerization of identification documents and increasing unwillingness of Ministry of Interior officials to allow them to state their actual religion or "other" or none at all, more and more Baha'is in Egypt face the choice of denying their religious identity in official government documents or doing without essential rights and services and risking arrest for not possessing an ID.¹⁷

Some members of the Baha'i community have challenged in court the government's refusal to recognize their religion on official documents. In April 2006, an administrative court upheld an earlier decision issued in 1983 that Baha'is had the right to obtain official documents identifying them as Baha'is. Following an appeal by the government, however, the Supreme Administrative Court overturned the lower

¹⁴ Johanna Pink, "Deriding Revealed Religions: Baha'is in Egypt," *ISIM Newsletter*, October 2002, p. 30. Pink's article also notes that in 1952, Egypt's Administrative Court ruled against a Baha'i suing an employer for failing to give him the marriage and family allowances to which he was entitled. The court ruled that because the plaintiff was an apostate, his marriage was null and void.

¹⁵ The Supreme Court became the Supreme Constitutional Court in 1979. This is the highest court on constitutional matters; the Court of Cassation is the highest court for civil and criminal matters; the Supreme Administrative Court is the highest court for administrative law issues. The Supreme Court's rulings on constitutional matters are legally binding; its legal reasoning, however, while considered authoritative, is not binding on other courts.

¹⁶ Supreme Court decision in case number 7/2, issued on March 1, 1975. The Supreme Court became the Supreme Constitutional Court in 1979.

¹⁷ Other sects, like the Jehovah's Witnesses, also do not have official recognition, but Jehovah's Witnesses identify themselves as Christians, so do not face this official identity problem. Similarly, Shi'ism does not enjoy legal recognition in Egypt, but Shi'a are recognized in official documents as Muslim.

court's decision in December 2006, arguing that mention of the Baha'i faith in identity documents constituted the practice of a religious rite, which the government could restrict on grounds of preserving "public order."

Conversion from Islam and Public Order

Conversion from Islam to Christianity is fraught with legal and social risks for the person converting. As a result, the number of persons born Muslim who have converted to Christianity is hard to gauge, but at a minimum it would appear to involve a score or more persons per year, and so cumulatively be in the hundreds if not thousands. On occasion, authorities have arrested persons who converted to Christianity, particularly if those persons publicly announced their conversion or appeared to be proselytizing. Authorities have also on occasion arrested individuals for public adherence to a non-orthodox understanding of Islam or Christianity.¹⁸ In such instances, the authorities typically charged those persons with violating Article 98(f) of the Penal Code, which criminalizes any use of religion "to promote or advocate extremist ideologies... with a view toward stirring up sedition, disparaging or showing contempt for any divinely-revealed religion, or prejudicing national unity and social harmony."¹⁹

The number of Christian-born Egyptians who have converted to Islam and then reverted to Christianity is similarly difficult to estimate with precision, but there are certainly hundreds, at minimum. Human Rights Watch and the Egyptian Initiative for Personal Rights (HRW/EIPR) documented and studied the files of 165 such cases that were filed before one administrative court in Cairo between April 2004 and the time of writing.

According to the Civil Status Law, a citizen can change or correct most information, including religious affiliation, in his or her identification documents by simply registering the new information, without requiring the approval of the Ministry of Interior's Civil Status Department (CSD).²⁰ The only requirement is to have the request authorized by the "competent body" (*jihat al-ikhtisas*). While the law does not elaborate on what constitutes a competent body, in practice it has meant an

¹⁸ One recent case is that of Baha' al-`Akkad, a convert detained for 25 months for violating Art 98(f), but never charged in court and released on April 28, 2007. Also see the discussion of the case of Mustafa al-Sharqawi in Chapter V of this report.

¹⁹ Article 98 (f) specifies penalties of up to 5 years in prison and a fine of up to LE 1,000.

²⁰ Article 47 (2).

employer when one is seeking to change how one's profession is listed, for instance, or an officiating religious authority in the case of one's marital status.

While the CSD generally has applied this formal flexibility for revising identification documents to persons converting to Islam, in practice CSD officials obstruct and discriminate against persons who have converted from Islam to Christianity by refusing to make the change in official records or to provide vital documents reflecting the requested change.²¹ This refusal to accommodate requests to change one's religion of record to Christianity, in accordance with the Civil Status Law, extends to persons who were born Christian, became Muslim for a time, and wish to convert back to Christianity, as well as persons who were involuntarily "converted" to Islam, usually as a result of a father having converted to Islam. At least 89 of these people filed lawsuits against the Civil Status Department's refusal to correct their personal information. The Court of Administrative Justice has issued seven rulings in such cases, all of them in favor of the plaintiffs.

Official denial of one's religious identity has enormous consequences for the persons concerned. Often converting to Islam or Christianity also involves changing one's name to a Muslim or Christian one, and so goes to the very core of a person's self-identity. It also affects a person's ability to worship as part of a religious community. Moreover, one's religious identity, as reflected in an ID, determines the religion that will be listed on their children's birth certificates, which, once they begin school, will determine whether mandatory religious instruction will be Islam or Christianity.²² It will also affect who they can marry, and the inheritance rights of surviving family members upon their death.

Muslim converts to Christianity face the choice of denying their new religious identity, securing fraudulent identification documents and risking criminal prosecution for that offense, or living an underground existence without official identification in which even local travel or acquiring work can lead to arrest and detention.

²¹ This report also notes several recent instances where the government has interfered with efforts by Egyptian Christians to convert to Islam, apparently in response to Coptic Christian protests over what they claim are forced conversions, particularly of Christian women and girls.

²² In line with a prevailing interpretation of Shari`a, if one parent is Muslim, or officially regarded as Muslim, the government automatically classifies the child as Muslim.

Freedom of Religion, Shari`a, and Public Order

In Egypt, Islam is the religion of most of society and of the state.²³ Egyptian officials cite Article 2 of the Constitution, which stipulates that Islamic law is the principal source of legislation, to justify policies that conflict with the government's obligation to guarantee freedom of religion.²⁴ Egypt's judiciary has supported the government's position that Islamic law, or at least those elements that are considered fixed and undisputed, constitute an essential part of public policy owing to their "strong link to the legal and social foundations which are deep-rooted in the conscience of [Egyptian] society."²⁵ The Supreme Constitutional Court, in denying a challenge to the Ministry of Education's ban on women wearing veils in state schools, distinguished between freedom of belief, which the state cannot restrict, and freedom to practice, which the state may restrict "on the grounds of preserving public order and moral values and the protection of the rights and freedoms of others."²⁶ On the basis of this distinction between practice and belief, the government has maintained that it has no obligation to register any religion other than the three "recognized" religions in public records because doing so would disturb public order.

The Egyptian government's policy of denying identification documents to Baha'is and converts to Christianity unless they misidentify their religion violates their right to adopt the religion of their choice, for which no limitation is allowed under the Egyptian constitution or international human rights law. The government has not provided any evidence, in court or elsewhere, to support its contention that conversion from Islam or adherence to a non-recognized religion are forms of religious practice (the "manifesting" of religious belief as distinct from the belief itself), and thus subject to limitation on grounds such as preserving public order.

Furthermore, the government's use of "public order" to justify discrimination against Baha'is and converts to Christianity fails to meet the narrow grounds on which

²³ Approximately 90 percent of Egypt's 79 million people are Sunni Muslim. Estimates of the number of Christians, most of them Copts, range from 8 to 12 percent, with other Christians making up most of the remainder. (See the chapter on Egypt in U.S. Department of State, *International Religious Freedom Report 2007*, accessed on September 20, 2007 at www.state.gov/g/drl/rls/irf/2007/90209.)

²⁴ Article 2 was amended in 1980 to state that Shari`a is "the" rather than "a" principal source of legislation.

²⁵ Decision of the Court of Cassation in Case no. 475/65, issued on August 5, 1996. The Cassation Court, in the case of the scholar Nasr Abu Zayd, defined apostasy, for the first time, as "a clear declaration of unbelief" See Maurits S. Berger, "Apostasy and Public Policy in Contemporary Egypt: An Evaluation of Recent Cases in Egypt's Highest Courts," *Human Rights Quarterly* 25 (2003), p. 731.

²⁶ Decision of the Supreme Constitutional Court in Case no. 8/17, issued on May 18, 1996. The ICCPR includes a similar provision in Article 18(3).

international law permits such restrictions. The UN Human Rights Committee has explained that any such restriction must be: proscribed by law; necessary to achieve the legitimate aim of preserving public order; proportionate to achieving the specific need; not applied in a manner that would vitiate the right to freedom of religion; and “not ...imposed for discriminatory purposes or applied in a discriminatory manner.”²⁷

The Egyptian government’s policy with regards to identification documents is inconsistent with these standards. While listing one’s religion on identification documents is required by law, no law limits that identification to particular religions, and the Civil Status Law specifically allows Egyptians to change elements of their identification, including their religion. The limitations imposed by the government clearly have a discriminatory impact on certain religions and a foreseeable deleterious impact on affected individuals’ equal access to health care, education, and employment, among other rights, effects which could not be considered proportionate to achieving the specific need of preserving public order. The government has consistently failed to show how public order would be harmed by allowing citizens to list their actual religious affiliation in their identification documents. Moreover, it is hard to imagine how any legitimate public order concern could justify effectively denying affected individuals the ability to exercise numerous basic civil and economic rights. In 1996, the European Court of Human Rights ruled that “[t]he right to freedom of religion... excludes any discretion on the part of the State to determine whether religious beliefs or the means used to express such beliefs are legitimate.”²⁸

Article 40 of the constitution guarantees equal rights to all citizens and prohibits discrimination based on religion (or other factors). Article 46 states that “the State shall guarantee freedom of belief and the freedom to practice religious rites.”²⁹ The Penal Code contains similar provisions.³⁰ Egypt has ratified the International Covenant on Civil and Political Rights (ICCPR), which guarantees freedom of thought and religion (Article 18), and Article 151 of the constitution states that international treaties have the force of law and supersede domestic law. In ratifying the ICCPR,

²⁷ Human Rights Committee, General Comment No. 22 [ICCPR Article 18], para 8.

²⁸ *Manoussakis and Others v. Greece*, (18748/91) [1996] ECHR 41 (26 September 1996), para. 47. The case concerned the refusal by Greece to authorize a new church on the grounds of preserving public order.

²⁹ The text of the Constitution is available in English at <http://www.sis.gov.eg/En/Politics/Constitution/Text/040703000000000001.htm>

³⁰ Articles 160 and 161 impose criminal punishment for desecration of religious sites or assaults on religious communities.

however, Egypt attached a statement that the government would comply with the ICCPR to the extent that its provisions were consistent with Islamic law: “Taking into consideration the provisions of the Islamic Shari`a and that they do not conflict with [the Covenant].”³¹ However, the UN Human Rights Committee has made clear that states may not make reservations³² that are “incompatible with the object and purpose” of the treaty, and that reservations that “offend peremptory norms” – among them freedom of religion – are not acceptable.³³ In a different authoritative opinion, the Committee noted that the fact that a religion is recognized as a state religion, or that its followers comprise the majority of the population, “shall not result in the impairment of the enjoyment of any rights under the Covenant, including articles 18 and 27 [concerning the protection of minorities].”³⁴

Egyptian government officials and jurists attempt to reconcile the serious discrepancy between state practice and constitutional and international treaty guarantees of freedom of religion by defining freedom of belief essentially as the absence of any compulsion to become Muslim and freedom to embrace any religion. However, a person who is a Muslim by birth or conversion does not have the right, under Islamic law, to convert or otherwise cease to be Muslim. Freedom of belief, according to a Supreme Administrative Court ruling, “does not restrict the application of the Islamic Shari`a to those who embrace Islam.”³⁵ In other words,

³¹ Presidential Decree no. 536/ 1981, Official Gazette issue no. 15, April 15, 1982. In responding to the Human Rights Committee, which reviews state reports on their compliance with the ICCPR, Egyptian officials have stated that there is no contradiction between the Covenant and Egyptian law. Concluding observations of the Human Rights Committee: Egypt, November 28, 2002, UN Doc. CCPR/CO/7/EGY, para 5, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G02/460/72/PDF/G0246072>, accessed on September 24, 2007.

³² According to the Vienna Convention on the Law of Treaties (1969), art. 2(1)(d), a reservation to a treaty means “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.” According to the Human Rights Committee: “It is not always easy to distinguish a reservation from a declaration as to a State’s understanding of the interpretation of a provision, or from a statement of policy. Regard will be had to the intention of the State, rather than the form of the instrument. If a statement, irrespective of its name or title, purports to exclude or modify the legal effect of a treaty in its application to the State, it constitutes a reservation.” Human Rights Committee, General Comment 24, Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, (Fifty-second session, 1994), U.N. Doc. CCPR/C/21/Rev.1/Add.6 (1994), para. 3.

³³ Human Rights Committee, General Comment No. 24, para. 8.

³⁴ Human Rights Committee, General Comment No. 22 [ICCPR Article 18].

³⁵ Cited in Berger, p. 736. The ruling continues, “Since the plaintiff has embraced Islam, he must then submit to its law which does not condone apostasy.”

apostasy is “part of the *practice* of a belief” in Islam, and thus regulated by Islamic law.³⁶

Although there is no penalty in Egyptian law for apostasy, government lawyers have argued in conversion cases, and courts have agreed, that apostasy "is synonymous with death"; that is, it deprives the "apostate" of the ability to perform many civil acts.³⁷ For instance, consequences of conversion from Islam include the revocation of an individual’s right to marry, maintain custody of children, and inherit property.³⁸

The legal repercussions of apostasy directly extend to matters of personal status, where religious law – Shari`a or (Coptic) canon law for almost all Egyptians – rather than civil law governs. Matters governed by religious law include marriage and divorce, child custody, inheritance, and so forth.³⁹ The requirement to include religion on national identification documents, however, coupled with the determination of Ministry of Interior officials to deny Baha’is and converts from Islam identification documents that accurately identify their religious identity, extends the consequences of apostasy to a range of civil, political, economic, social, and cultural rights, in addition to violating the right to practice freely the religion of one’s choice and the right to manifest publicly, or not, one’s religion. This policy forces individuals to suppress or deny their religious identity in order to enjoy the protection of and access to many basic rights, including the right to participate in public affairs, to work, to education, and to have a family. Basic daily activities – registering for school, opening a bank account, engaging in a property transaction, picking up a pension check – require a national ID.

There is general agreement among all leading schools of Islamic law that the “people of the Book,” that is, Christians, Jews, and Muslims, should enjoy the right to

³⁶ See *ibid.*, p. 737.

³⁷ Cassation Court rulings in Case no. 20/34 on March 30, 1966 and Case no. 162/62 on May 16, 1995.

³⁸ See for example Cassation Court rulings in Case no. 37/32 on April 21, 1965 and Case no. 34/55 on November 27, 1990.

³⁹ According to Berger, the extent of case law on apostasy “can be attributed to the use and abuse of apostasy as a legal strategy in the family court,” for instance, in order to exclude a person from an inheritance or to secure a divorce. See Berger, “Apostasy and Public Policy,” p. 724. Family courts in Egypt apply separate legal codes in adjudicating legal disputes, depending on the religious affiliation of the spouses. Shari`a is considered the applicable legal code in family court cases where one of the spouses is Muslim or where the spouses belong to different Christian denominations. While Muslims and non-Muslims enjoy equal legal standing before criminal and civil courts, family courts generally apply the notion that “there is no jurisdiction by a non-Muslim over a Muslim,” with ensuing discrimination against non-Muslims in areas such as child custody and the unequal weight of testimony in family law disputes.

practice their religion without interference.⁴⁰ There is also general agreement that the authorities may not compel anyone to become Muslim. However, virtually all schools of Islamic jurisprudence also agree that a person who is a Muslim, whether by birth or conversion, may not leave the faith. Conversion to another religion constitutes a repudiation of the faith, and thus apostasy. Religious scholars, however, differ widely on whether or not it is appropriate for a government through its courts to mete out worldly punishment to converts from Islam to Christianity or any other religion.

In an article that appeared in July 2007 on a *Washington Post-Newsweek* website, Egypt's Mufti, Shaikh `Ali Gum`a, the government-appointed top religious adviser, wrote:

The essential question before us is can a person who is Muslim choose a religion other than Islam? The answer is yes, they can, because the Qur'an says, "Unto you your religion, and unto me my religion," [Qur'an, 109:6], and, "Whosoever will, let him believe, and whosoever will, let him disbelieve," [Qur'an, 18:29], and, "There is no compulsion in religion. The right direction is distinct from error," [Qur'an, 2:256]. These verses from the Qur'an discuss a freedom that God affords all people. But from a religious perspective, the act of abandoning one's religion is a sin punishable by God on the Day of Judgment. If the case in question is one of merely rejecting faith, then there is no worldly punishment.⁴¹

Similarly, Shaikh Gamal Qotb, former head of the Fatwa Committee at Al-Azhar, holds that "being an apostate is a sin, but the preponderance of evidence from both the Qur'an and Sunna indicates that there is no firm ground for the claim that apostasy in itself deserves a mandatory fixed punishment [*hadd*], namely capital punishment."⁴² Qotb, echoed by other scholars, argues that "there is no *hadith* confirming punishment or retribution solely for apostasy. In every case where punishment has been meted out, apostasy involved treason or rebellion... The prophet's *hadith*, 'If somebody [a Muslim] discards his religion, kill him,' can be

⁴⁰ There are four major Sunni schools of Islamic law – Hanafi, Sha'fi, Maliki, and Hanbali. The Hanafi school prevails in Egypt and much of the Arab Middle East. In Shi'a Islam, there are three branches – Twelvers, Ismailis, and Zaydis.

⁴¹ Available at http://newsweek.washingtonpost.com/onfaith/muslims_speak_out/2007/07/sheikh_ali_gomah.html#more.

⁴² Nashwa Abdel-Tawwab, "Whosoever will, let him disbelieve," *Al-Ahram Weekly*, August 9-15, 2007, available at <http://weekly.ahram.org.eg/2007/857/eg9.htm>.

considered a legal policy determined by the time when the prophet advocated it as head of the Muslim state in wartime. He himself did not kill the hypocrites, who were among his companions.”⁴³

By subjecting converts from Islam to severe and far-reaching administrative discrimination, in some cases coupled with criminal punishment for those who refuse to obtain a national ID on condition that they misidentify their religion, the Egyptian government is selectively using Shari`a to absolve itself of its obligations under the constitution and international human rights law to protect religious freedom and equality before the law without discrimination on any grounds.

The government does the same in not recognizing Baha’i faith and preventing Baha’is from identifying themselves as such. One of the precepts of Islam is that it is the last revealed religion and that the Prophet Muhammad is the last of all prophets. There is widespread agreement among Muslim religious authorities, therefore, that because Bahá’u’lláh, the spiritual founder of the Baha’i faith, was himself a Muslim and established the Baha’i religion well after the establishment of Islam, it is not a legitimate religion but rather an apostate deviation from Islam whose institutions and public manifestations should be suppressed rather than protected.

The Quran, in fact, nowhere restricts the freedom to practice one’s religion to the three “recognized” religions and Egyptian government officials and judicial authorities have cited no evidence in the practice of the Prophet Muhammad or his followers that co-existence was only allowed among Muslims, Jews, and Christians, even in the early days of Islam.⁴⁴ The Egyptian government is using an Islamic religious belief – that Islam is the last revealed religion and that no other legitimate faith will follow – in order to negate the civil rights of citizens who adhere to other faiths that emerged after Islam and that most Muslims do not recognize as a legitimate religion. In its April 2006 finding against the government’s policy vis-à-vis Egyptian Baha’is, the Court of Administrative Justice argued to the contrary that Shari`a *requires* the authorities to identify Baha’is as such:

⁴³ Ibid. For a detailed discussion of the jurisprudential strength and different interpretations of this *hadith*, see Taha Jaber al-’Alwani, *La Ikraha fil Din: Ishkaliyyat Al-Ridda wal Murtaddin men Sadr Al-Islam Ila Al-Yom [There is no Compulsion in Religion: the Dilemma of Apostasy and Apostates from Early Islam until Today]* 2nd edition, (Cairo: International Institute of Islamic Thought and Maktabat Al-Shuruq Al-Dawliyya, 2006), pp. 123-144.

⁴⁴ According to the United Nations office of the Baha’i International Community, Baha’is in Bahrain, Iraq, Jordan, Lebanon, Morocco, Qatar, and the UAE have national ID cards. E-mail communication from Bani Dugal, principal representative of the Baha’i International Community’s UN Office, October 11, 2007.

The Shari`a provisions require, as explained by Muslim scholars, a disclosure that would allow a distinction to be made between Muslims and non-Muslims in the exercise of social life, so as to establish the range of the rights and obligations reserved to Muslims that others cannot avail [themselves] of, for these [rights and obligations] are inconsistent with their beliefs.⁴⁵

The manner in which the Egyptian government has applied Article 2 of the constitution contradicts the position of the Supreme Constitutional Court (SCC), which issues binding interpretations of constitutional provisions. The SCC has stated that the opinions of religious scholars or jurists “are not to be considered fixed laws or regulations that cannot be deviated from. If this were the case, then one would not be allowed to think or contemplate in God’s religion. This would also be contrary to the fact that each opinion can be wrong.”⁴⁶ The court further found that the state may follow a minority position on a particular aspect of Shari`a regardless of its jurisprudential weight: in order to preserve people’s interests (*masalih al-nas*):

Accordingly it is correct to assert that the opinion of one of the jurists (*fuqaha*) is as valid as any other’s. Indeed, an opinion that may be seen as the weakest could turn out to be most fitting for the changing circumstances, even if this opinion contradicts received wisdom and the consensus that had been established for a long time.⁴⁷

The SCC reasoned that the state has an *obligation* to interpret religious texts in order to deduce modern day solutions to pressing problems on which there is no fixed position in Shari`a:

Furthermore, if it is correct to assert that the opinion in matters about which the Qur’an and the *sunna* are not clear is a right reserved to jurists and, further, that they also have the right to resolve disputes among people by deducing principles and/or interpreting the Text, then by the same token the ruler has that same right; nay, he may

⁴⁵ Decision of the First Circuit of the Court of Administrative Justice in Case no. 24044/45, issued on April 4, 2006.

⁴⁶ Decision of the Supreme Constitutional Court in Case no. 5/8, issued on January 6, 1996.

⁴⁷ Ibid.

even be more entitled than them so that he may be able to quiet unrest, resolve disputes and end enmity. It should be understood that the opinions of previous generations should not be considered the final or sole source from which practical principles could be deduced.⁴⁸

As noted, while the SCC's legal reasoning is itself not binding on lower courts, it is the highest court on constitutional matters and its reasoning—together with the lack of a fixed and undisputed Islamic law position on the administrative requirements for religious identification in the public records of a modern bureaucracy—make clear that the Egyptian government has a choice. It is not true, as officials have publicly asserted, that the government's arbitrary and discriminatory administrative policies are religiously mandated.

The Computerization Deadline

Egypt introduced computer-generated birth certificates and plastic national identity cards in 1995. Since then, persons needing a birth certificate or national identity card because they had come of age, or needing to replace their existing paper ID, have had no option other than a computer-generated card. As this report documents, when Egyptians have requested identity documents reflecting the fact that they are Baha'i or adhere to any religion other than Islam, Judaism, or Christianity, officials have told them that government policy does not permit this and that, furthermore, the computers generating the ID cards were programmed in a way that prevented them from leaving the religion line blank or writing "other" on that line.⁴⁹

Since 2004, government officials have been warning that older paper IDs would soon no longer be valid and urging citizens to approach Civil Status Department offices to obtain their computer-generated plastic cards. On August 13, 2007, General `Isam al-Din Bahgat, then-Assistant Minister of Interior and president of the CSD, asserted in *Al-Ahram*, the semi-official daily newspaper, that as of October 2007, government

⁴⁸ Ibid.

⁴⁹ HRW/EIPR interview with Labib Iskandar Hanna, Cairo, November 9, 2005. Contrary to officials' claim that computers were only programmed to choose Islam, Christianity, or Judaism, a few Baha'is were able starting in 2000 or so to obtain computer-generated ID cards with the word "other" inserted for religion but later came under pressure to hand them back (see Chapter IV of this report).

offices will no longer accept paper IDs in official dealings.⁵⁰ According to the US Department of State, in its *International Religious Freedom Report 2007*, the government extended the deadline for the use of old identity cards to January 2008.⁵¹ As of this writing, the government had not issued any law or decree setting an official deadline for the expiry of old IDs.

⁵⁰ “Farewell to paper IDs as of 1 October!,” *Al-Ahram*, August 13, 2007, p. 3. On September 30 the daily *Al-Ahram* announced the retirement of General Bahgat and the appointment of Gen. Mustafa Radi as Assistant Minister of Interior and president of the Civil Status Department.

⁵¹ US Department of State, in its *International Religious Freedom Report 2007*, at www.state.gov/g/drl/rls/irf/2007/90209 (accessed on September 20, 2007).

IV. Egypt's Baha'is and the Policy of Erasure

Diya' Nur al-Din is a 24-year-old Egyptian who in November 2005 had just graduated with a university degree in aeronautical engineering. The handwritten birth certificate his parents acquired when he was born, in 1982, recognizes his Baha'i faith. In 2001, Diya', like most Egyptians his age, had to acquire a new computerized birth certificate in order to be admitted into a public university. His new certificate dropped the mention of his true religious affiliation and replaced it with the word "other." Since September 2005, he has been trying unsuccessfully to obtain a national ID card, known in Arabic as the *raqam qawmi*, or "national number," the now-mandatory computerized identification document, with either Baha'i or "other" listed in the space reserved for religion. After nearly two months of negotiations, officers at the Interior Ministry's Civil Status Department (CSD) told him that they would shelve his application until he chose one of the three "recognized" religions: Islam, Christianity, or Judaism. In his case, because he has a Muslim name, CSD officers told him he had no practical choice but to identify as Muslim.⁵²

Diya's 23-year-old sister, Sama', has a dash in the religion entry on her birth certificate. Her 2001 computerized ID card, however, identifies her as Muslim. Their father, Nur al-Din Mustafa, has a birth certificate that says he is Baha'i and a paper ID card with a dash in the religion line. Their mother, Tahra, has a paper ID card that identifies her as Christian, in accordance with her family name, despite the fact that her birth certificate leaves her religion blank, indicating that she comes from a Baha'i family.

The Nur al-Din family has been Baha'i for at least three generations, but the four members of the family have obtained official identification documents in the last fifty years that list their religious affiliation alternately as Baha'i, Muslim, Christian, "other," or simply a dash. Most Baha'i families in Egypt have the same bouquet of official religious affiliations today, reflecting the government's arbitrary and discriminatory policy when it comes to recognizing the Baha'i faith in essential personal identification documents. Since the 1960s, the ability of Baha'i Egyptians to acquire identification documents listing their actual religious affiliation has largely

⁵² HRW/EIPR interview with Diya' Nur al-Din, Cairo, November 13, 2005. Diya' had obtained a paper, handwritten ID when he turned 16, as required by law, which identified him as Muslim even though he had indicated his Baha'i faith in the application.

depended on the disposition of local CSD officials. Fortunate individuals have been able to obtain documents with “Baha’i,” “other,” or a dash. Others have been forced to identify themselves as Muslim, like Sama’ Nur al-Din, or Christian, like her mother Tahra, depending on how officials arbitrarily classified their family names. This policy of denying Baha’is the right to adhere publicly to their true faith, and in this way pressuring them to lie in order to obtain necessary documents, makes it impossible for them to simultaneously adhere to their religious identity and obtain official identification documents necessary for daily life.

Official discrimination against and hostility towards Baha’i Egyptians started when late President Gamal `Abd al-Nasir issued decree Law 263/1960, which ordered the closure of Baha’i assemblies and centers and confiscated their assets.⁵³ The government issued the law during a state of emergency and under the 1958 Interim constitution of the United Arab Republic (the political union of Egypt and Syria from 1958 to 1961), the only modern constitution in Egypt that did not include any provisions for the protection of freedom of religion. The legislation was limited to the community’s public activities and did not criminalize adherence to the Baha’i faith per se, but it marked the beginning of decades of violations of Baha’is’ basic human rights that continue to this day.⁵⁴

Egyptian security services have exploited the decree to orchestrate six major crackdowns on the Baha’i community, in 1965, 1967, 1970, 1972, 1985, and 2001. The authorities arrested a total of 236 Egyptian Baha’is in these crackdowns, on grounds they had violated the decree or on charges of “contempt of religion.” On the few occasions on which arrests were followed by prosecutions, none of the defendants were ever found guilty of violating Law 263/1960 or any other law.⁵⁵

The government continues to use this decree to justify discriminatory policies and attitudes toward the Baha’i community. These policies affect the daily lives of all Baha’i Egyptians who attempt to obtain mandatory identification documents, and

⁵³ The Central Spiritual Assembly of Baha’is in the Egyptian State was registered on December 26, 1924, by the Cairo Mixed Court, contract copy on file with HRW/EIPR.

⁵⁴ In 1975 the Supreme Court (now Supreme Constitutional Court) upheld the constitutionality of law 263/1960. The court found that the law did not restrict the freedom to adhere to the Baha’i faith and, therefore, did not violate the constitutional protection of freedom of religion under the 1971 Constitution. Forty-three Baha’i Egyptians had filed the appeal. Supreme Court ruling, case number 7/2, issued on March 1, 1975.

⁵⁵ HRW/EIPR interview with Amin Battah, a leading Egyptian Baha’i community figure.

their concomitant access to education, finding employment, registering children's births and family members' deaths, and collecting pensions.

As noted, in the years following the promulgation of Law 263/1960, Egyptian officials denied Baha'is the right to identify themselves as Baha'is in a haphazard manner. Starting in 2004, official correspondence began referring to an Interior Ministry directive that transformed what had been arbitrary practice into official policy. Several government documents dealing with applications for identification documents, obtained by HRW/EIPR, cite "Circular 49/2004 regarding the rules of recognizing religions in birth records and identification cards," but never actually describe what the circular says.⁵⁶ The government has not responded to a Human Rights Watch request for a copy of the document.⁵⁷ Baha'is interviewed by HRW/EIPR for this report said that officials have consistently denied their requests to obtain or even to read that circular.

Ra'uf Hindi Halim was among the first Baha'i Egyptians to confront the 2004 directive. Halim's twin children, Nancy and `Imad, were born in Oman in 1993. He was able to obtain Omani birth certificates for the two children listing them both as Baha'i and get them officially recognized and stamped by the Egyptian embassy in Oman. When Halim returned to Egypt with his family in 2001, Egyptian law required him to obtain Egyptian birth certificates for his two children in order to enroll them in Egyptian schools. In 2001, he went to the central office of the CSD in al-`Abbasiyya in northern Cairo. That simple administrative procedure proved to be more difficult than Halim had anticipated.

They looked at my children's birth certificate and said, "No, we can't give you new birth certificates because you have a Christian family name and your wife has a Muslim family name."⁵⁸ They cited the 2004 circular. We asked to see it many times but they always refused.⁵⁹

⁵⁶ See for example the letter from Muhammad Naguib, Director of Legal and Technical Research Administration, Civil Status Department, Interior Ministry, regarding an application by a Baha'i citizen for a national number card, November 2, 2004, copy on file with HRW/EIPR.

⁵⁷ The Human Rights Watch letter requesting a copy of the circular is reproduced in the appendix to this report.

⁵⁸ Egypt's personal status law follows the prevalent interpretation of Islamic Shari'a, which prohibits marriage between Muslim women and non-Muslim men.

⁵⁹ HRW/EIPR interview with Ra'uf Hindi Halim, Cairo, November 11, 2005. Prior to this incident, Halim had tried to apply for birth certificates for his children in 2001. A letter dated November 30, 2004, from the Legal and Technical Research Department, Civil Status Department, Interior Ministry stated that "[i]t is imperative that the applicant belongs to one of the

Halim tried to explain to CSD officials that his wife was a third-generation Baha'i and was never Muslim, but they were adamant that, because under Shari`a a Muslim woman cannot marry a non-Muslim man, he had to convert to Islam as a first step in order for the state to recognize his children and issue birth certificates. Knowing that the decision was largely in the hands of the Interior Ministry's State Security Intelligence (SSI), Halim decided to speak to them directly.

I took an appointment with one of the generals from SSI and went with my wife. The meeting was polite. I told him what happened. He said we cannot, by law, give you Egyptian birth certificates listing Baha'i. OK, I said, just put a dash. No, he said, I can't. I showed him my older son's birth certificate, born in 1987, with a dash in front of "religion." He said, "Sorry, I know you are not Christian or Muslim, but you need to choose one of them."⁶⁰

Halim asked the general what he thought the solution was. "Dr. Ra'uf," the officer said, "go to court."

Halim followed the officer's advice and filed a lawsuit before the Court of Administrative Justice against both the Interior Minister and the president of the CSD.⁶¹ The first of many hearings on the case was held on October 19, 2004. The case is still pending before the court.

In November 2005, the same SSI officer summoned Halim to his office in Lazoghly. The officer advised him to withdraw his court case.

I said, "But we went to court based on your advice." "Things are different now," he said. "It's better to withdraw, and we will try and resolve this out of court." He was more aggressive this time and said we were damaging Egypt's image abroad with our court case. He also made indirect threats this time. "You should watch out for your children," he said. I refused to withdraw the case. His last words were,

three divine religions (Islam, Christianity, Judaism). Accordingly, it is not permissible in this case to issue replacement birth certificates for the two children of the applicant." Copy of letter on file with HRW/EIPR.

⁶⁰ HRW/EIPR interview with Ra'uf Hindi Halim, Cairo, November 11, 2005.

⁶¹ Case number 18354/58 before the First Circuit of the Court of Administrative Justice.

“Now you know what you have to do.” I said, “I know exactly what I have to do.”⁶²

Later, at 10 p.m. in the evening of the same day, Halim received a phone call from SSI asking him to go back to Lazoghly for another meeting, at 11 p.m. He went and waited for more than three hours before he met with a more senior official. This official was even more aggressive, Halim said.

He asked me again to withdraw the case. I said, “Your office advised me to go to court.” “OK,” he said, “we will deal with this by the law. Since you came back to Egypt, you have been sending reports to Baha’i s outside. Your reports cause the world outside to disrespect us. We can punish you.” I asked if I could speak. “Of course,” he said. I said, “The world will not respect us as long as we deny rights. I’m not the cause. You are the cause.”⁶³

The meeting lasted more than 30 minutes, until 3 a.m. At the end, the SSI senior official threatened Halim. “Take it as a fatherly advice,” he said. “You should focus on your work. You could lose your job because of your actions.”⁶⁴

Three days later, on November 2, 2005, the beauty center where Ra’uf Halim taught massage classes called to tell him that they no longer needed his services.

So now I no longer have a job. But I can’t prove [the cause]. These people are very clever, like mercury; you can’t catch them. But I will not withdraw the court case, no matter what happens. Why do they want me to withdraw? I think because they want to tell the world, “Look, Baha’is in Egypt have no problems, they even withdrew in court. They don’t have a case.”⁶⁵

⁶² HRW/EIPR interview with Ra’uf Hindi Halim, Cairo, November 11, 2005.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

While Ra'uf Hindi Halim was struggling with the CSD in Cairo, Hosam `Izzat, another Baha'i Egyptian, was having a similar struggle in Alexandria. `Izzat is a civil engineer whose paper ID card states his Baha'i faith. His wife, Rania `Inayit, is a dentist with a dash in the religion entry in both her birth certificate and her ID card. They have three daughters, aged 12, 10, and 6, for whom they managed to acquire birth certificates listing them as Baha'is.

In April 2004 the `Izzats approached the Immigration and Passports Department to list the three daughters on their mother's passport so they could travel to visit relatives who lived abroad. They thought there would be no problem, since passports are among the very few identification documents that do not list the holder's religious affiliation. However, after long negotiations, the department agreed to add the daughters to their mother's passport only if the `Izzats agreed to put a dash in front of "religion" on the passport application, which asks applicants to state their religion.⁶⁶

A few weeks later, in May 2004, the Civil Status Intelligence Unit in Alexandria, a law enforcement arm of the CSD, summoned Rania `Inayit. She went with her husband, and they met with an officer.

He asked to see our IDs, so we handed them to him. He said we had to change the religion entry on our IDs and on our daughters' birth certificates. When we asked why he said that public order required that we list one of the three recognized religions. Before we left, we asked to get our IDs back. He said, "No way."⁶⁷

The CSD officials did not stop with confiscating the IDs cards of Hosam and Rania. In August 2004, Mo`taz Siddiq Radwan, chief of the Lower Egypt Intelligence Department, sent a letter to the private school that their three daughters attended, informing the school's principal that they have "amended the religion [of the three girls] in records and on the computer" and asking him to:

⁶⁶ HRW/EIPR interview with Hosam `Izzat, Cairo, November 13, 2005.

⁶⁷ Ibid.

Kindly confiscate the [birth] certificates, dispatch them to the Middle Delta Criminal Intelligence Administration..., request that their father submit new birth certificates where religion is listed as "Muslim" and refrain from accepting any birth certificates where religion is recognized as "Baha'i" since they violate public order.⁶⁸

"I have no idea why this happened when it did," Hosam `Izzat said.

We're not the exception. There seems to be a policy change emanating from the Civil Status Department to recognize only three heavenly religions and prevent any mention of the Baha'i faith. In our case, I think the passport application is what opened their eyes. They provided the passport, but confiscated everything else.⁶⁹

The experience of Hosam `Izzat's family marked an apparent turning point in the governmental discrimination against Baha'is. Not only was the government refusing to grant Baha'i individuals identification documents listing their faith, but state officials were also actively seeking to confiscate any documents that mentioned the Baha'i faith as a religious affiliation. The government, it appears, wanted to erase any official trace of Egypt's Baha'i community.

On June 10, 2004, Hosam `Izzat and his wife Rania filed a lawsuit before the Court of Administrative Justice, asking the Interior Minister and the CSD to issue ID cards for them and new birth certificates for their three daughters, all recognizing their Baha'i faith. On April 4, 2006, the court issued a decision in favor of the plaintiffs and ordered the CSD to grant them the requested documents. The decision relied almost entirely on a 1983 decision by the higher Supreme Administrative Court in a similar case, which had reached the same conclusion.⁷⁰ The earlier ruling reasoned that recognizing the Baha'i faith in official documents not only did not violate Shari`a but was in fact a requirement under Shari`a in order to regulate the rights and duties of distinct religious communities:

⁶⁸ Letter signed by officer Mo`taz Siddiq Radwan, Chief of the Lower Egypt Intelligence Department, August 11, 2004. Copy on file with HRW/EIPR.

⁶⁹ HRW/EIPR interview with Hosam `Izzat, Cairo, November 13, Cairo, November 11, 2005.

⁷⁰ Decision of the Supreme Administrative Court in Case no. 1109/29, issued on January 29, 1983.

The Shari`a provisions require, as explained by Muslim scholars, a disclosure that would allow a distinction to be made between Muslims and non-Muslims in the exercise of social life, so as to establish the range of the rights and obligations reserved to Muslims that others cannot avail [themselves] of, for these [rights and obligations] are inconsistent with their beliefs.⁷¹

The court further reasoned that the CSD was obliged to recognize religious affiliation even for adherents of religions that the state does not recognize:

It is not inconsistent with Islamic tenets to mention the religion on this card even though it may be a religion whose rites are not recognized for open practice, such as Baha'i faith and the like. On the contrary, these [religions] must be indicated so that the status of its bearer is known and thus he does not enjoy a legal status to which his belief does not entitle him in a Muslim society.⁷²

Significantly, the court asserted that the position of Islam and official Islamic institutions vis-à-vis the Baha'i faith had no relevance to the right of Baha'is to acquire official documents. Government lawyers submitted to the court a 1986 fatwa issued by Al-Azhar's governing body, the Islamic Research Council (*majma` al-buhuth al-Islamiyya*), which concluded that the "Baha'i faith is not a religion, is not endorsed by Islam and sows the seeds of discord among the Muslim nation." The court responded that "the scope of the case under consideration is merely confined to mentioning the Baha'i faith on the identity card of the plaintiffs and the birth certificates of their daughters," implying that the beliefs of the plaintiffs may not be invoked to prejudice their right to obtain necessary official documents.

While this April 2006 decision merely reiterated the position of Egypt's administrative judiciary, it received unprecedented media attention, and for the first time in decades, Egyptian newspapers and talk shows interviewed Baha'is extensively. Most Egyptians had never heard of the Baha'i faith or met Egyptian Baha'is before this court decision. Many media outlets and Muslim religious

⁷¹ Decision of the First Circuit of the Court of Administrative Justice in Case no. 24044/45, issued on April 4, 2006.

⁷² Ibid.

scholars misrepresented the court ruling as a decision to recognize a new religion after Islam, rather than a corrective measure to restore the rights of a community of citizens that had lived in Egypt for over a century.⁷³

In addition to media attacks on the court ruling, several members of parliament representing the ruling National Democratic Party and the largest opposition movement, the Muslim Brotherhood, moved to discuss the issue in the People's Assembly two weeks after the ruling. During this parliamentary hearing, state representatives announced that they would appeal the decision, and the speaker of parliament vowed to "monitor the government during the appeal process."⁷⁴

On May 15, 2006, the Appeals Inspection Chamber of the Supreme Administrative Court (SAC) declared admissible the government's appeal against the decision and granted the government's request to suspend the implementation of the lower court ruling pending the appeal. The SAC held one hearing, on December 2, 2006, on the merits of the appeal. On December 16, 2006, it found that the state was under no obligation to issue ID cards or birth certificates recognizing the Baha'i faith, overturning the lower court decision and reversing its 1983 position on the rights of Baha'i Egyptians to acquire documents reflecting their true religious affiliation.

The SAC, in its decision, reasoned that while freedom of religion was absolute and could not be subject to limitation, the government could restrict the practice of religious rites on the grounds of "respecting public order and morals."⁷⁵ In upholding the government's restriction on the right of Baha'is to identify their faith on record, the court improperly classified the compulsory listing of religious affiliation in necessary identification documents as a religious rite, which may be limited by the state. It went on to argue that the mention of the Baha'i faith in identity documents constitutes a religious rite that violates public order, which in Egypt is based on Shari`a:

This is established on the grounds that the legal provisions that regulate all these issues [including the issue of religious affiliation in

⁷³ For an analysis of how Egyptian media addressed the case, see the Andalus Institute for Tolerance and Non-Violence Studies, "Freedom of Belief in the Eyes of Egyptian Media: Baha'i faith as a Case Study," Cairo, July 2006.

⁷⁴ "People's Assembly says no to Baha'i faith," *Al-Akhbar*, May 4, 2006.

⁷⁵ Decision of the Supreme Administrative Court in Case no. 16834/52, issued on December 16, 2006.

identification documents] are considered part of the public order. Therefore no data that conflicts or disagrees with [public order] should be recorded in a country whose foundation and origin are based on Islamic Shari`a.⁷⁶

The SAC decision did not respond to any of the nine arguments submitted by the lawyers representing Hosam `Izzat's family. Rather, most of the decision was dedicated to an attack on the tenets of the Baha'i faith, which fell outside the scope of the lawsuit:

They [Baha'is] absolutely and totally forbid the jihad⁷⁷ that is provided for in the Islamic Shari`a, because they want people and nations to submit to their executioners without any resistance, in return for poetic and sweetened words calling for the establishment of a world government, which is the main purpose of the Baha'i movement. This is one of the secrets of their ties with the colonialists, old and new, who embrace and protect them. Furthermore, they made up a "Shari`a" for themselves in accordance with their beliefs which forfeits the provisions of fasting, praying, family law in Islam and makes new and different provisions.⁷⁸

A main premise of the SAC decision was the assertion that Shari`a only allows freedom of religion for the "recognized" religions. Neither government lawyers nor the court provided evidence to support such claims. Lawyers representing the `Izzat family argued that the Qur'an does not restrict religious freedom to the three religions, and that there is no evidence in the practice of the Prophet Muhammad or his followers that co-existence was only allowed among Muslims, Jews, and Christians. Distinction must be made, the lawyers argued, between the Islamic notion that Islam is the last revealed religion and that no other legitimate faith will follow it, on the one hand, and the civil rights afforded to citizens who adhere to other faiths even if they emerged after Islam and were not recognized or legitimized

⁷⁶ Ibid.

⁷⁷ Jihad literally means "striving." The website of a US-based school of Islamic studies defines it as "[a]ny earnest striving in the way of God, involving personal effort, material resources, or arms for righteousness against evil, wrongdoing, and oppression. If it involves armed struggle, it must be for the defense of the Muslim community or a just war to protect even non-Muslims from evil, oppression, and tyranny." (<http://www.cordobauniversity.org/gsis/glossary.asp>)

⁷⁸ Ibid.

by the Muslim majority, on the other. The lawyers challenged the government's claim that adherence to the Baha'i faith, in itself, violated public order. The SAC decision did not include any response to these pleas.

The SAC decision in the `Izzat case is final and cannot be appealed before any other court. `Izzat's three daughters faced the choice of converting to Islam, being expelled from their school, or leaving the country. As of this writing (November 2007), the private school they have been attending has allowed them to remain enrolled using their passports as IDs, but this is a fragile arrangement and will not suffice when they have to take national secondary school final exams.

While SAC rulings are technically not binding to the lower courts, they have an authority that usually influences lower courts. Fearing a negative decision on his pending case in the lower Court of Administrative Justice following the `Izzat ruling, Ra'uf Hindi felt compelled in January 2007 to amend his pleas there. Instead of asking for birth certificates recognizing his children's Baha'i faith, Hindi's request is now confined to birth certificates with a dash inserted in the religious affiliation line. This case was still pending before the court at the time of this writing.

Like Ra'uf Hindi Halim's twins and Hosam `Izzat's three daughters, children have been paying a high price for the government's arbitrary and discriminatory policy toward Baha'i Egyptians. HRW/EIPR are aware of at least 13 cases of Baha'i families whose children face serious problems in obtaining birth certificates.

Until recently, the most frequent problem faced by Baha'i Egyptians wishing to register the birth of their children has been their inability to list their Baha'i faith in their birth certificates, or to replace their old handwritten birth certificates with the new computerized ones. However, HRW/EIPR have documented several cases in which the authorities in the last four years refused to record the birth of children unless their parents produced Islamic or Christian marriage contracts.

In addition, Baha'i parents report that children without birth certificates are now being barred from receiving immunizations from the Health Ministry and its local branches. `Asir and Cinderella Hani Fawzi were born in Isma`iliyya in 2002 and 2003, respectively. For four years, the local health department refused to recognize their

existence. As a result, the local hospital consistently refused to give the children the immunizations mandated by the state.⁷⁹

HRW and EIPR are aware of three other children born to Baha'i parents in 2006 alone who still have no birth records. One of the parents told HRW/EIPR of the difficulties he faced in order to immunize his son, who was born on June 13, 2006.

My wife gave birth at the Demerdash hospital [in Cairo]. I went to the Wayli Health office to issue the birth certificate for my son, Omar. The director was very polite, but said that the only thing he could do is to seek instructions from the Civil Status Department in Wayli. They instructed him not to accept my application unless I chose one of the three recognized religions. When the time for the first immunization came, I told the hospital officials that I was late in picking up the birth certificate. The second time I explained the situation and told them I didn't know what to do. The doctor was sympathetic and agreed to give Omar the immunization. We still don't know how we're going to manage in the future without a birth record.⁸⁰

In another case documented by HRW/EIPR, the public hospital where she worked denied a Baha'i mother of a child born on August 23, 2006, her right to a maternity leave because of her failure to provide her son's birth certificate.⁸¹

In addition to violating the right to freedom of religion, such state practices violate the right to enjoy the highest obtainable standard of health as set out under the International Covenant on Economic, Social and Cultural Rights (ICESCR), which Egypt ratified in 1982.⁸²

In addition, children need birth certificates to enroll in public or private schools. Next year, for instance, `Asir Hani Fawzi will reach the age of compulsory primary

⁷⁹ HRW/EIPR interview by phone with Hani Fawzi, October 21, 2006.

⁸⁰ HRW/EIPR interview by phone with Khalid Mohi, October 21, 2006.

⁸¹ Complaint from Dr. Samah al-Hadi to the National Democratic Party, September 2006. Copy on file with HRW/EIPR.

⁸² International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, article 12. See also, Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990, article 24. Egypt ratified the CRC in 1990.

schooling but will not be able to start school as long as local Isma`iliyya officials deny him a birth certificate.⁸³

Baha'i students currently enrolled in schools and universities are hardly more fortunate than their co-religionists who are barred from enrolling. The state has stepped-up enforcement of its anti-Baha'i policy in the last few years, leaving many students either suspended or under the constant threat of suspension. Sarah Mahir Nasif, for instance, a 15-year-old senior at a private secondary school in Minya, has a handwritten birth certificate that identifies her as Baha'i. The school insists that she provide a computerized birth certificate. When she applied for one, she learned she was listed in the government electronic database as Muslim.⁸⁴ Worried that she might not be able to take her general secondary school examination if the school decided to suspend her for not having the new computerized birth certificate, Sarah and her family decided to move to the United States where she is currently pursuing her studies.⁸⁵

Suspension remains a grim reality that Baha'i students face at university. Husain Husni Bakhit, 15 years old at the time, enrolled in the Higher Institute of Social Work in Port Sa`id in September 2005. The institute accepted his paper birth certificate, which recognized his and his parents' Baha'i faith. In January 2006 he became legally obliged to acquire an ID card. Bakhit explained that when he attempted to obtain his national identification card:

The CSD office in Tanta refused to accept my application. An official there told me they couldn't issue IDs for Baha'is. I tried to get an official copy of my birth certificate from the CSD office in Shabin al-Kum, but they refused and told me I had to go to the same office that issued the original birth certificate, in Cairo. When I went to that office, in Zaitun, an official told me the only way I could get any documents was to go to Al-Azhar mosque and get a certificate of conversion to Islam.⁸⁶

⁸³ HRW/EIPR interview by phone with Hani Fawzi, October 21, 2006.

⁸⁴ Complaint from Sarah Mahir Nasif to the National Democratic Party, September 2006. Copy on file with HRW/EIPR.

⁸⁵ HRW/EIPR phone interview with Sarah Nasif's aunt, Wafa' Hindi Halim, September 24, 2007.

⁸⁶ HRW/EIPR interview with Husain Husni, Cairo, September 17, 2006.

In February 2006, when the school announced grades for the fall semester, Husain's grades were blocked because of his failure to provide an ID card to the institute's administration. The same thing happened with his grades for the spring semester.

I went to the student affairs office at the institute and explained the whole situation. They told me this was my problem to solve with the Civil Status Department and there was nothing they could do.⁸⁷

Husain never knew whether or not he passed his first year exams at the university. In September 2006 he went to the institute on the first day of classes, only to learn that he had been suspended. They told him that he could not start his second year of university without an ID card.

Losing hope in being reinstated by the social service institute, Husain decided to enroll in the Film Institute in Cairo. "They didn't even let me take the admission test without an ID," he told HRW/EIPR.⁸⁸

Academic institutions, as well as public and private employers, are legally prohibited from hiring or admitting anyone without an ID card. Article 56 of Law 43/1994 on Civil Status reads: "No one without usable, valid identification cards may be admitted, hired, or employed as a civil servant, employee, worker, or student." And Article 70 of the same law punishes any official who violates this requirement with imprisonment for up to three months or a fine between 200-500 Egyptian pounds (US \$35-88).⁸⁹

This regulation forces some Baha'i parents to send their sons and daughters to expensive private universities, which allow more latitude when it comes to official documents required for admission. These more fortunate students are only able to defer the problem for a few years. They cannot graduate without an identification card.

⁸⁷ HRW/EIPR interview with Husain Husni, Cairo, September 17, 2006. In February 2007, the EIPR filed a lawsuit on behalf of Husni before the First Circuit of the Court of Administrative Justice against the Interior Ministry's refusal to provide him with a nation identification card with a dash inserted in the religious affiliation line. The case was still pending before the court at the time of writing.

⁸⁸ HRW/EIPR interview with Husain Husni, Cairo, September 17, 2006.

⁸⁹ Law 43/1994, article 70.

Through these actions, Egypt is violating the right of everyone to education as provided under the ICESCR.⁹⁰

Male students face an additional problem. When they reach the age of 18, the law requires them to either perform their mandatory military service for one to three years or obtain a "red card," which defers their military service until they finish their university education. The Defense Ministry refuses to deal with applicants who do not have an ID card. The parent of one student said:

[My son] now has finished his American high school diploma, and we sent him to a local private university. They accepted him on the understanding that he would provide his ID soon. But at age 18, he has to register with the military to get the red card for his student file. He won't be able to graduate without it.⁹¹

The parent said his son bears the psychological burden of being under the constant threat of expulsion from university.

He is not happy. There is lots of pressure on me to resolve this. He doesn't want to leave the Baha'i community. I asked him to write what he wants for "religion" [in his ID card application]. We don't force our kids to be Baha'i. He had to write it himself. He chose to write Baha'i.⁹²

Wafa' Hindi Halim managed to send her son to a private university.

My son is now 19 years old. His university expects us to get his military service deferment papers now, but we can't get it without an ID. We tried to get him a passport, but they can't issue it without the military service papers, because students aren't allowed to leave the country while on reserve. So now he has no ID, no passport, no military service card, nothing.⁹³

⁹⁰ ICESCR, article 13. See also the Convention on the Rights of the Child, article 28.

⁹¹ HRW/EIPR interview, name withheld, Cairo, November 11, 2005.

⁹² HRW/EIPR interview, name withheld, Cairo, November, 2005.

⁹³ HRW/EIPR phone interview with Wafaa Hindi Halim, October 18, 2006.

“My son is now 18.” another parent said. “He doesn’t have an ID though he tried to get one. If the military discovers he doesn’t have one, they will treat him as a draft dodger.”⁹⁴

The lack of a military service deferment card could obstruct a Baha’i student’s education even if he has an ID card. Nayir Nabil `Ali is a 21-year-old senior in the physical education college of the public Suez Canal University. In the summer of 2005, the university administration informed Nayir that he would not be able to start his last year without a “red card.” When Nayir went to the local military service office, officials there told him that the Defense Ministry had a new rule: anyone born during or after 1985 had to produce the computerized national ID card for his application to be processed. They refused to accept Nayir’s paper ID card, since he was born in 1985.

I tried to obtain the national ID card. In the application, I wrote that my religion was Baha’i. The officer refused to accept the application and asked me to present my birth certificate. I showed it to him. It stated that I was Baha’i and so were my parents. He still refused to accept the application and asked me to apply in Cairo. When I went to Cairo, I met an officer called Wa’il who opened a drawer in his desk and pulled out a big pile of documents and said, “You see, all these applications are from Baha’is who want IDs. You will never ever get them.”⁹⁵

Nayir’s university wrote to the military service office to seek instruction. On September 3, 2005, the chief of the military liaison office at the university wrote to Nayir’s college administration: “We wish to inform you that religion is not relevant for conscription and that only the nationality of the student matters.”⁹⁶ The letter stated that Nayir’s birth certificate should be sufficient for the purpose of the military service deferment.

But when Nayir went with his birth certificate to get his “red card” on September 11, 2005, the officials still refused to process his application when they saw “Baha’i” on his birth certificate. On February 15, 2006, three weeks into his last semester before

⁹⁴ HRW/EIPR interview, name withheld, Cairo, November 9, 2005.

⁹⁵ HRHW/EIPR interview with Nayir Nabil, Cairo, June 27, 2006.

⁹⁶ Letter signed by Lieutenant Ahma Hanna d Hilmi al-`Adawi, 3 September, 2005. Copy on file with HRW/EIPR.

graduation, Nayir received a letter informing him that the “faculty board meeting number 131, held on February 12, 2006” had decided to suspend him due to his “failure to clarify his military service situation.”⁹⁷

Now I’m not even allowed access to the university campus. The guards were ordered to deny me access. I had checked out a book from the university’s library that was due, and I tried to go to return it. The guards had to call their boss. He allowed me to go to the library with a university security guard, who then escorted me back to the gates like I was some criminal.⁹⁸

In the summer of 2006, the EIPR filed a lawsuit on behalf of Nayir before the Court of Administrative Justice, in Cairo, against the ministers of Defense and Higher Education and the president of the Suez Canal University, seeking that the university reinstate him and allow him to take his final exams for graduation.⁹⁹ “I sent several complaints to President Mubarak, the Defense Minister and several other officials, but received no replies from anyone,” he told HRW/EIPR.¹⁰⁰ On May 29, 2007, the court granted an urgent motion filed by EIPR’s lawyers ordering the university to reinstate him and allow him to take his final exam notwithstanding the final outcome of the lawsuit.¹⁰¹ The decision, which barely made any reference to Nayir’s religious beliefs, constituted a significant positive development in ensuring young Baha’i Egyptians their right to education, even if their faith was not recognized by the state. Instead of using this court decision as an opportunity to remedy the injustice inflicted upon Nayir, the ministries of defense and higher education decided on July 2, 2007, to appeal the decision before the Supreme Administrative Court. While the appeal is pending before the court, Nayir is unable to find employment without a university degree.

The law prohibiting employment of anyone without a valid ID document has affected many young Baha’is. One is Samih Nabil Habib, born in 1982. His birth certificate

⁹⁷ Letter from Professor Yasin Kamil Habib, Deputy Dean of Physical Education Faculty, Suez Canal University. Copy on file with HRW/EIPR.

⁹⁸ HRHW/EIPR interview with Nayir Nabil, Cairo, June 27, 2006.

⁹⁹ Case number 37774/60. The first hearing was held on September 23, 2006.

¹⁰⁰ HRHW/EIPR interview with Nayir Nabil, Cairo, June 27, 2006.

¹⁰¹ Decision on urgent motion of Case number 37774/60, issued on May 29, 2007. Copy on file with HRW/EIPR.

indicates that he and his parents adhere to the Baha'i faith. Since 2000, he has been unable to acquire a computerized birth certificate without converting to Islam or Christianity. After obtaining a technical school diploma in 2004, Samih could not find employment because his paper ID card was worn out and he was unable to get the new computerized ID. He attempted to obtain a passport to use as an identification document in work interviews, but officials told him that he had to produce an ID card in order to get a passport. "Now he has no ID, no passport, no birth certificate," Samih's father said. "He says he will go to prison, but he will not give up his religion."¹⁰²

In late 2005, Samih was finally able to find a job at a small hotel in Alexandria. His father said the wage was low and the conditions were poor, but the employer was willing to take the risk of hiring him without an ID.¹⁰³ Several months later, Samih was fired and once again unemployed after tourist police launched a routine inspection of the hotel staff's papers.¹⁰⁴

Samih's case is not unique. Basim Wajdi, 23, was appointed as a lecturer in physics at the German University in Cairo (GUC) on July 16, 2006. After starting his new job, the human resources department of the university asked him to open a bank account at a certain large private bank in Egypt where they would transfer his salary every month. Like most banks in Egypt, the bank refused to accept Basim's paper ID card and asked for the computerized national ID card. Basim explained the situation to the finance department of the GUC and asked them to pay him by check. On September 25, 2006, an email from the human resources department director informed him that his employment with the university had been terminated on the grounds that his "legal documents are incomplete."¹⁰⁵

¹⁰² HRHW/EIPR interview with Nabil Habib, Alexandria, November 14, 2005.

¹⁰³ HRHW/EIPR interview with Nabil Habib, Alexandria, November 14, 2005.

¹⁰⁴ HRW/EIPR phone interview with Nabil Habib, October 14, 2006.

¹⁰⁵ Written statement by Basim Wajdi to the EIPR, October 15, 2006. Copies of letters of appointment and termination on file with HRW/EIPR.

Basim met with the human resources director and argued that his paper ID was still valid and that there were no legal grounds for terminating his employment solely on the basis that he did not have a computerized ID card.¹⁰⁶

At this point [the human resources director] made it clear that this decision comes from "a higher authority." When I asked who, she said she didn't know but it could be national security and other higher authorities. She further stated that the university's position is sensitive and therefore they are unable to contest the decision. She also assured me that this decision is not GUC's, and that it was the higher authorities who did not approve my employment.¹⁰⁷

In addition to discrimination in education and employment, the inability to obtain official identification documents renders young Baha'i individuals vulnerable to arrest on criminal charges. Article 48 of Law 43/1994 on Civil Status obliges each citizen to apply for an ID card within six months of reaching the age of 16. Article 68 of the same law stipulates a punishment of up to six months in prison or a fine between 100-500 Egyptian pounds (US\$18 – 88) for the violation of Article 48. Failure to produce a valid national ID card "to representatives of public authorities immediately whenever requested" is punishable with a fine of between 100-200 Egyptian pounds (US\$18-35).¹⁰⁸

Many banks and official bureaus now refuse to accept paper ID cards in any dealings and transactions. Basma Musa's driver's license expired in June 2006. When she went to the Interior Ministry's Traffic Police to renew it, they told her she had to acquire a new national ID card first.

I told them my paper card has always been sufficient, but they said these were the new regulations. I met with a senior official and explained to him the difficulty Baha'is have in obtaining national IDs.

¹⁰⁶ Article 50 of Law 43/1994 on Civil Status states that it is "impermissible for governmental or non-governmental authorities to refrain from accepting identification cards" as long as the cards were "usable and valid." Unlike other provisions, however, the law does not stipulate any penalty for the violation of this article.

¹⁰⁷ Written statement by Basim Wajdi to the EIPR, October 15, 2006.

¹⁰⁸ Articles 50 (2) and 68 (2) of the Civil Status Law.

Eventually they agreed to renew my license but only for one month, with a note saying, “one month for the national number.”¹⁰⁹

It is also impossible to collect a pension without an ID. Qudsiyya Husain Ruhi was 75 years old when she spoke with HRW/EIPR in late 2005. For three years she had been struggling to have access to her deceased husband’s pension, to which she is entitled under law. She tried to acquire an ID with “Baha’i” or a dash inserted for religion, but the CSD told her she had to convert to Islam first.

My husband died in 2003. He worked for Al-`Amiriyya Oil Company. To pick up my pension from the bank or the post office, I need an ID card. I’m supposed to get 70 percent of my husband’s salary, but I’ve gotten nothing since he died. I have to rely on my kids to help me because I have no other income. Everyone should be free. The state should not be responsible for anyone’s religion.¹¹⁰

Nabil Habib, a 67-year-old retired physical education teacher, relies on his pension to support his family. Habib cried as he described how he lived under constant threat that his pension will stop once his paper ID card is declared no longer valid.

Both of my parents were Baha’i. I applied for a family ID in 2001 but they refused to give me one. Then I applied for the national ID card in 2005, and again they refused. Every official I went to said, “You’re a Baha’i, we can’t deal with you. We’re just applying the law.”¹¹¹

Most Baha’i Egyptians must endure the uncertainty of what will happen to them when paper ID cards are finally no longer valid at all – perhaps as soon as early 2008. A few Baha’i s were able to secure computerized national number cards with the word “other” inserted for religion when the system was first introduced. Even this lucky minority is under pressure to hand these cards back. One said that, after receiving such an ID card in September 2000, “I learned later that the person who issued it for me had a problem and was interrogated by SSI,” referring to the State

¹⁰⁹ HRW/EIPR with Basma Musa, Cairo, September 18, 2006. Copy of driver’s license on file with HRW/EIPR.

¹¹⁰ HRW/EIPR interview with Qudsiyya Husain Ruhi, Alexandria, November 14, 2005.

¹¹¹ HRW/EIPR interview with Nabil Habib, Alexandria, November 14, 2005.

Security Investigations arm of the Interior Ministry.¹¹² Throughout 2006, the CSD local office that issued the ID has been pleading with this person to return this ID card.¹¹³

Perhaps the most absurd case of discrimination against Baha'i Egyptians remains that of the late Salwa Iskandar Hanna. Ever since she died in October 2005, the government has been insisting that Salwa posthumously convert to a "recognized" religion in order for her relatives to get a certificate proving her death. "My sister died on October 4, 2005. We obtained a permission to bury her, but we can't get a death certificate," said Labib Iskandar Hanna.

We tried, but were told we had to choose Muslim, Christian or Jew. Her son Ra'uf and I went to the local health department where we got the burial permit. They told us to come back the next day. The next day we saw [the head of the department] who told us, "according to the law, we can't issue a death certificate because she is Baha'i." We had no option to leave it blank or write "other."¹¹⁴

After the government established the National Council for Human Rights (NCHR) by presidential decree in 2004, a delegation of Baha'i Egyptians approached its leadership and described the problems they were facing in obtaining official documents. In April 2005, the NCHR informed the Baha'i delegation of an agreement it had reached with the Interior Ministry by which Baha'is would be able to obtain passports but not other forms of identification.¹¹⁵ An NCHR official told Human Rights Watch,

We asked them, why do you need IDs? Use passports, which have no religion line. We proposed to help them get passports. Some agreed, but others insisted on IDs. Unfortunately 75 percent of them refused.¹¹⁶

¹¹² HRW/EIPR interview, name and location withheld, November 14, 2005.

¹¹³ HRW/EIPR phone interview, name withheld, October 20, 2006.

¹¹⁴ HRW/EIPR interview with Labib Iskandar Hanna, Cairo, November 9, 2005. Copy of Salwa Iskandar Hanna's burial permit on file with HRW/EIPR.

¹¹⁵ National Council for Human Rights, Second Annual Report (2005-6), February 2006, p. 156.

¹¹⁶ Human Rights Watch interview with Ambassador Mukhlis Qutb, NCHR Secretary General, Cairo, November 8, 2005.

Baha'i Egyptians had their reasons to refuse the offer. They said that their problems with official documents go far beyond obtaining passports, which would not resolve issues such as children's birth registration, immunizations, school enrollment, or military service. Labib Iskandar Hanna said,

The NCHR told us to use passports for IDs and leave the religion line blank in the passport application. We said, "It doesn't work. We need birth certificates. We need death certificates. And passports expire every six years and cost 65 Egyptian pounds each time. Birth certificates cost only five pounds and only one time."¹¹⁷

Such an arrangement would have also violated Baha'i Egyptians' constitutional right to equality and non-discrimination. Furthermore, the offer sent Baha'i Egyptians a dangerous message: the only identification document that the government is willing to offer Baha'is is the one that would make it easier for them to leave the country.

More importantly, Hanna said, Baha'i Egyptians were concerned that the offer was an attempt by the government to erase any trace of Baha'is from official records.

Without national ID cards issued to Baha'is, suddenly, *voilà*, there are no Baha'is in Egypt.¹¹⁸

¹¹⁷ HRW/EIPR interview with Labib Iskandar Hanna , Cairo November 9, 2005.

¹¹⁸ Ibid.

V. Conversion and Freedom of Religion

Egyptian Muslims who wish to convert to Christianity face a serious dilemma. The state does not recognize conversions from Islam and refuses to allow citizens legally to change their religious affiliation, or to change a Muslim name to a Christian name on national identification documents. Among other things, this means that converts face significant hardships in areas of family law governed by religion, such as marriage, divorce, and inheritance. They are also unable to legally raise their children in the faith that they now proclaim. Some obtain fraudulent documents recognizing their new faith, but this places them at risk of criminal prosecution and imprisonment on charges of forgery and falsifying documents.¹¹⁹

Neither the constitution nor Egyptian law addresses the question of conversion explicitly. Internal regulations of the Ministry of Justice specify procedures that the Ministry's Public Notary Authority (*maslahat al-shahr al-aqqari*) should follow to register and validate (*tawthik*) conversions to Islam. According to Law 68 of 1947, public notary offices must validate all documents for Egyptian nationals.¹²⁰ Law 70/1964 on Registration and Validation Fees exempts certificates validating conversion to Islam from any fees, a clear indication of official encouragement of this type of conversion over all others.¹²¹

The Regulations of the Public Notary and Validation Authority include a chapter entitled "Validating Declarations of Islam," which includes detailed procedures to be followed in order to make official an individual's conversion to Islam.¹²² Potential converts must be over 16 years old and must file a request at the local offices of the Security Directorate of the Interior Ministry. The police, in turn, set up a meeting between the potential convert and a representative of that person's present religious denomination to advise the potential convert against leaving his or her present faith. The prospective convert then has the right to withdraw the request "if he accepts the

¹¹⁹ Article 72 of the Civil Status Law stipulates a punishment of 5 to 15 years in prison for falsifying identification documents issued by the Civil Status Department.

¹²⁰ Law 68/1947 on Notarization, Official Gazette, issue no. 58, July 3, 1947.

¹²¹ Law 70/1964 on Notarization and Registration Fees, Official Gazette, issue no. 67, march 22, 1964 article 34.

¹²² Ministry of Justice, Regulations of the Public Notary and Validation Authority, 3rd edition, 2001, pp. 333-336.

advice of his co-religionists.” Otherwise the convert receives a clearance to validate his conversion to Islam at the local notary office.¹²³

The authorities, however, do not always follow these procedures, with the result that conversion to Islam is even more straightforward than the regulations suggest. Mira Makram Gubran, 30, told HRW/EIPR that when she converted to Islam in 1994, she did not have to submit a request to police headquarters or meet with a representative of the Coptic Church. “The proceedings one is supposed to go through before announcing one is Muslim – none of that happened,” she said.¹²⁴ Nevertheless, she was able to validate her conversion at the Notary office and obtain an identity card from the CSD recognizing her adoption of Islam.

Converts to Islam also rarely experience difficulty acquiring identity cards that recognize their conversions. However, in the wake of widespread Coptic demonstrations in December 2004 protesting the alleged forced conversion to Islam of the wife of a Coptic priest, there have been reports that the State Security Intelligence bureau of the Ministry of Interior has instructed Al-Azhar, the religious authority that gives the initial approval of conversion to Islam, as well as the ministry’s local Security Directorates, to make it more difficult to convert to Islam in order to avoid contributing to sectarian unrest.¹²⁵

HRW /EIPR are aware of four cases in which the CSD rejected requests by Christians wishing to convert to Islam to amend information on their national ID cards to reflect their Muslim identities. Those individuals have appealed the CSD decisions to the Cairo Court of Administrative Justice, and the court has found in favor of the plaintiffs in all four cases.¹²⁶ In all of these decisions, the court found that restricting the plaintiffs’ right to convert to Islam violated Civil Status Law 143 of 1994 and Article 46 of the Constitution, which guarantees freedom of belief. The court also stated that security concerns should not constitute a factor in denying citizens their legal rights.

¹²³ In January 2006 the Court of Administrative Justice decided that the requirement to validate conversion to Islam as a prerequisite for the finalization of conversion procedures is an impermissible restriction of freedom of religion. See *Rosa al-Yousef*, January 26, 2006, p. 1.

¹²⁴ HRW/EIPR interview with Mira Makram Gubran, Cairo, November 12, 2005.

¹²⁵ HRW/EIPR interviews with lawyers `Isam Sultan (Cairo, November 12, 2005) and Ahmad `Abd al-Mo`iz (Cairo, November 8, 2005). Sultan said that in the case of his client, the Al-Azhar authorities refused to give her the required certificate of conversion, apparently at the behest of the Ministry of Interior. See also “Secret Instructions Preventing Christians from Converting to Islam,” *Sawt al-Umma* weekly, March 21, 2005.

¹²⁶ Cases no. 35721/59, 31890/59, 31895/59 and 41841/60.

In this respect, these rulings were consistent with Egypt's obligations under international law.

Law 143/1994 governing civil status allows an individual to amend or correct information contained on his or her identification documents, including religion, on "demonstration of proof from appropriate authorities."¹²⁷ However, in the absence of any state law or decree recognizing and protecting the right to convert from one religion to another, the Egyptian government claims that it follows Shari`a on such matters. Egypt's Civil Code governs issues of conversion, and Article 1 stipulates that in matters not covered by the code and where there is no legitimate customary administrative practice, judges should apply the principles of Shari`a.¹²⁸

Egyptians who are born Muslim and wish to convert to Christianity (or any other religion) thus confront the likelihood that they and their immediate families will face official as well as social discrimination, including the automatic nullification of marriage between the convert and his or her Muslim spouse and forced separation from children, who are compelled to reside with the Muslim spouse or a close Muslim relative.¹²⁹

Converts also risk imprisonment. The government has used Article 98(f) of the Penal Code to criminalize actions or other expressions of unorthodox religious views, including conversion from Islam. The article prescribes, among other things, "disparaging or contempt of any divinely-revealed religion or its adherents, or prejudicing national unity or social harmony."¹³⁰ As the testimonies in this report indicate, officials have interpreted this article to proscribe conversion from Islam on the grounds that such conversion disparages Islam and is thus incompatible with public order.

In addition to these restrictive laws and policies, societal attitudes towards religious conversion, by both Muslim and Christian communities, remain highly negative and hostile. The last few years have witnessed an increase in sectarian tensions in

¹²⁷ Article 47.

¹²⁸ On the few issues not already codified, Shari`a principles would apply to non-Muslims as well, although on family law matters Christians and Jews would come under the jurisdiction of their respective family courts.

¹²⁹ See for example Cassation Court ruling in Case no. 1359/28 on November 27, 1984, in which the Court found that "the contract signed by the female apostate and her non-Muslim husband...is considered null and void".

¹³⁰ Article 98(f) specifies penalties of up to five years in prison or a fine of up to LE 1,000.

Egyptian society, and one of the manifestations of this sectarianism is the extreme politicization of the issue of conversion. Conversions have often led to Muslim-Christian violence, especially when they have been accompanied by rumors of forced abduction of young women by men of the other religious communities or proselytizing by enthusiasts of the other faith.

For these reasons, few if any born Muslims have initiated the formal steps necessary to change their religion. One lawyer who represents a Coptic cathedral in dealings with the government told Human Rights Watch that

Muslims wanting to be Christians can go to prison. The only thing we can do is send them abroad, but this is very difficult after 9/11.... [They] live as Muslims or they emigrate. Otherwise their lives are at risk. They don't even think of applying for IDs.¹³¹

Majdi Morcos, an Egyptian lawyer who represents persons trying to convert back to Christianity from Islam, said that he has “heard of many cases” of born Muslims converting to Christianity and “sat with them,” but has not represented any in court or administrative hearings because “the state does not allow such conversion.”¹³²

Mamduh Nakhla, a lawyer who represents Egyptian Christians whom the state has wrongly classified as Muslims, told HRW/EIPR, “Since 1983, when I began to practice law, there has not been a single case of a Muslim officially converting to Christianity. They are unable to change their religious affiliation on their identification documents or get court rulings recognizing their conversion.”¹³³ One aspect of the problem, Nakhla said, is that the law requires the “competent body” – the health department for births, Al-Azhar for conversions to Islam – to authorize the changes on ID documents, but there is no equivalent authorizing office for Egyptians wishing to convert to Christianity. The idea that the Ministry of Interior might approve of conversions of born Muslims to Christianity is, Nakhla said, practically unthinkable.¹³⁴

¹³¹ HRW/EIPR interview, name withheld on request, Cairo, November 8, 2005.

¹³² HRW/EIPR interview with Majdi Morcos, Cairo, November 7, 2005.

¹³³ HRW/EIPR interview with Mamduh Nakhla, Cairo, November 7, 2005.

¹³⁴ In August 2007, lawyer Mamduh Nakhla filed an unprecedented lawsuit on behalf of a Muslim couple who converted to Christianity requesting that their new faith be recognized in their official documents. The case has not been heard by the

The Egyptian state's refusal to recognize conversions to Christianity is profoundly discriminatory, in addition to effectively denying persons who convert or wish to convert their right to practice their religion of choice. By contrast, Christians who wish to convert to Islam have, at least until recently, faced no problems whatsoever. Ghada, 26, who preferred not to give her full name, converted to Islam in 1996 and three years later tried to convert back to Christianity. "When I converted to Islam," she said, "my papers were changed in the blink of an eye. Three years later, I went back to the Church, got a certificate of re-conversion, and went to change my [identification] documents, but in the eyes of the state, I remain a Muslim."¹³⁵ A lawyer familiar with conversion cases agreed that converting to Islam, unlike Christianity, generally occurs without difficulty. "Converts to Islam get a new birth certificate quickly and free of charge," he said. "It's the only free document in the entire Civil Status Department."¹³⁶

Mustafa al-Sharqawi grew up Muslim in Port Sa'id and converted to Christianity in the 1980s. He left Egypt in 1998, ten years after he was baptized, and now lives abroad. He told Human Rights Watch that State Security Investigation (SSI) officers detained him and two other converts for almost ten months, from September 1990 until July 1991, for possible violation of Penal Code Article 98(f). "My story had started to be well known," he said. "By converting, I was denying Islam, insulting Islam. I was promoting corrupt ideas. I lived many years thinking I was the only convert. When I discovered there were others, we got together as a group."¹³⁷

Al-Sharqawi said that security agents subjected him to torture and ill-treatment during the first several weeks of his detention at SSI headquarters in Lazoghli in 1990.

I was beaten. They gave me electric shock three times, and hung me by my hands for five days and four nights. I was blindfolded for two weeks and handcuffed naked. What did they ask me about? Everything. My life story in full, seven times over. It was a mind battle.

Court of Administrative Justice as of this writing. See Nashwa Abdel-Tawwab, "Whosoever will, let him disbelieve," *Al-Ahram Weekly*, August 9-15, 2007, available at <http://weekly.ahram.org.eg/2007/857/eg9.htm>.

¹³⁵ HRW/WIPR interview with Ghada, Cairo, November 12, 2005.

¹³⁶ HRW/EIPR interview, name withheld on request, Cairo, November 8, 2005.

¹³⁷ Human Rights Watch interview with Mustafa Sharqawi, London, November 3, 2005. See also Human Rights Watch *World Report 1992*, p. 642. The others detained with al-Sharqawi were Muhammad Sallam and Hassan Muhammad.

The state never charged al-Sharqawi with a crime, but neither did it close the investigation. "After my release I was called in seven or eight times for 'conversations,'" he said. "They would call my jobs and get me fired."

Al-Sharqawi told Human Rights Watch that he never tried to change his religion on his national ID card.

I had a paper ID, "Muslim" written in the religion slot. They might have changed mine if I'd tried, but not my kids. They say that according to Shari`a, children must follow the "best religion": Islam. I could try to change my name, but I can't change my father's name [Muhammad]. My son Fadi was born in 1992, but he has to carry my [Muslim] name. His son will carry Fadi, which can be Christian or Muslim. So it takes time. But Fadi Mustafa Muhammad cannot stand up in school and say, "I am not a Muslim." In 1997 we named our second son Rafik, like Fadi, it works as a Christian or Muslim name.

The problem came when we enrolled Fadi in school in 1997. I left the space [for religion] empty. No one noticed; it's a very long and complicated form. But you know kids; they ask each other, and religion is a big thing in our lives. This was a Christian school. He replies that he is Christian, but he understands when we visit our families we deal as Muslims. School is the challenge in Egypt. Your religion determines the curriculum. International schools, where it doesn't matter, are very expensive.¹³⁸

When al-Sharqawi tried to leave Egypt in 1997, he said, security officials confiscated his passport. Eventually he, his wife, who is also a convert, and two young sons were able to leave in 1998. When asked how he was able to leave despite having his passport confiscated, al-Sharqawi said, "God gave me a good one. I don't know how."

Samuel (not his real name), 31, is another convert to Christianity whom State Security agents detained arbitrarily in the 1990s. A former law student, he told

¹³⁸ Article 19 of Egypt's Constitution stipulates that "Religious education shall be a principal subject in the curricula of general education."

Human Rights Watch that on the basis of the freedom of belief provisions in Egypt's constitution, he expected converting would not be difficult. "I expected trouble from the fundamentalists, but not from the government," he said.¹³⁹ Samuel converted in 1994, and commuted between his family's home in Tanta, where he was a law student, and Cairo, where he attended an evangelical Christian church. The SSI arrested him in Tanta on July 7, 1995. "Word got around; it's a small city," he said. "Conversion was seen as possibly sparking sectarian violence." Samuel said that State Security tortured him several times a day and tried to recruit him to report on other converts. When they released him, he told his family that they had arrested him because he was working for an Islamist party.

In November 1997 Samuel married a woman who was also a convert, using their Muslim names. With the birth of their first child, in September 1998, he said,

I started to feel the need to change my ID. I discussed it with a lawyer. This double life was too much. I started this journey [to change my papers] in late 2000 – but not officially. The priest introduced me and other converts to government employees as people who lost their birth certificates and other papers, in return for bribes. These were civil service employees, Muslim and Christian, who had access to computer entries. Then we went with our [new] birth certificates that said we were Christians and got IDs that said we were single Christians, even though [my wife] was pregnant. The ID change process is long and expensive. The main advantage is for the children. I still face risk of arrest and three years in prison, but I have all my documents except military service.¹⁴⁰

Samuel said that he uses two sets of identification papers, one with his Muslim name and identity and the other with his Christian name and identity.

Egyptians held in custody more recently following their conversion to Christianity also told Human Rights Watch that security officials had subjected them to torture. One 30-year-old man said that police identified him after interrogating persons

¹³⁹ HRW/EIPR interview, real name withheld on request, Cairo, November 10, 2005.

¹⁴⁰ Military service is mandatory for all male adults with few exceptions. Adult Egyptian men must possess a certificate proving that they have served, or have been exempted from, their military duty.

arrested in Alexandria in October 2003 when the authorities broke up a group of some 32 converts and suspects involved in providing false identification documents to converts:

[Those arrested] knew me. They were pressured, tortured, to inform on me. These were converts, and they were put on trial. I was arrested later, on my own. Those people, someone from the church stood with them, so the case was dropped. No one stood with me.¹⁴¹

The Civil Status Intelligence Unit, a law enforcement arm of the CSD, he said, arrested him on December 20, 2003. “They arrested the government employee who did it [provided a new ID card] for me,” he told Human Rights Watch. “They found out about me from his confession.” Initially, they held him at the Shubra police station where, he said, “They tortured me to the maximum, trying to convert me back. The first three days, they would not let me sleep. I was made to stand for seven days. My feet were swollen and bleeding. They brought in a Muslim Brotherhood lawyer to talk to me.” The torture stopped after the authorities transferred him to the State Security Intelligence bureau. He said they released him on bail after 50 days, and then he fled in October 2004. A court convicted him of forgery in absentia and sentenced him to fifteen years in prison.

I can’t work. My wife and child have left [emigrated]. I can’t leave this apartment. I only go to church. [Names two other converts in the apartment building] visit me. I see [names two other converts in Alexandria]. I feel abandoned.

When asked what steps the authorities should take, he responded that they should “remove the convictions of persons who obtained documents illegally solely because of government restrictions on converting.”

Samia (not her real name), 31, a Muslim convert to Christianity, also faces forgery charges stemming from her efforts to secure a new national ID card reflecting her actual religious identity. Samia married Nabil (not his real name), 33, a Christian and

¹⁴¹ Human Rights Watch interview, Alexandria, November 14, 2005. Thirty-two individuals from Cairo and Alexandria were charged with forging documents in case number 2793/2003 before the Moski prosecution office in Cairo. Twenty-three were detained for investigations and eventually released without being indicted.

a classmate at `Ayn Shams University, in 1996. “I was raised among Christians,” Samia told Human Rights Watch.

Nabil was not a practicing Christian, but I found my interest in Christianity becoming strong. My family confiscated my passport after I told my older brother that I planned to go with Nabil to Cyprus to be baptized. They pressed me to get engaged to my cousin. My friends helped me [get away from my family], but my parents contacted the State Security.¹⁴²

The authorities apprehended Samia when she and Nabil tried to leave the country on December 22, 2002. Their names were still on the SSI list as a result of her parents’ initiative seven years earlier. The authorities initially brought heavy pressure to bear on the couple.

State Security tried to persuade us both to be Muslims. We were exhausted, more than 24 hours with no food. When they failed to convince us to become Muslims, they referred us to criminal investigation. From five in the morning until five at night, the State Security grilled us. They said that they would bring forgery charges against both of us.

“They tried to convince me to accuse him [Nabil] of seducing me,” Samia told Human Rights Watch.

[At another point] they told me Nabil would convert to Islam, why not me? I told them this [being Christian] was not about him. Besides forgery, they accused me of insulting Islam. They asked, “What is it about Islam that led you to become Christian?”

“From 5:30 in the evening until 1:30 in the morning, they wrote police report after police report, each one stronger than the last,” Nabil said.

¹⁴² HRW/EIPR interview with Samia and Nabil, Heliopolis, November 17, 2005.

The interrogation finally finished at 8 a.m., after 27 hours. At no point did we have a lawyer. We were afraid to ask for our rights. Then they transferred us to the Nozha police station, around 4 p.m. The prosecutor ordered us both held for 45 days for forging papers.

Samia and Nabil were held in separate places of detention for 11 months while investigations continued. “Finally, they said they’d release us because of the children,” Samia said. “Like, they finally discovered we had children! We were detained on December 22, 2002 and released on October 28, 2003.” The state has dropped forgery charges against Nabil, but they remain against Samia. “There have been no hearings, but the case is still open,” Nabil said. “We’re afraid to send a lawyer to ask what’s going on.”

Mamduh Nakhla, the lawyer who represented Nabil in the case, said that the authorities held Nabil’s and Samia’s marriage to be invalid (under prevailing interpretations of Islamic law, a Muslim woman cannot marry a non-Muslim man), but imposed no criminal penalty. He confirmed that the government has banned both from leaving Egypt. “There have been external pressures not to convict her, so the case remains in limbo,” he said.¹⁴³

Samir, a Christian, worked as a musician and met Nura, a Muslim (not their real names), at a party where he was playing in 1991. They told Human Rights Watch that at the time he was not particularly religious, but after they started seeing each other, they both grew increasingly interested in Christianity. “We went to churches, but they were scared and wanted nothing to do with us,” Samir said.¹⁴⁴ After several years, they said, they found a priest who talked them through conversion concerns. In 1998 Nura was baptized, and the priest married them. Nura had lived with her family up to this point, but they engaged her to someone else, triggering the couple’s decision to marry each other. Nura found a place to stay in `Abbud, a poor area in Cairo. “Both our families were well off, so this was a big change for us,” she said.

After Nura became pregnant, “I worked on getting her documents,” Samir said.

¹⁴³ HRW/EIPR interview with Mamduh Nakhla, Cairo, November 7, 2005.

¹⁴⁴ HRW/EIPR interview, names withheld on request, Alexandria, November 14, 2005.

I paid for a marriage contract. But then in a police station one time, someone warned me that we were wanted by State Security. I had gone to get her birth certificate and to register as her husband. Until now we are fugitives. She's wanted by her family, and now I am also. After our son was born, the police confiscated our IDs, but I managed to get away. This was just after our son was born; he's three now. He can't go to school; he's not registered. We have no money, no jobs. The priest who married us has passed away, so there is no proof even that we are married.

Mahmud (not his real name), 36, grew up “a normal, practicing Muslim” in a poor area near Cairo. He said that his interest in Christianity developed in his late teenage years. He became acquainted with other Christian converts, and he himself converted around ten years ago. He said his family does not know that he has converted. About six months ago, he married a woman who is also a Muslim convert to Christianity. They were married in a church, and she is now pregnant. “The identity card is my challenge,” he said.

My ID card says I am Muslim. One option is to get a forged ID, but it's not an option for me. The children are the key. We moved to Alexandria because it's a lot bigger; we can disappear. But this can't continue, for psychological as well as legal reasons. The children's birth certificates will say Muslim, but they are raised Christian. When they start school, then the problems really start. Religion class starts in the first grade.¹⁴⁵

Ahmad (not his real name), 37, is a friend of Mahmud. He told HRW/EIPR that he had been a *salafi*, but that he converted to Christianity in 1988, when he was about 18 years old.¹⁴⁶ “Because I wanted to convert, I was threatened with death,” he said. He left Isma`iliyya, his home town, that year.

But then there were quite a few problems with security, beginning in late 1990. We were a group of about fifteen [converts]. The trouble

¹⁴⁵ HRW/EIPR interview, name withheld on request, Cairo, November 10, 2005.

¹⁴⁶ *Salafi* refers to adherents of current revivalist movements dedicated to sweeping away the accretions of intervening centuries and supplanting them with what they consider to be the original faith and practices of the Prophet Muhammad and his contemporaries (*salaf*).

came when we started getting unity. Before it was just individual converts, and they left the country. But fifteen converts who wanted to stay and stay together, this was something new. State Security arrested three of our group for “defaming Islam.” Mustafa al-Sharqawi [see above] was one of them. They came to my home [in Isma`iliyya], but I wasn’t there. My brother came and told me I need to go to the State Security when I go to Cairo. Because I was in the army, they treated me better [than Mustafa al-Sharqawi]. I wore my uniform. I was called back seven times, and my file was moved to military intelligence.

My family: that’s the typical persecution of a convert. That’s why I left home. I was three years in the streets, [then] changed residences frequently. [Since 2002] State Security follows me, calls me in every week. Now it’s about once a month.

I know ID is a big issue. I am against doing anything illegal. It is against my faith. I have a totally legitimate complaint. A Christian who converts to Islam has to meet first with the pastor, but there are no obstacles; the government facilitates it. For us, though, it’s a big deal, to change an ID.¹⁴⁷

In Ahmad’s view, the problem is less with the government than with State Security, whom he characterized as “extremists [who] take it personally.”

[President] Mubarak is more flexible, but he is worried about facing down society, the army, intelligence services. Just apply the constitution to all is what we say, to Christian converts as well as Muslim converts.

It is difficult to know how many Egyptians are directly affected by official and societal discrimination, official harassment, and threats to their well-being because they have converted from Islam to Christianity. These unwanted consequences have forced an undetermined number to emigrate to other countries or to live anonymously and surreptitiously with ID cards and other documents obtained

¹⁴⁷ HRW/EIPR interview, name withheld on request, Cairo, November 10, 2005.

illegally, making them subject to criminal prosecution. One priest told Human Rights Watch that he had performed between 90 and 100 baptisms of converts each year for the past five years.¹⁴⁸ Another priest said he had baptized perhaps 800 persons over the past fifteen years.¹⁴⁹ One said that he knew of several priests who also baptized converts. HRW/EIPR were unable to confirm the figures they provided, but it is reasonable to assume that the total number is at least hundreds and perhaps thousands of persons.

The second priest told HRW/EIPR that following the arrests in Alexandria in October 2003 (see above), getting ID documents has become two-and-a-half times more expensive and that “the quality is down.”

¹⁴⁸ HRW/EIPR interview, name withheld on request, Cairo, November 15, 2005.

¹⁴⁹ HRW/EIPR interview, name withheld on request, Cairo, November 10, 2005.

VI. No Return: Official Obstacles to Re-converting to Christianity

There are hundreds of known cases of Coptic Egyptians who converted to Islam and subsequently decided to return to Christianity. The reasons why Christians convert to Islam are numerous, including marriage and divorce, and improved social and economic opportunities, as well as religious conviction. They typically face no difficulties converting to Islam and acquiring identity documents recognizing their conversions, but those who subsequently wish to return to Christianity meet with refusal and harassment from the Civil Status Department (CSD) of the Ministry of Interior.

At least 211 Egyptians wishing to reconvert to Christianity have appealed the CSD's decisions before the Cairo Court of Administrative Justice since 2004. The court, which before then had consistently found that re-conversion to Christianity is a form of apostasy that a Muslim state may not endorse, reversed its position in April 2004. Over the following two years, the court found for the plaintiffs in all of these cases. In April 2007, however, following the retirement of Judge Faruq `Abd al-Qadir as its head, the court reverted to its previous position of allowing freedom to change one's religion only in cases of conversion *to* Islam. Many similar cases are still pending before the court, and the Supreme Administrative Court is expected to hear the appeals of those who have lost their suits before the lower Court of Administrative Justice. Meanwhile, these individuals continue to be unable to lead normal lives without basic identification documents recognizing their true faith.

Unlike conversions to Islam, there are no written regulations at the Public Notary and Validation Authority setting out the procedures for conversion to Christianity. A circular of the Public Notary Office, issued in 1971, instructs employees that in cases where local security directorates inform them of "apostasy," local notary offices should note the person's return to their original faith on the same certificate that validated their conversion to Islam. Local offices may not validate certificates of re-conversion to Christianity because, "Apostasy from the Islamic religion is a matter that the esteemed Islamic Shari`a does not recognize."¹⁵⁰

¹⁵⁰ Circular no. 5 issued on June 10, 1971. HRW/EIPR were unable to verify the authenticity of this circular. HRW/EIPR addressed questions related to this issue to the Interior Minister and the President of the Civil Status Department in January 2006 but as of writing received no answer.

Civil Status Law 143/1994 states that amendments to or corrections of information pertaining to religion are entered “based on rulings or documents issued by competent authority.”¹⁵¹ HRW/EIPR have documented the cases of 167 individuals in which the CSD has refused to acknowledge re-conversions to Christianity, despite the fact that the applicants presented official documents from the Coptic Orthodox Patriarchy sanctioning their return to the Church, which should, in theory, be considered the “competent body” for the purposes of the Civil Status Law.

The CSD’s refusal to grant national ID cards recognizing the Christian identities of persons who re-convert from Islam forces these individuals to live with a dual identity – Christian in their faith, but Muslim in the eyes of the state and much of society. “I don’t know how to live with this split identity,” Ghada told HRW/EIPR.¹⁵² They have difficulty marrying because potential Christian partners fear they risk excommunication from the church for having married Muslims, that they will be subjected to Muslim personal status laws, and that their children will automatically be classified as Muslim.

Theresa Husni Mahir, 29, who reverted to Christianity in 1998 after her divorce (she had converted to Islam at the time of her marriage to a Muslim man), explained the difficulties she faced as a result of the refusal of CSD officials to issue her an ID recognizing her return to Christianity. “Since 1998, I can’t travel, I can’t work,” she said. Mahir wants to remarry, but worries about the consequences. “I got permission to marry in the Church, but to register my marriage, I need an ID.”¹⁵³ An unregistered marriage poses a severe problem because the state considers any children the couple might have to be illegitimate, with the result that they lose inheritance rights and face social ostracism.

One 32-year-old Egyptian, who asked to remain anonymous, told HRW/EIPR that he converted to Islam as a result of a deal with Islamists in prison after he was convicted for allegedly supplying arms to Christians during sectarian unrest in the Cairo neighborhood of Imbaba in the early 1990s. The Islamist prisoners promised him that upon his conversion to Islam they would testify in his favor, thereby shortening his sentence. Upon his release, Islamists took him to Al-Azhar to declare

¹⁵¹ Article 47.

¹⁵² HRW/EIPR interview with Ghada, last name withheld on request, Cairo, November 12, 2005.

¹⁵³ HRW/EIPR interview with Theresa Husni Mahir, Cairo, November 12, 2005.

his conversion. He subsequently did his obligatory military service, where he had acted like a pious Muslim, performing the rituals of the religion.

He reverted back to Christianity in 1999 and obtained an official document to that effect from the Patriarchy in 2004. The CSD denied his request for an ID listing him as Christian. This prompted him to attempt to falsify his paper ID to read Christian; but the forgery was transparent, making him vulnerable to arrest for document forgery. As a result, he said, if he wants to marry in the Church:

Problems would come with children. If my brothers and sisters want to marry and ask me to be their representative I can't use my ID. I can't be a partner in business transactions.... By remaining Muslim, I hurt my family; my sister can't marry.¹⁵⁴

Not having one's true religious identity reflected in official documents can have other consequences. Mira Makram Gubran converted to Islam, along with her ex-husband, in 1994, and they subsequently reconverted to Christianity with the permission of the Coptic Orthodox Patriarchy. In 2002, her husband again converted to Islam and listed her as a Muslim on his family ID. After marital problems developed, he filed a complaint against her, claiming that she had forged her ID identifying her as Christian.

The police intelligence unit of the CSD then subpoenaed her and confiscated that ID. She told HRW/EIPR that the officer in charge refused to issue her a new ID unless she accepted being identified as Muslim. "He said, 'By the time you finish your coffee, your Muslim ID will be ready, and your Christian ID will be buried.'"¹⁵⁵ She told HRW/EIPR that in the CSD computers she is identified as Christian, but that her file reads "frozen for security reasons," and any official calling it up would automatically send her back to that same officer.

¹⁵⁴ HRW/EIPR interview, name withheld on request, Cairo, November 11, 2005. Christian men would normally refuse to marry a woman with Muslim siblings for fear that the Muslim family members will enjoy preferential treatment in possible family law disputes.

¹⁵⁵ HRW/EIPR interview with Mira Makram Gubran, Cairo, November 12, 2005.

"Without my ID, I lost custody of my son, lost my alimony, and lost my flat," she said. "The officer offered money, custody of my son, and marriage on condition that I get a Muslim ID."

Gubran filed a lawsuit before the Court of Administrative Justice in March 2004 against Interior Minister Habib al-`Adli and `Isam al-Din Bahgat, then president of the CSD. On April 13, 2004, she won a favorable ruling and subsequently received her national ID card listing her as Christian, although at the time she spoke with HRW/EIPR her son remained with her former husband in Canada.

Golsen Sobhi Kamil, 33, also confronted official obstruction when she attempted to amend information on her national ID card. When she was 16, she converted to Islam to marry a Muslim man. She saved her Christian identification card, but received a new computerized Muslim ID as well, which reflected her new Muslim name, `Ismat, and her religion as Islam. After divorcing her husband in 1998, she obtained permission from the Coptic Church to re-convert to Christianity. She then married a Christian man and attempted to get a new national ID card listing her name as Golsen and her religion as Christian. At the CSD, afraid to mention her conversion to Islam or her marriage, she claimed that she was applying for an ID for the first time. The Police Intelligence Unit of the CSD called her in and questioned her. The same official who pressured Mira Makram Gubran to remain Muslim also pressured Golsen Sobhi Kamil. "He started with a nice tone, trying to persuade me to stay Muslim," she told HRW/EIPR, but then

He said I'd committed a sin against God. He asked why I wanted to go back to Christianity. "If you had bad luck with your first husband, you should have found another Muslim man." He offered me assistance and favors. "I can find you a good Muslim man," he said. "If it's financial, we can help you find a job. If you went back to your family for lack of any alternative, we'll help you find an apartment." When I insisted on staying a Christian, he said, "Well, we have to start an investigation into the forgery."¹⁵⁶

¹⁵⁶ HRW/EIPR interview with Golsen Sobhi Kamil, Cairo, November 15, 2005.

At one point, the official sent Golsen and her mother to the Daher police station. “He tried to handcuff my mother and me, but [my mother] broke down, so he said, ‘OK, handcuffs are not needed,’ and took us in a police car to the station.” There, she said, they were handcuffed and kept for the night. The police then transferred them to the public prosecutor’s office, where they charged Golsen with document forgery. Police released the two on bail after they spent the night in detention. On April 19, 2005, a criminal court sentenced Golsen to a six-month suspended sentence and insisted on using her Muslim name, despite her request that the verdict use her Christian name. Her Christian husband, who wished to divorce her, was subsequently able to win a court case nullifying their marriage, since the state does not recognize marriages between Christian men and Muslim women. Because her marriage was nullified, she had no legal rights to alimony and return of her dowry.

HRW/EIPR examined 211 lawsuits filed by Egyptians who have converted from Islam back to Christianity before the Court of Administrative Justice challenging the CSD’s refusal to reflect their actual faith in their national identity cards and other vital documents. The plaintiffs maintain that the CSD’s refusal to recognize their re-conversion to Christianity violates the Civil Status Law and Egypt’s Constitution, which guarantees freedom of belief and prohibits discrimination based on religion.

In all these cases, government lawyers argued that because apostasy in the form of abandoning Islam is a matter not regulated explicitly by Egyptian law, it should be governed fully by the relevant provisions of Shari`a, in accordance with the Civil Code and the Personal Status Law.

Given that the provisions of apostasy under Islamic Shari`a are clear, including that an apostate should not have his apostasy recognized, this lawsuit therefore has no accurate basis in Shari`a or law and therefore must be dismissed.¹⁵⁷

Government lawyers also argued that CSD officials are justified in denying the plaintiffs their right to national identity cards and the consequent ability to exercise numerous civil rights. The government claimed that it no longer regards the Coptic Orthodox Patriarchy as the “competent body” for the purposes of the Civil Status

¹⁵⁷ Court brief submitted by the State Lawsuits Authority to the First Circuit of the Court of Administrative Justice in Case no. 24673/58 on 29 March 2005.

Law since the plaintiffs, having converted to Islam, are now governed by the principles of Shari`a.

Similarly, the State Commissioners Authority, a body of legal experts attached to administrative courts and mandated to submit advisory opinions to the court before it reaches a decision, supported the government's position.¹⁵⁸ In Ghada's case (see above), the report of the State Commissioner assigned to the case concurred that, in the absence of specific legislation on the matter, Shari`a principles must apply to the facts of the case.¹⁵⁹

Neither the government lawyers nor the State Commissioners Authority acknowledged that, in fact, there is a law governing the matter in questions, namely the Civil Status Law, which regulates change of religion in official identification documents, as detailed above. The report concluded that the government was under no obligation to recognize the plaintiff's reversion to Christianity and saw no conflict between this policy and the constitutional protection of freedom of belief:

Apostasy provisions do not contradict or nullify freedom of belief, because these provisions apply to Muslims exclusively and not to others. If a non-Muslim refrains from endorsing Islam voluntarily he should be left to what he believes in. But if he endorses Islam he then becomes subject to the rule of Islamic Shari`a – including on apostasy – which prevents a Muslim from changing his religion once he has adopted Islam.¹⁶⁰

On April 23, 2004, the First Circuit of the Cairo Court of Administrative Justice, then presided over by Judge Faruq` Abd al-Qadir, found in favor of Mira Makram Gubran (see above) and decided that the Interior Ministry and the CSD were legally obliged to recognize her conversion back to Christianity and to allow her to regain her former

¹⁵⁸ Judges of administrative courts are required by law to see the views of the State Commissioners Authority before reaching a decision on any case. A case is typically referred to one commissioner who prepares an advisory report. The report is then shared with the parties to the case who are allowed to comment on it. Courts follow the recommendations of these advisory reports in the majority of cases.

¹⁵⁹ Report submitted by the State Commissioner to the First Circuit of the Court of Administrative Justice in Case no. 24673/58, January 2005. While government lawyers in the case justified the reliance on Shari`a with Article 2 of the constitution, the State Commissioner argued that Article 2 only applies to the legislature. The application of Shari`a to the case in question, the State Commissioner argued, is based on Article 1 of the Civil Code, which stipulates that Shari`a should govern civil matters on issues where there is no legislation or customary norms.

¹⁶⁰ Ibid.

Christian name. Since then and until September 2006, when Judge `Abd al-Qadir retired, HRW/EIPR documented at least 22 similar decisions, all in favor of the plaintiffs.

These ground-breaking decisions constituted a major shift in the position of the Court of Administrative Justice. The court had, in the past, consistently maintained in its decisions that the CSD was under no legal obligation to recognize re-conversion to Christianity, reasoning that Egypt, as a Muslim state, should not recognize decisions by Muslims to change their religion, as such decisions constitute apostasy.¹⁶¹ One of these decisions, issued in 2001, stated, “Although the constitution guarantees freedom of belief and the freedom to perform religious rites..., this constitution has taken Islamic Shari`a as the principal source of legislation...including the provisions related to apostasy.”¹⁶²

In his decisions, Judge `Abd al-Qadir reasoned that the Civil Status Law requires identity cards to reflect a citizen's correct civil status, and that all changes to that status require only the approval of the competent official body. In cases of return or conversion to Christianity, he asserted, the Coptic Orthodox Patriarchy is the competent body. He concluded that the refusal of CSD officials to amend the plaintiffs' information constituted a breach of that law. The decisions also stated that allowing the plaintiffs to change their religion to Christianity on their identity cards merely confirmed a reality and did not establish a new situation.

There is a legal obligation on the administration to intervene and recognize the true religion adopted by the plaintiff in order to preserve the rights of others [who may come in contact with her]. Moreover, it is not permissible in any manner for the administration to use the administrative power vested in it by law as a vehicle to force the plaintiff to remain in Islam.¹⁶³

The decisions reaffirmed that the state had an obligation to prevent discrimination and to protect freedom of religion under the constitution and added:

¹⁶¹ See for example decisions in Case no. 2011/33 on March 25, 1980 and Case no. 1290/39 on December 1, 1987.

¹⁶² Decision in Case no. 1300/55 on July 8, 2001.

¹⁶³ See for example Decision in Case no. 24673/58 on 26 April 2005. All decisions issued by Judge `Abd al-Qadir in similar cases included the same reasoning.

Needless to say, an undeniable relationship exists between allowing for freedom of belief and the consequences that stem from that freedom. To say otherwise is to void that freedom of its substance and render it as mere rituals and rhetoric with no real essence.¹⁶⁴

The court also stated that the constitutional protection of freedom of religion and non-discrimination is in line with both the Universal Declaration of Human Rights and other international treaties, such as the Arab Charter on Human Rights.

Judge `Abd al-Qadir stated that his decisions were fully in accord with Shari`a, which provides for freedom of religion.¹⁶⁵ He also dismissed the claim of CSD officials that the plaintiffs were apostates by stating that Islamic jurisprudence only considers an "apostate" deserving chastisement to be a Muslim who repudiates Islam and "who finds comfort in disbelief."

Refusal by the CSD to issue identity cards recognizing the plaintiffs' correct religion, the decision concluded, constituted "an unjustifiable interference and use of coercion to compel [the plaintiff] to choose a certain religion or creed against her wish."

The government did not appeal any of the 22 decisions issued by Judge `Abd al-Qadir as president of the Court of Administrative Justice.¹⁶⁶ This was likely an admission that the plaintiffs should not have been required to resort to courts in the first place in order to ascertain rights that are explicitly guaranteed by the constitution and the Civil Status Law. Officials at the Interior Ministry and its CSD were evidently reluctant to accept responsibility for applying the law, preferring to leave this up to the judiciary to settle each case individually, without formally amending their arbitrary and discriminatory policy against Christians who have converted to Islam and wished to revert back to Christianity.

¹⁶⁴ Decision in Case no. 24673/58 on 26 April 2005.

¹⁶⁵ The rulings cite verse 256 of the Cow *sura*: "There is no compulsion in religion; truly the right way has become clearly distinct from error." The Administrative Court also cited the Yunus *sura* as affirming the principle of freedom of religion in verse 99: "And if your Lord had pleased, surely all those who are in the earth would have believed, all of them; will you then force men till they become believers?" (English Translation of the Holy Qur'an, available at <http://quod.lib.umich.edu/k/koran/browse.html>.)

¹⁶⁶ Some of the decisions were appealed before the Supreme Administrative Court by a private lawyer but the Supreme Administrative Court declared them all inadmissible saying the lawyer had no legal standing in the cases.

Yet even those who spent months in courtrooms trying to obtain accurate identity documents and won favorable court rulings in the short period before Judge `Abd al-Qadir retired and the Court of Administrative Justice reverted to its previous position on the matter continued to face difficulties in the implementation of these rulings. HRW/EIPR are aware of several cases in which CSD officials subjected citizens who converted back to Christianity to further questioning, insults, and pressure to remain Muslim before they implemented the court rulings and finally issued them new ID documents reflecting their true religious affiliation.

For example, Ghada (see above) obtained a favorable ruling from the Court of Administrative Justice in April 2005, but she was unable to obtain her new identity card until September 2005. CSD officials transferred her on two occasions to different offices; at each stage, the officials refused to amend her information despite the fact that she presented them with the court order. They reluctantly proceeded only after her lawyer sent complaints directly to the Interior Minister and the Public Prosecutor.

Her lawyer, Peter Naggar, told HRW/EIPR that ministry officials told him to see the director of the local CSD office in the Zaitoun neighborhood, but these officials informed him that the files had been transferred to Sharabiyya, Ghada's birthplace. The officials there at first refused. "I won't write something like this," Naggar quoted one as saying.¹⁶⁷ When Ghada finally went to the CSD headquarters in Cairo's al-`Abbassiyya district, around September 25, 2005, to get her new national ID card, they first compelled her to meet with a female psychologist who probed her reasons for reconverting and tried to persuade her to remain Muslim. "The woman took me upstairs, alone, and kept asking me why I re-converted," Ghada told HRW/EIPR. "She kept asking, 'Did they pressure you? Do you need us to stand by you?' I said, No, I'm doing what I believe in."¹⁶⁸

Theresa Husni Mahir (see above) started trying in 1998 to get her new ID documents recognizing her return to Christianity. "Without an ID I couldn't travel, I couldn't work," she said.¹⁶⁹ She filed suit in 2004 and received a favorable court ruling on April 26, 2005. Only in November 2005 was she able to secure her national ID card.

¹⁶⁷ HRW/EIPR interview with Peter Naggar, Cairo, November 12, 2005.

¹⁶⁸ HRW/EIPR interview with Ghada, last name withheld on request, Cairo, November 12, 2005.

¹⁶⁹ HRW/EIPR interview with Theresa Husni Mahir, Cairo, November 12, 2005.

Until then, each time she presented herself to the Zaitoun and `Abbassiya CSD offices, officials asked her for different non-required documents. “Every time I went, they found a new obstacle,” she said.¹⁷⁰

She said that on one occasion, in September 2005, a senior official with the Legal Affairs office at the CSD insulted her and made her wait for hours with her toddler before sending her home empty-handed. The official threatened to have criminal charges brought against her for forgery because a Coptic Orthodox Patriarchy document listed her as a virgin despite the fact that she had been married.¹⁷¹ As in Ghada’s case, CSD officials violated the law and exceeded their legal powers in refusing to implement the Administrative Court’s decision. “They will change [her] ID, but they are trying to discourage us from doing this [filing suit] ever again,” said Mahir’s lawyer, Ramsis Naggar.¹⁷²

By April 2007, the Court of Administrative Justice, with a new president and panel appointed in September 2006, decided to reverse the rulings the court had issued in the previous three years and to return to the position it had maintained at least since the early 1980s that the Muslim state may not recognize a decision by any Muslim to change his or her religious affiliation.¹⁷³ On April 24, 2007, the court issued another batch of 22 decisions, all of which rejected the request of plaintiffs and upheld the decision by the Interior Ministry to deny them new documents identifying them as Christians.¹⁷⁴

The court, now presided over by Judge Muhammad al-Husaini, reasoned that, according to Islam, “to accept the return of someone who abandons the Islamic religion to a different religious affiliation is an assault on the Islamic religion he had endorsed.”¹⁷⁵

¹⁷⁰ Ibid.

¹⁷¹ According to Mahir’s lawyer, Ramsis Naggar, the Patriarchy does not recognize marriages outside the Church, such as Mahir’s first marriage to a Muslim man. HRW/EIPR interview, Cairo, November 12, 2005.

¹⁷² HRW/EIPR interview with Ramsis Naggar, Cairo, November 12, 2005.

¹⁷³ All judges are appointed by a presidential decree based on recommendations from the Supreme Judicial Council. Judges may not be impeached and they serve until compulsory retirement at the age of 70.

¹⁷⁴ “Court decision on conversion a setback for religious freedom,” press release by the Egyptian Initiative for Personal Rights, April 29, 2007, available at <http://www.eipr.org/en/press/07/2904.htm>

¹⁷⁵ See for example decision in Case no. 7403/60 on April 24, 2007. All 22 decisions issued on that date in similar lawsuits contained identical reasoning.

The “assault,” the court explained, happened because the plaintiffs “manipulated religions”:

A large distinction exists between freedom of belief and of religious rites on the one hand, and the freedom that some seek to manipulate beliefs by switching from one religion to another in order to achieve earthly interests.

With its rulings, the court effectively stripped these plaintiffs of their right to freedom of religion by deciding that either or both their initial and subsequent conversions were not the result of genuine conviction. Not only did the court attempt to judge the sincerity of the religious conversion of each plaintiff, but it also did not include any facts or evidence to support any of the 22 decisions. The court effectively decided that the plaintiffs were not genuine when they endorsed Islam or decided to leave it and thus constitutional guarantees of freedom of belief provided no protection for them.

The court reiterated the earlier position of Egyptian courts that “freedom of belief as guaranteed by the Constitution...must not undermine public order” and that, because Shari`a is part of public order and prohibits “apostasy,” it is proper for the state to deny recognition to individuals who wish to convert from Islam to another faith.¹⁷⁶

HRW/EIPR are aware of at least 120 other lawsuits still pending before the same chamber of the Court of Administrative Justice requesting identity documents that recognize the plaintiffs’ return to their original faith. It will be the Supreme Administrative Court (SAC) that will have the final say on the issue once it starts to hear the 12 appeals filed by those plaintiffs who lost before the lower court. On July 2, 2007, the SAC’s Appeals Inspection Chamber rejected the Interior Ministry’s plea to dismiss the appeals and referred the matter to the First Chamber of the SAC, which began considering the merits of the cases on September 1, 2007.

¹⁷⁶ Decision in Case no. 7403/60 on April 24, 2007.

VII. In the Name of the Father: Involuntary “Conversions”

Fadi Naguib Girgis’s father converted to Islam, changing his surname to `Abd al-Hakim, and left his Christian family when Fadi, now 27, was only five. As noted, according to Islamic law, a child’s religion is determined by that of his or her parents, and when one parent is (or becomes) Muslim, the authorities classify the children as Muslims. Fadi grew up Christian in Alexandria and used his birth certificate, which identified him as Christian and reflected his original surname, Girgis, for as long as he could. “At 19, I came to Cairo for work,” he told HRW/EIPR.

My [paper] ID was falling apart, and I wanted the national identity card. I went to apply on November 11, 2003. They pulled up my name; it was listed not as Girgis but `Abd al-Hakim [his father’s new Muslim surname]. And the religion was wrong [listing Fadi as a Muslim]. They charged me with forging my ID, my birth certificate, my diplomas, said I was trying to convert from Islam to Christianity. They confiscated my documents and transferred me to the public prosecution office. I was in prison until November 16. By chance, [my cousin and a lawyer] met someone who put us in touch with the [Coptic] Pope, who called the public prosecutor and got me out.

The public prosecutor later dropped the case due to lack of evidence and advised Fadi Naguib to reapply for an identity card at the Civil Affairs Department (CSD). Fadi did so, but CSD officials again rejected his request. “In this country, on this issue, life is difficult,” he told HRW/EIPR. Without an ID, he said, “I have to stay put, couldn't take a job in Sharm, I can't go to Alexandria.... I'm walking close to the wall, like a shadow.”¹⁷⁷

Fadi is one of at least 89 individuals in similar circumstances who have resorted to the Court of Administrative Justice and whose cases HRW/EIPR have documented in Cairo alone. These individuals represent a distinct category of Egyptian Christians whom the state has categorized as Muslims without their knowledge or against their will. In most if not all of these cases, their fathers were Christians who converted to

¹⁷⁷ HRW/EIPR interview with Fadi Naguib Shafiq Girgis, Cairo, November 12, 2005.

Islam. When this occurred, the government automatically “converted” the children as well, without regard to their or their mothers’ wishes, and frequently without their even being aware that this had happened. Indeed, many individuals in this category only learned they were “Muslim” when they applied for their own national ID cards upon reaching their sixteenth birthday, as required by law.

When these Egyptians attempt to assert their Christianity, typically fortified with documents from the Coptic Orthodox Patriarchy proving that they had lived their entire lives as Christians, they face the same discriminatory and obstructionist policies from CSD officials as Egyptians who convert or reconvert from Islam to Christianity. CSD officials refused to grant them identity cards reflecting their actual religion, on the premise that the state should not acknowledge or abet “apostasy” and thereby undermine public order.

State policy dictates that children adhere to their parents' religion, reflecting the position that in the absence of specific legislation, Shari`a principles must govern such matters.¹⁷⁸ If the father is Muslim and the mother belongs to any other recognized religion -- that is, Christianity or Judaism -- the children must adopt the religion of the father.¹⁷⁹ In cases where either parent converts to Islam, however, the state considers the children to be Muslim.¹⁸⁰

The Court of Cassation, Egypt’s highest appellate court, has consistently ruled that if either parent converts to Islam, Shari`a jurisprudence requires that the children also become Muslim. Children who become Muslim in this manner do not need to declare that they embrace Islam when they reach puberty and adulthood, as a convert to Islam would.¹⁸¹

¹⁷⁸ The Civil Code 131 of 1948 in article 2, section 1 stipulates that in the absence of legislation on a particular matter, the courts are to refer to customary law (*urf*) and then to Shari`a principles.

¹⁷⁹ The reverse is not an issue because the state does not recognize marriages between Muslim women and men of other faiths.

¹⁸⁰ In the absence of specific legislation, Egyptian family courts apply the Hanafi school of Islamic jurisprudence, according to which a Muslim convert's child under fifteen must adopt Islam because Islam is the last and therefore the superior divinely revealed religion. See report submitted by the State Commissioners Authority to the First Circuit of the Court of Administrative Justice in Case no. 24405/60 on March 27, 2007, p. 5. Copy on file with HRW/EIPR.

¹⁸¹ “It is stipulated under Shari`a that the son follows the parent with the better religion during his childhood before puberty, and does not need to renew his Islam after puberty.” Cassation Court ruling in Case no. 21/39 on October 9, 1974. See also rulings in Case no. 1/22 on June 12, 1952 and Case no. 44/40 on January 29, 1975.

HRW/EIPR examined the files of 56 lawsuits brought before the Cairo Court of Administrative Justice since May 2004. All of these lawsuits involved Christians who were unwillingly or unwittingly “converted” to Islam by the state upon the conversion to Islam of either parent. In most of these cases, as already noted, it was the father who converted to Islam and left his Christian family. The children typically were then brought up in Christian households and continued to adhere to Christianity. When the children reached the age of 16 and requested national ID cards from the CSD, as required by law, they discovered that the government had changed their religion, and at times even their family names. When they applied to the CSD to alter their personal data to reflect their actual faith, CSD officials refused, even when they presented appropriate documentation from the Coptic Orthodox Patriarchy. The CSD officials considered their requests to identify themselves as Christians to constitute acts of “apostasy.”

There is one documented case of a mother's conversion to Islam which resulted in the children's automatic classification as Muslims by the CSD although the children continued to practice Christianity and identify themselves as Coptic Christians. They obtained documents from the Coptic Orthodox Patriarchy stating that they had belonged to the church since birth. Nevertheless, the CSD also denied them ID cards recognizing their adherence to the Christian faith, on grounds that the CSD should not condone “apostasy.”

Yusif Fandi (not his real name) is a victim of this official policy, which has hindered his ability to marry and start a family. Yusif's father converted to Islam before Yusif turned 15. Yusif remained Christian in faith. When he presented himself to the Civil Registry Office, as local branches of the CSD are called, in Imbaba to apply for an identity card, the office director confiscated his birth certificate, which stated that he was Christian, and referred him to the Imbaba police. After he spent the night at the police station, the police transferred him to the Imbaba public prosecutors office. The prosecutor freed him later the next night, but CSD officials continued to refuse to grant him an identity card listing him as Christian. Yusif said he had been engaged for several months while he was trying to get a correct identity card, but that “our engagement was broken, only because of this ID problem. Now a Christian girl's family won't accept me because I'm [officially] a Muslim, and a Muslim girl's family won't accept me knowing I'm really Christian.”¹⁸²

¹⁸² HRW/EIPR interview, name withheld on request, Cairo, November 11, 2005.

Yusif's brother told HRW/EIPR that he faces a similar problem but that he prefers to leave the country to avoid the legal and social difficulties associated with proving his Christian identity.

Christian women classified as Muslim by the state confront even greater difficulties in marrying a Christian, since marriages between Muslim women and men of any other faith are not recognized and cannot be registered. HRW/EIPR have documented 27 cases of women who were victims of this policy.

In some cases, the state forcibly converted offspring to Islam against the wish of the converting father. Isam Ishaq Nasif's father converted from Christianity to Islam when Isam was 14 years old. CSD officials denied Isam an identity card listing him as Christian even though his father did not wish to convert him. Isam said that the police finally coerced his father into changing Isam's religion by threatening to bring charges against Isam in connection with a minor bicycle accident.

`Isam's lawsuit is still pending before the Court of Administrative Justice, where he is requesting an ID card with his real religious affiliation and his birth name, rather than the Muslim name that a CSD official chose for him. In a significant development related to this case, `Isam's Christian fiancé asked the court in March 2005 for a stay to intervene as a party in the case against the government. She argued that since she would not be able to marry him if he did not obtain documents recognizing him as Christian, she therefore had an interest in `Isam's success and should be added as one of the plaintiffs.

"I'm still in touch with my father," `Isam told HRW/EIPR. "He was not trying to make me a Muslim. He agreed to be a witness, but they haven't contacted him yet."¹⁸³

Without an identity card, Isam, who is now 24, faces problems at the Suez Canal University, where he is studying tourism because he could not provide the required military service documents, which can be obtained only with a valid identity card. The university administration has sent him several expulsion warnings as a result. "If the university knew the religion aspect, they would not be so tolerant," `Isam said.

¹⁸³ HRW/EIPR interview with `Isam Ishaq Nasif, Cairo, November 12, 2005.

The 56 lawsuits filed by Christians whose fathers had converted to Islam are all before the First Circuit of the Court of Administrative Justice in Cairo. They all challenge the Interior Minister and the president of its CSD to end their practice of routinely denying identity cards recognizing the Christian identity of children of Muslim converts. The plaintiffs in these suits argue that the refusal of CSD officials to grant them documents identifying them as Christians violates the 1994 Civil Status Law regulating the issuance of mandatory identity documents as well as Egypt's constitution, which guarantees freedom of belief and outlaws discrimination on the basis of religion.

In all of these cases, government lawyers made no distinction between those converted to Islam against their will and other Christian converts to Islam who are suing to have the state recognize their reversion to Christianity. Defense briefs submitted to the court by government lawyers consistently argue that those asking to be identified as Christians after their fathers' conversion to Islam should be treated as "apostates." The briefs argue a Muslim state may not recognize apostasy and should therefore not recognize the validity of the act or its consequences. No reference is made to the fact that those offspring were born Christian, had no say in their parents' conversion, and never endorsed Islam willingly. One such government brief, in complete disregard for the facts, argued:

The Plaintiff adopted Islam with his full will and freedom, with no compulsion or coercion from whomsoever, and in accordance with the principle of freedom of religion and religious rites protected by the Constitution...Therefore, he must abide by the precepts of Islamic Shari`a. The steadiness and stability of legal standings necessitate the non-recognition of the applicant's apostasy and his abandonment of Islam and return to Christianity.¹⁸⁴

¹⁸⁴ Defense brief submitted by the State Lawsuits Authority to the First Circuit of the Court of Administrative Justice in Case no. 24405/60 on January 9, 2007, p. 11, copy on file with HRW/EIPR. The government briefs were self-contradictory in many places because they largely reproduced the same briefs they submitted to the court in cases of Christian converts to Islam seeking reversion to Christianity, and did not bother to adjust their arguments to the specifics of this distinct group of cases filed by the Christian offspring of converts to Islam. For example, the brief cites several *fatwas* that define an apostate as that "who reverts from Islam" and specify the requirement for apostasy as "uttering the words of unbelief *after belief*."

¹⁸⁴ This and other *fatwas* cited in the government defense briefs should not apply to plaintiffs who never endorsed Islam as their religion.

The State Commissioners, who are required to give advisory opinions to the judges of the Court of Administrative Justice before they can pronounce decisions, supported the government's position but provided arguments that were more specific to these cases than those put forward by the government lawyers. In addition to stating the Shari`a position on apostasy and the principle of non-recognition, the Commissioners argued that, under Shari`a, children remained affiliated to their father until the age of puberty. Under the Hanafi school of Islamic jurisprudence, they added, 15 is the average age of puberty. The legal test, they argued, should therefore be whether the plaintiff was above or below the age of 15 at the time of his or her father's conversion to Islam. According to this test, anyone below the age of puberty should automatically follow "the parent with the better religion."¹⁸⁵

In the case of Rami Na`im Nazir, for instance, the State Commissioners advised the court to find against the plaintiff because he was 14 years old when his father converted to Islam in 1987 and changed his son's name to Rami `Abdullah `Abd al-Rahman.¹⁸⁶ Rami, now 23, grew up with his Christian mother after their father left them 20 years ago. He went to church all his life, studied Christianity as his mandatory religious education at school, and has a cross tattoo on his wrist. He has been fighting since 1999 to get the Interior Ministry's CSD to recognize that he is Christian and never converted to Islam.

As detailed above, the Shari`a-based argument put forward both by the government lawyers and by the State Commissioners Authority, which treats plaintiffs in this type of cases as apostates, is highly selective and by no means reflects a consensus (*ijma*) among Muslim jurists.

Government lawyers and State Commissions have not sought to distinguish the facts of the cases in question from the incident that led to the revelation of the Qur'anic verse: "There is no compulsion in religion" (2:256). Scholars of exegesis (*tafsir*) hold that the verse was revealed when an inhabitant of Medina who had converted from Christianity to Islam asked the Prophet for permission to coerce his two Christian

¹⁸⁵ Report submitted by the State Commissioners Authority to the First Circuit of the Court of Administrative Justice in Case no. 24405/60 on March 27, 2007, p. 5. Copy on file with HRW/EIPR.

¹⁸⁶ *Ibid.*

sons into adopting the new faith.¹⁸⁷ The Prophet refused and advised Muslims against forcing people into Islam against their will.¹⁸⁸

As of this writing, the court had ruled in favor of the plaintiffs in seven of these lawsuits, while the remaining suits were still pending. All seven decisions, however, were issued between 2004 and the retirement of the Court's then president, Judge Faruq `Abd al-Qadir, in September 2006. As noted above, on April 24, 2007, the Court's new president and members reversed an earlier decision by Judge `Abd al-Qadir and found that Christians who convert to Islam have no right to revert back to Christianity and have their new faith recognized in identity documents. While the court has yet to decide on the issue of offspring of Christian fathers who convert to Islam, the April 24 decision indicated the possibility of a similar reversal.

In all seven rulings issued in favor of the plaintiffs thus far, the Court of Administrative Justice used exactly the same reasoning it used in the earlier decisions in favor of those reverting back to Christianity, described above. These are: the protection of freedom of religion and prohibition of discrimination under the constitution, the Universal Declaration of Human Rights, and Shari`a; the obligation on the state under the Civil Status Law to issue identity documents and make any necessary changes in them in order to reflect the individual's actual status; and, most importantly, that the cases under consideration do not constitute acts of apostasy under Shari`a. "It is stipulated under [Islamic] jurisprudence than Muslims are not considered as abandoning Islam or as having committed apostasy except when they find ease in disbelief and are content with it."¹⁸⁹

The court then reached the same conclusion it had in cases of those reverting to Christianity:

This position of the administration constitutes an impermissible interference and use of coercion to compel [the plaintiff] to choose a

¹⁸⁷ This interpretation of the verse (2:256) appears in the four authoritative books of *tafsir* (exegesis) Ibn Kaltheer, al-Jalalein, al-Tabari and al-Qurtubi, available at <http://quran.al-islam.com/arb>. See also Taha Jaber al-Alwani, *La Ikraha fil Din: Ishkaliyyat Al-Ridda wal Murtaddin men Sadr Al-Islam Ila Al-Yom [There is no Compulsion in Religion: the Dilemma of Apostasy and Apostates from Early Islam until Today]*, 2nd edition, (Cairo: International Institute of Islamic Thought and Maktabat Al-Shuruq Al-Dawliyya, 2006) p. 92.

¹⁸⁸ See *ibid.*

¹⁸⁹ Decision of Court of Administrative Justice in Case no. 18924/58 on April 5, 2005.

certain religion or creed against his wish... It is not permissible in any manner for the administration to use the administrative power vested in it by law as a vehicle to force the plaintiff to remain in Islam.¹⁹⁰

Notably, the court in these decisions did not reason that the plaintiffs could not have abandoned Islam because they never embraced it. Nor did the court find that changing one's religion from Islam to any other faith or no faith at all should not have punitive civil or criminal consequences; rather, the court maintained only that plaintiffs' actions should not be penalized in these cases because they do not meet the court's definition of what constitutes apostasy.

The fact that citizens whom the state listed as Muslims against their wishes and often without their knowledge need to resort to the courts to prove their Christian identity represents an unreasonable barrier to their exercising freedom of religion and belief. That the Ministry of Interior has refrained from appealing these court decisions before the Supreme Administrative Court does not absolve the ministry of its obligation to respect domestic and international law. The government has an obligation to instruct the Interior Ministry and CSD to implement the Civil Status Law, which stipulates that the CSD should change a person's stated religion in official documents upon presentation of documentation from the relevant authorities, in this case from the Coptic Orthodox Church.

As in the cases of Egyptians who revert to Christianity, involuntary "converts" to Islam continue to face difficulties even after securing favorable rulings due to the hostility of CSD officials and the delays they cause in the implementation of court orders. Lawyer Athenasius William, who represented 13 plaintiffs at the time HRW/EIPR spoke with him, said that CSD officials were refusing to implement all six favorable rulings in these cases. He said he sent complaints to the office of the public prosecutor and the Ministry of Interior. While the CSD eventually implemented all such decisions, several lawyers handling similar cases claimed that their clients have faced delays in implementing court orders, mostly due to the discriminatory attitudes of Ministry of Interior officials and the reluctance of officials to take initiatives to rectify discriminatory practices.

¹⁹⁰ Ibid. See also the decision in Case no. 20498/58 on May 31, 2005.

VIII. Freedom of Religion and Human Rights Law

International Standards

International human rights law clearly affirms the right to freedom of religion. Article 18 of the International Covenant for Civil and Political Rights (ICCPR) states: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or in private, to manifest his religion or belief in worship, observance, practice and teaching.” Article 18 further specifies that “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” Freedom to manifest and practice one’s faith “may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” Finally, Article 18 enjoins the states parties to the ICCPR to “have respect for the liberty of parents... to ensure the religious and moral education of their children in conformity with their own convictions.” The covenant specifies that Article 18 is one from which no derogation is possible.¹⁹¹

The UN Human Rights Committee, the body of experts that monitors compliance of states parties to the ICCPR, decisively rejected in the drafting process a proposal by the Soviet Union to subject this right to “the dictates of public morality.”¹⁹² Muslim states, and in particular Saudi Arabia, objected to the formulation of Article 18 of the Universal Declaration of Human Rights recognizing the “right to change” one’s religion, resulting in the vaguer ICCPR formulation “to have or adopt a religion or belief of his choice.”

Manfred Nowak, in his authoritative ICCPR commentary, writes that “there can be no doubt that the freedom to adopt a religion *of one’s own choice* includes the right to withdraw one’s membership in one religious society and join another.”¹⁹³ Nowak also writes, “Every individual must have the right and the *de facto* possibility to join a

¹⁹¹ ICCPR, article 4(2),

¹⁹² Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl and Arlington, VA: N.P. Engel, 2005), p. 410.

¹⁹³ Nowak, p. 414, emphasis in original.

religious society or to leave it.” This right is compatible with a state religion, “so long as the State permits other religions alongside the official one and does not exercise direct or indirect coercion to join the latter.”¹⁹⁴ According to Nowak, Article 18(2)’s prohibition of coercion is based on an Egyptian proposal in the UN Human Rights Commission directed at “protection against legal barriers to a change of religion or those established by the religion itself.”¹⁹⁵ This prohibition also applies to indirect means of coercion, such as tax or social welfare benefits, which would “impair” the exercise of the right to freedom of religion.

Article 18 protects not only the right to adhere to religious beliefs of one’s choice, but also the right to express and practice that belief in a public manner. This includes communication of religious beliefs (also protected under Article 19, guaranteeing freedom of expression) and gathering together with co-believers (also protected under Article 21, guaranteeing freedom of peaceful assembly). Article 18(3) states that limitations to manifesting one’s belief must be proscribed by law and must be necessary to achieve the specific purposes of protecting public safety, order, health, and morals, and the fundamental rights and freedoms of others.

Article 18(4), guaranteeing parents (or legal guardians) the right to ensure the religious education of their children in accordance with their own convictions, is also pertinent to assessing Egypt’s compliance with international human rights standards with regard to the religious freedom implications of its national identification policies. Egypt’s constitution mandates religious instruction, either Muslim or Christian, in all public elementary and secondary schools.¹⁹⁶ Whether that instruction is Muslim or Christian depends entirely on the religious identification of the child, which in turn depends on that of the parents.

By denying Egyptians the right to adhere without interference to the religion of their choice, by not recognizing conversions from Islam and by denying the status of Baha’i faith as a separate religion, Egypt is in violation of Article 18 of the ICCPR.¹⁹⁷ The state also violates Article 18 by forcing Egyptian students to receive Muslim or Christian religious education without providing exemptions or alternatives,

¹⁹⁴ Nowak, p. 415.

¹⁹⁵ Nowak, p. 416.

¹⁹⁶ Article 19 of the Egyptian Constitution.

¹⁹⁷ Baha’i parents are asked to consent to their children’s taking the mandatory religion exam for either Islam or Christianity.

particularly for its Baha'i community.¹⁹⁸ These state practices also violate the right to enjoy the highest standard of health, as set out in the International Covenant on Economic, Social, and Cultural Rights, which Egypt ratified in 1982, and the Convention on the Right of the Child, which Egypt ratified in 1990.¹⁹⁹

In addition, Article 2(1) of the ICCPR affords basic rights to all individuals without distinction or discrimination on any grounds including religion. Article 26 places an obligation on states to ensure that, “the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as... religion.” Article 17 guarantees protection against unlawful or arbitrary interference with one's privacy or family, and commits the state to ensuring legal protection against such interference. According to the UN Human Rights Committee, “the notion of privacy refers to the sphere of a person's life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone.”²⁰⁰

The UN General Assembly, in November 1981, issued a Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. Although the declaration does not carry with it the obligations of treaty law, it affirms the right to freedom of religion and choice of religious belief (Article 1) and calls on all states to “take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life” (Article 4).²⁰¹ The Declaration also states, “Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents... and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardian, the best wishes of the child being the guiding principle” (Article 5 (2)).

¹⁹⁸ Human Rights Committee, General Comment No. 22 [ICCPR Article 18], para. 6. The General Comment “notes that public education that includes instruction in a particular religion or belief is inconsistent with [respect for the liberty of parents to ensure their children’s religious education in conformity with their own convictions] unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents or guardians.”

¹⁹⁹ International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, articles 12 and 13; Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2, 1990, articles 24 and 28.

²⁰⁰ UN Human Rights Committee, *Coeriel and Aurik v The Netherlands*, Communication no. 453/91.

²⁰¹ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. res. 36/55, 36 U.N. GAOR Supp. (No. 51) at 171, U.N. Doc. A/36/684 (1981).

The U.N. Human Rights Committee in 1993 issued an authoritative General Comment on Article 18 of the ICCPR making the following points that are relevant to Egyptian state policies regarding religion and national identity and the human rights consequences of those policies:

- The Committee asserts that Article 18’s protections are not limited to “traditional religions” and “views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religions minorities that may be the subject of hostility by a predominant religious community.” (para 2)²⁰²
- The freedom to “have or to adopt” a religion includes “the right to replace one’s current religion or belief with another...” Article 18 also “bars coercion that would impair the right to have or to adopt a religion or belief, including the use or threat of physical force or penal sanctions to compel believers or non-believers... to recant their religion or belief or to convert.” Policies that restrict “access to education, medical care, employment” or other rights guaranteed by the ICCPR “are inconsistent with Article 18 (2).” (para 5)
- The General Comment “notes that public education that includes instruction in a particular religion or belief is inconsistent [with respect for the liberty of parents to ensure their children’s religious education in conformity with their own convictions] unless provision is made for non-discriminatory exemptions or alternatives that would accommodate the wishes of parents or guardians.” (para 6)
- The General Comment notes that “limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.” (para 8)
- The fact that a religion is recognized as a state religion, or that its followers comprise the majority of the population, “shall not result in the impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27 [concerning the protection of minorities]” (para 9).

²⁰² Human Rights Committee, General Comment No. 22 [ICCPR Article 18].

As noted, when Egypt ratified the ICCPR, the government attached a statement that it would comply with the Covenant's provisions "to the extent that they do not conflict with" Shari`a. But the UN Human Rights Committee, in another General Comment, made clear that states ratifying the ICCPR may not make reservations that are "incompatible with the object and purpose of the treaty."²⁰³ The Human Rights Committee further stated, "Reservations that offend peremptory norms would not be compatible with the object and purpose of the Covenant," among which it lists "freedom of thought, conscience and religion."²⁰⁴ Following a review of Egypt's implementation of the ICCPR in 2002, the Human Rights Committee concluded:

While observing that the State party considers the provisions of the Islamic Shariah to be compatible with the Covenant, the Committee notes the general and ambiguous nature of the declaration made by the State party upon ratifying the Covenant. The State party should either clarify the scope of its declaration or withdraw it.²⁰⁵

Egypt did not reply to this request, and to date has neither clarified the scope of its declaration nor withdrawn it.

Egypt is also a state party to the African Charter of Human and Peoples' Rights. Article 8 of the Charter states, "Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms."²⁰⁶ Articles 2 and 3 of the Charter guarantee the right to non-discrimination and to equality before the law.

The UN Special Rapporteur on freedom of religion or belief, Asma Jahangir, in her September 2005 report to the General Assembly, noted that she had in 2005

²⁰³ Para 6 of General Comment 24, Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, November 4, 1994. UN doc. CCPR/C/21/Rev.1/Add.6, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/69c55b086f72957ec12563ed004ecf7a?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/69c55b086f72957ec12563ed004ecf7a?Opendocument), accessed on September 25, 2007.

²⁰⁴ *Ibid.*, Para 8.

²⁰⁵ Concluding observations of the Human Rights Committee: Egypt, November 28, 2002, UN doc. CCPR/CO/7[^]/EGY, para 5, available at <http://daccessdds.un.org/doc/UNDOC/GEN/G02/460/72/PDF/G0246072>, accessed on September 24, 2007.

²⁰⁶ The text of the African Charter is available in *Twenty-five Human Rights Documents* (New York: Center for the Study of Human Rights, Columbia University, 1994), pp. 119-128.

requested an invitation to visit Egypt but had received no reply.²⁰⁷ In her report, the special rapporteur made the following general observation that is relevant to Egyptian official rationales for denying Baha'is and converts from Islam the right to exercise freedom of religion. States, she wrote:

must ensure that the persons on their territory and under their jurisdiction, including members of religious minorities, can practice the religion or belief of their choice free of coercion and fear.²⁰⁸

The special rapporteur, in her March 2006 report to the former Commission on Human Rights, wrote that she had contacted the Egyptian government at least twice, on April 15, 2004 and May 15, 2005, "related to the requirement to mention one's belief on identity cards and other documents."²⁰⁹ In her May communication to the government, the special rapporteur expressed her concern "that the forms [for acquiring identity documents] currently contain three religious affiliations to choose from: Islam, Christianity and Judaism and that it was impossible for members of other religious groups or non-believers to indicate their religion or leave the space blank."

Freedom of Religion and Egyptian Law

Freedom of religion and belief has been protected since Egypt had its first constitution in 1923. Article 46 of the current Constitution, issued in 1971, stipulates that, "The State shall guarantee the freedom of belief and the freedom of practicing religious rites." Egypt's Supreme Constitutional Court (SCC) defined freedom of belief, according to Article 46, in the following manner:

Freedom of belief, in principle, means for the individual not to be forced to adopt a belief he does not believe in, or to drop one that he had accepted, or to declare it, or to side with one belief in a manner that would be prejudicial to another by denying, belittling or ridiculing

²⁰⁷ "Elimination of all forms of religious intolerance: Report of the Special Rapporteur of the Commission on Human Rights on freedom of religion or belief, Asma Jahangir," General Assembly, 60th Session, A/60/399, September 30, 2005, Table 2.

²⁰⁸ *Ibid.*, para 53.

²⁰⁹ "Elimination of all forms of religious intolerance: Report of the Special Rapporteur of the Commission on Human Rights on freedom of religion or belief, Asma Jahangir, Addendum: Summary of cases transmitted to Governments and replies received," UN. Doc. E/CN.4/2006/5/Add.1, March 27, 2006, para. 117.

it. Rather all religions should be tolerant and respectful of each other. In addition, according to the right definition of freedom of belief, [the state] does not have the right to punish those who adopt a belief that it has not chosen.²¹⁰

Freedom of religion and belief belong to a group of rights protected by the constitution that the SSC termed "absolute rights," that is, rights and freedoms that the government can not subject to limitations of enjoyment. The SSC in its rulings made this distinction and established the supremacy of constitutionally-protected rights and freedoms over any laws or state policies.

All Egyptian constitutions, starting with the 1923 Constitution, have stressed the primacy of public rights and freedoms. This was intended to grant these rights and freedoms the power of the constitution itself and its primacy over ordinary laws, and by stating [these rights and freedoms] in the text of the Constitution the aim was to limit the power of the state [and to curtail] what regulations and rules it passes. In one instance, [for example] the Constitution establishes a certain public freedom and allows for its regulation in order to define the limits of this freedom and how it is to be practiced in a complete and unabridged manner. Elsewhere the Constitution stresses the absolute nature of [certain other] public freedoms in such a way that it becomes impossible to delimit or regulate.²¹¹

Moreover, Article 40 guarantees equality among all citizens and prohibits discrimination on several grounds, including religion and creed. The SSC defined discrimination for the purpose of Article 40 as "any act of differentiation, limitation, privileging or exclusion that can affect in an arbitrary manner the rights and freedoms guaranteed by the constitution and the Law, this either by denying the very existence [of these rights and freedoms] or by suspending and/or limiting their effect in such a way that it prevents their enjoyment on a complete equal footing by all entitled to exercise them."²¹²

²¹⁰ Decision of the Supreme Constitutional Court in Case no. 8/17, issued on May 18, 1996.

²¹¹ Decision of the Supreme Constitutional Court, in Case no. 44/7, issued on May 7, 1988.

²¹² Decision of the Supreme Constitutional Court in Case no. 180/20, issued on January 1, 2000.

Articles 41 and 45 of the constitution protect the personal liberty and "inviolability of the private life" of citizens, respectively. The SCC attempted in its ruling to explain these rights and delineate the areas of the human life where the state has no right to interfere. The court called these areas "sanctuaries," the protection of which from arbitrary interference is vital for individuals to be truly "sovereign."

There are areas of private life for each individual that are sanctuaries not to be violated. The secrecy and sanctity of these areas are to be protected by forbidding anyone to ever intrude upon them; any violation of these areas is not allowed. These areas of personal privacy protect two functions which complement each other even if they appear to be separate. [The first] is that in general there exist those areas of personal matters that should be hidden and not revealed to others. [Secondly, these areas of personal privacy] are necessary for each individual to be sovereign in matters affecting his own destiny.²¹³

The SCC further found that "personal freedom is not guaranteed only by preventing any assault on the body; rather, it includes other forms such as the will to choose and the autonomy which each individual is endowed with."²¹⁴

The SCC is the judicial body solely mandated to issue binding interpretations of constitutional provisions. While the reasoning included in SCC rulings has an authoritative power over other courts, that reasoning is not itself binding on the other courts. This, together with the "legal plurality" introduced in the Egyptian legal system by virtue of placing Islamic Shari`a in parallel to civil laws, result in often contradictory court rulings on several issues, including freedom of religion.²¹⁵

Egyptian government policies that compel Baha'is and converts from Islam to falsely identify themselves as belonging to a religion not of their choice in order to obtain national identification documents, essential to the exercise of basic rights and privileges, appear to be in conflict with the Constitution's guarantee of the right to

²¹³ Decision of the Supreme Constitutional Court in Case no. 56/18, issued on November 15, 1997.

²¹⁴ Decision of the Supreme Constitutional Court in Case no. 16/17, issued on June 7, 1997.

²¹⁵ See Ahmed Seif al-Islam Hamad, "Legal Plurality and the Legitimation of Human Rights Abuses: A Case Study of State Council Rulings Concerning the Rights of Apostates," in Baudouin Dupret, Maurits Berger and Laila al-Zwaini, eds., *Legal Pluralism in the Arab World*, (The Hague: Kluwer Law International, 1999).

freedom of religion. These concerns, as well as the right to privacy and the right not to be subject to discrimination based on religious belief, also arise in state policies denying Baha'is or converts from Islam the right to obtain necessary official documents that correctly identify their religion, without which they can not obtain immunizations, register for school, obtain a job, marry, or receive inheritances and pensions.

Methodology

Human Rights Watch and the Egyptian Initiative for Personal Rights jointly prepared this report. The organizations interviewed more than 40 victims, lawyers, family members, and religious and community leaders. In some cases, clearly indicated in the text, the individuals requested that we not use their real names. The EIPR examined the files of 304 court cases related to the categories of victims, as well as relevant laws and higher court cases. While conducting research for this report, the organizations requested meetings with the head of the CSD of the Ministry of Interior, at the time Gen. `Isam al-Din Bahgat, but his office instead urged us to submit our questions in writing. We subsequently wrote on two occasions to Minister of Interior Habib al-`Adli, in January 2006 and again in late October 2006, requesting information about the legal basis for government policies regarding religion and the provision of vital documents. As of this writing, we received no response. The letters are reproduced as an appendix to this report.

About This Report

Hossam Bahgat, executive director of the Egyptian Initiative for Personal Rights (EIPR), and Joe Stork, deputy director of the Middle East and North Africa division of Human Rights Watch (HRW), researched and wrote this report. Diana Eltahawy, former researcher with the EIPR's Right to Privacy Program, provided invaluable research and drafting assistance, and Adel Ramadan, legal officer for the EIPR's Right to Privacy Program, provided research and advice on Egyptian laws. Mandi Fahmy and Nagwa Hassan provided translation assistance. Sarah Leah Whitson, executive director of the HRW Middle East and North Africa division, and Joseph Saunders, Deputy Program Director of HRW, edited the report, and Legal & Policy Director James Ross provided legal review. Tarek Radwan, associate for the Middle East and North Africa division, Andrea Holley, director of publications, Grace Choi, publications specialist, and Fitzroy Hopkins, mail manager, prepared the report for publication.

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HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300
Email: hrwnyc@hrw.org

MIDDLE EAST AND NORTH AFRICA DIVISION

Sarah Leah Whitson, *Executive Director*
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Fadi al-Qadi, *Regional Advocate*
Eric Goldstein, *Research Director*
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Lucy Mair, *Researcher*
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Appendix: Human Rights Watch Letters to the Egyptian Minister of Interior on National ID Cards

www.hrw.org

January 13, 2006

His Excellency Gen. Habib Al-`Adli
Minister of Interior
Shaikh Rihan St.
Cairo, Egypt

Your Excellency:

Human Rights Watch is looking into the problems that some Egyptians have faced in securing national identification cards and other essential documents if they are not adherents of one of the three “recognized” religions – Islam, Christianity, or Judaism – or if they have converted from Islam to (or back to) another religion, namely Christianity.

We understand that responsibility for providing these documents resides with the Ministry of Interior’s Department of Civil Affairs. Our deputy director, Joe Stork, requested a meeting with Gen. `Isam Bahgat, director of the Civil Affairs Department, during a two-week visit to Cairo in November. Officials responded that a meeting would not be possible and asked him to submit his questions in writing, promising him they would be answered.

Because we nevertheless wish to understand the position of the government on these matters, and to reflect accurately the government’s position in any report we prepare, we hope that your office will respond to the following questions.

Human Rights Watch

- 1) Is there a date by which only computerized “national number” identification cards will be accepted by government and other institutions, such as banks, and after which paper identification cards will no longer be recognized?
- 2) Can citizens request that their religion not be listed on their identification cards or birth certificates, or on applications for these and other necessary documents?
- 3) What procedures are required by law for a citizen to change his or her religious affiliation from Christian to Muslim? Are these procedures any different from those required to change one’s religion from Muslim to Christian?
- 4) Are Egyptian citizens who adhere to the Baha'i faith able to list their religious affiliation in their national identification documents? What are the legal rules that regulate this matter?
- 5) Under what circumstances may Ministry officials confiscate the national identification card, birth certificate, passport, or other essential identification documents from citizens? What law(s) or regulation(s) govern the permissibility of confiscation? Are there any circumstances in which a person’s professed religion may be the basis for such confiscation?
- 6) Under what circumstances, and on the basis of what law(s) or regulation(s), may the Ministry refuse the request of a citizen to secure a national identification card, birth certificate, passport, or other essential identification document? Are there any circumstances in which a person’s professed religion may be the basis for refusing to issue such documents?
- 7) Are there public safety or other reasons why the Civil Affairs Department or other Ministry officials might seek to compel citizens to list in identification documents one or another religion, or to refrain from listing a particular religion in such documents, against the express wishes of the citizen?
- 8) Has the Ministry conducted any inquiries into allegations that Civil Affairs Department officials or State Security Investigation officers have unlawfully threatened incarceration or harm to persons on the basis of their professed religion? Has the Ministry instituted any disciplinary measures as a result of such inquiries?

We look forward to your response to these questions at your earliest convenience, preferably no later than February 12, so that we are able to include the government's position in a report we are preparing on this issue.

Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sarah Leah Whitson', with a long horizontal flourish extending to the right.

Sarah Leah Whitson
Executive Director
Middle East and North Africa division

HUMAN RIGHTS WATCH

1630 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20009
Tel: 202-612-4321
Fax: 202-612-4333
Email: hrwdc@hrw.org

MIDDLE EAST AND NORTH AFRICA DIVISION

Sarah Leah Whitson, *Executive Director*
Joe Stork, *Deputy Director*
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October 31, 2006

His Excellency Habib al-Adli
Minister of Interior
Arab Republic of Egypt

Fax: + 202 579 2031

Your Excellency,

I am writing to follow up on our earlier letter to you of January 13, 2006. We have not yet received a response to this inquiry, and we would be grateful if we could hear from you at your earliest opportunity. This would enable us to reflect the views of the government in any future report we issue.

In addition to responding to our earlier questions, we also respectfully request Your Excellency to kindly provide us with a copy of the Civil Status Department's "Circular 49/2004 regarding the rules of recognizing religions in birth records and identification cards."

Thank you in advance for your consideration of this request. We look forward to hearing from you at your earliest opportunity.

Sincerely,



Sarah Leah Whitson
Executive Director



EGYPTIAN INITIATIVE
FOR PERSONAL RIGHTS

8 Elbergas St., Garden city, apt. 9
Cairo, Egypt

www.eipr.org

HUMAN RIGHTS WATCH

350 Fifth Avenue, 34th Fl.
New York, NY 10118-3299

www.hrw.org

H U M A N
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Prohibited Identities

State Interference with Religious Freedom

All Egyptians age 16 or older must acquire a national identification card. This document, as well as other vital records such as birth certificates, lists among other things one's religion. Interior Ministry officials, based not on any Egyptian law but on what they consider to be requirements of Islamic law, or Shari`a, restrict the choice of religion to Islam, Christianity, or Judaism, and systematically refuse to allow Egyptian Baha'is to list their actual religious affiliation. Also on the basis of what they consider to be the Shari`a prohibition of apostasy, officials refuse to recognize the conversion to Christianity of any Muslim or person they consider to be Muslim. Sometimes officials attempt to intimidate persons into identifying themselves as Muslim against their express wishes.

These policies violate the right of many Egyptians to religious freedom. Because having an ID card is essential in so many areas of public life – access to school and jobs, opening a bank account, acquiring a driver's license, and a host of other daily transactions – these policies also effectively deny these citizens a range of civil and political as well as economic and social rights. As this report documents, this official refusal to recognize the actual belief of thousands of citizens strikes at the very core of their identity, and the consequences deeply affect their personal lives and those of their families.

National identification card issued to a Baha'i citizen from Alexandria in 2000. This is one of the very few computerized cards issued with the word "other" in the religion category, indicating the holder is a Baha'i.

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