



**Upper Tribunal  
(Immigration and Asylum Chamber)**

MS (Coptic Christians) Egypt CG [2013] UKUT 00611 (IAC)

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 17 and 18 September 2013**

**Determination Promulgated**

.....

**Before**

**UPPER TRIBUNAL JUDGE STOREY  
UPPER TRIBUNAL JUDGE ALLEN  
UPPER TRIBUNAL JUDGE KEBEDE**

**Between**

**MS  
FZ  
(ANONYMITY ORDER MADE)**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Ms M Benitez of Counsel, instructed by Irving & Co Solicitors  
For the Respondent: Mr T Wilding, Home Office Presenting Officer

## Law

*In relation to a country which is in a state of emergency affecting the life of the nation and which takes measures strictly required by the exigencies of the situation, its ability to afford adequacy of protection under Directive 2004/83/EC (the Qualification Directive) is to be assessed by reference to its general securement of non-derogable rights as set out in the ECHR.*

## Country guidance

1. *Notwithstanding that there is inadequate state protection of Coptic Christians in Egypt, they are not at a general risk of persecution or ill-treatment contrary to Article 3, ECHR.*
2. *However, on current evidence there are some areas where Coptic Christians will face a real risk of persecution or ill-treatment contrary to Article 3. In general these will be (a) areas outside the large cities; (b) where radical Islamists have a strong foothold; and (c) there have been recent attacks on Coptic Christians or their churches, businesses or properties.*
3. *On the evidence before the Upper Tribunal, the following are particular risk categories in the sense that those falling within them will generally be able to show a real risk of persecution or treatment contrary to Article 3, at least in their home area:*
  - (i) *converts to Coptic Christianity;*
  - (ii) *persons who are involved in construction or reconstruction/repair of churches that have been the target for an attack or attacks;*
  - (iii) *those accused of proselytising where the accusation is serious and not casual;*
  - (iv) *those accused of being physically or emotionally involved with a Muslim woman, where the accusation is made seriously and not casually.*
4. *Coptic Christian women in Egypt are not in general at real risk of persecution or ill-treatment, although they face difficulties additional to other women, in the form of sometimes being the target of disappearances, forced abduction and forced conversion.*
5. *However, depending on the particular circumstances of the case, Coptic Christian women in Egypt aged between 14-25 years who lack a male protector, may be at such risk.*
6. *If a claimant is able to establish that in their home area they fall within one or more of the risk categories identified in 3 (i)-(iv) above or that they come from an area where the local Coptic population faces a real risk of persecution, it will not necessarily follow that they qualify as refugees or as beneficiaries of subsidiary protection or Article 3 ECHR protection. That will depend on whether they can show they would not have a viable internal relocation alternative. In such cases there will be need for a fact-specific assessment but, in general terms, resettlement in an area where Islamists are not strong would appear to be a viable option.*
7. *None of the above necessarily precludes a Coptic Christian in Egypt from being able to establish a real risk of persecution or ill-treatment in the particular circumstances of their case, e.g. if such an individual has been the target of attacks because he or she is a Coptic Christian.*

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## DETERMINATION AND REASONS

### Introduction

1. Copts in Egypt go back to the time of the Pharaohs. From 400AD until the mid-10<sup>th</sup> century and the Muslim conquest of the country, Copts who had Christianised were a majority of the population. But since that conquest their position has altered dramatically. Coptic Christians are now a religious minority comprising between 5-15% of the population, the other 90% being predominantly Sunni Muslim. Yet even in the context of Egypt's sizeable population, some 83 million, they are the region's largest non-Muslim community. The biggest numbers live in Cairo and Alexandria and in Minya (sometimes spelt Menya) in Upper (i.e. southern) Egypt. Throughout Egypt there are said to be 108,395 mosques and 2,869 churches. In March 2012, Pope Tawardos II was confirmed as the new leader of Egypt's Coptic Christians and the consequences of his active support for the army's ousting of President Morsi in July 2013 is one of the matters we must analyse below. The ousting of Morsi coupled with the earlier popular revolution leading to the resignation of President Mubarak in February 2011 (which was followed by an interim period in which the Supreme Council of the Armed Forces (SCAF) ruled, lasting until Morsi was elected President in June 2012) means that the country has experienced two major upheavals in less than three years. It is against this background that we must address the issue of whether Copts - or Coptic Christians (in modern times the two terms are used interchangeably) - in Egypt are at real risk of persecution or ill-treatment.
2. The case arises in the context of appeals brought by a mother, MS, and her minor, disabled son, FZ (who is now aged 12), against a decision by the First-tier Tribunal (Judge C M Phillips) against the respondent's decision of 21 February 2012 to remove them from the UK, having refused to grant them asylum. For convenience we shall refer for the most part hereafter to the first appellant simply as "the appellant" and the second appellant as "her son". The basis of the appellant's claim to have experienced serious harm was that she had suffered verbal abuse and physical attacks at a school in Cairo where she had worked as a teacher since 1992, and an attempt to kidnap her by the Muslim brother of a teacher colleague. She said she had left Egypt for fear of further attacks.
3. Judge Phillips found the appellant's account to be a fabrication and that even if the events she narrated had taken place, she would have available to her a sufficiency of protection, and also (even if he was wrong about that) a viable internal relocation alternative.
4. On further appeal, Designated Upper Tribunal Judge Shaerf set aside the decision of Judge Phillips in the following terms:
  - "7. I find the Judge's limited treatment of the background evidence and her failure to address in detail the background evidence which was before her amounted to a material error of law. Additionally, the Judge was obliged, notwithstanding her adverse credibility findings, to consider if there was any general risk to the

Appellants by virtue of their faith as Coptic Christians on return to Egypt in the context of the consequences of the fall of the Mubarak regime.

8. There is no reason for the Judge's findings on the personal circumstances and narrative of the Appellants to be set aside or her findings on their claim under Article 8. These findings should be preserved but the Judge's conclusions about the general situation of Coptic Christians in Egypt and the risk on return in general to Coptic Christians must be set aside."
5. In subsequent directions issued by Upper Tribunal Judge Kekić on 18 April (as amended on 30 April) 2013, the agreed country guidance issues were specified as:
    - "• The risk of persecution and/or ill treatment on return to the appellants' usual place of residence either at the hands of the authorities or Muslim Egyptian nationals and including persecution arising out of discrimination and/or harassment.
    - The risk of persecution and/or ill treatment on return to other places in Egypt, including Cairo, either at the hands of the authorities or Muslim Egyptian nationals and including persecution arising out of discrimination and/or harassment.
    - The willingness and ability of the authorities to protect Coptic Christians generally and, in particular, the appellants against persecution and/or ill treatment including persecution from discrimination and/or harassment from Muslim Egyptian nationals amounting to persecution/ill treatment.
    - The impact upon risk of the first appellant's condition as a single mother and divorcée without any other familial or male support in Egypt."

Since the appellant's home area is a suburb of Cairo, we construe the reference to Cairo in the second bullet point above to mean "other parts of Cairo".

### **Scope of the Hearing**

6. At the outset of the hearing Mr Wilding asked us to confine the scope of the appeal to the asylum-related issues and to exclude anything related to Article 8, pointing out (correctly) that the appellant's grounds of appeal made no mention of this provision. We ruled that we would not exclude Article 8. We have to bear in mind in re-making the decision on these appeals that pursuant to section 85(4) of the Nationality, Immigration and Asylum Act 2002 we have to consider matters as they are at the date of hearing before us, and although all the findings of fact made by the First-tier Tribunal about the appellant's personal circumstances have been preserved, including those relating to her and her son's private and family life, the hearing before that judge took place over a year ago, in March 2012, and the original grounds of appeal did raise Article 8, and in particular the family and private life circumstances of the appellant and her disabled son. In the particular circumstances of this case we do not consider that the failure of the appellant to identify or produce

further evidence in accordance with rule 15(2A) of The Tribunal Procedure (Upper Tribunal) Rules 2008 is fatal and we apply rule 7 of the same Rules.

### **Background Evidence**

7. The full body of materials submitted to the Tribunal in this case is set out at Appendix A. Here we confine ourselves to a summary of what is said in the major country reports dealing with Egypt and the state of religious freedom in that country as well as some other reports, including by Christian NGOs, and the Home Office Country of Origin Information Service bulletin of 17 April 2013, a May 2013 OGN on Egypt and 5 August 2013 letter from the Foreign and Commonwealth Office (FCO) Egypt desk. We should also mention that when below we use terms such as "radical Islamists"/"Islamists" it is because they are used in the major country reports.

### **US Department of State Report on International Religious Freedom: Egypt (USSDIRF), 20 May 2013**

8. In this May 2013 report concern is expressed about the 2012 constitution introduced by President Morsi and the fact that it made the right to practise religious rituals and establish places of worship conditional by adding the ambiguous clause "as regulated by the law". It also made the principles of Sharia (Islamic law) the primary source of legislation. The report's executive summary observes that:

"While recognised and unrecognised religious minorities mostly worshipped without harassment, the government generally failed to prevent, investigate, or prosecute crimes, against members of religious minority groups especially Coptic Christians, which fostered a climate of impunity."

9. The government often sponsored or permitted "reconciliation sessions" following communal violence and sectarian attacks instead of prosecuting perpetrators of crime.
10. Along with other religious minorities, Coptic Christians face personal and collective discrimination, especially in government employment and in their ability to build, renovate and repair places of worship. The report adds:

"There were reports of societal abuses or discrimination based on religious affiliation, belief or practice. Although lethal sectarian attacks decreased markedly during the year, compelled expulsion and collective punishment increased. Local Islamists also carried out isolated acts of intimidation against some Christians in Upper Egypt..."

11. The report mentions the concerns of the US administration about religious violence and discrimination, failure to prosecute perpetrators of sectarian violence, discriminatory prosecution and sentencing of Christians.



12. The report notes that the government in Egypt interprets Sharia as forbidding Muslims from converting to another religion despite there being no statutory prohibition on conversion. Converts from Islam to Christianity lose all rights of inheritance. Neither the constitution nor the civil and penal codes prohibit proselytising and the government generally tolerates foreign religious workers proselytising so long as it is not to Muslims. Both Islamic and Coptic Orthodox religious law prevent Coptic men and Muslim women from marrying each other.
13. As regards kidnappings of Coptic women for forced conversion to Islam, the report describes opinion being divided as to how common or rare these were, noting that “[f]amilies sometimes claim kidnapping when women or girls ran away for reasons ranging from abuse to voluntary conversion or elopement”.
14. Under a heading “Positive Developments in Respect of Religious Freedom”, the report notes (then) President Morsi on 5 October 2011 ordering increased security for Christians in Al Arish and having spoken about the need for Muslims and Christians to stand together against violent extremism, telling Copts “your security is my security”. It noted that Morsi had met twice with senior representatives of Egypt’s Christian churches, something neither Former President Mubarak nor the SCAF had done in decades. Belated action to protect Christians was noted in Dahshour. In a section on societal respect for religious freedom, the report states that lethal sectarian attacks decreased during the year. “Communal tensions remained high, although Christians and Muslims share a common culture and in most cases continued to live peacefully as neighbours throughout the country”.

The US Commission on International Religious Freedom, United States Commission on International Religious Freedom Annual Report 2013, Egypt, (USCIRF) 30 April 2013

15. This report provides a similarly mixed picture. On the one hand it notes some improvements relating to freedom of religion and positive societal progress, a significant decrease in deaths and injuries from sectarian violence, and, over the past two years, the government beginning to re-open more than 50 churches. On the other hand it records Coptic Orthodox Christians and their property continuing to experience sustained attacks and the government failing or being slow to protect religious minorities from violence, all of this continuing to foster a climate of impunity. The report recommended that Egypt remain on its own (USCIRF) Watch List as a “country of particular concern” (CPC) as it had been since 2002.
16. From the report it can be gleaned that the occurrence of two huge popular upheavals within the space of two and a half years has to be viewed in the context of the country’s worsening economic situation. The revolution of 2011 hit tourism receipts and foreign investment declined, leaving the country’s foreign reserves to fall acutely. Unemployment has grown to over 13%. Corruption remains prevalent. Egypt was ranked 118 out of 176 countries surveyed in Transparency International’s 2012 Corruption Perceptions Index (the higher the ranking the less the transparency).

## Recent Reports

17. The Christian Solidarity International (USA) report, "Tell My Mother I Miss Her": the Disappearance, Forced Conversions and Forced Marriages of Coptic Christian Women in Egypt, 17 July 2012, says that although there is no systematic data collection within the Coptic community, this community has become increasingly vulnerable to persecution on account of the upsurge of militant Islam following the overthrow of President Mubarak. Young Coptic women are particularly vulnerable to forced disappearances, abduction and forced conversion. Cases have escalated since January 2011. One attorney interviewed for the report indicated first-hand knowledge of over 1,600 cases of Christians who had converted to Islam in recent years, and who are now petitioning to have their Christian identities restored, 60% being women. Four attorneys collectively report a total of over 550 cases of abductions, disappearances and petitions to restore Christian identity following abduction, forced marriage and forced conversions over a five year period.
18. A report issued in February 2013 by Freedom House commenting on events of 2012 states that "[s]ectarian violence has increased in recent years with Christians bearing the brunt of the violence".
19. In a press release of 23 July 2013, Amnesty International recounts that under President Mubarak at least 15 major attacks on Copts were documented. Sectarian violence continued under the SCAF and following the election of President Morsi. At least six attacks on Coptic churches or buildings took place in 2013 during the final months of Morsi's administration.
20. On 15 August 2013, Mr Adam Dieng, UN Special Advisor on the Prevention of Genocide and Ms Jennifer Welsh, UN Special Advisor on the Responsibility to Protect, addressing the situation in Egypt deplored both the excessive use of force by Egyptian security forces against demonstrators in Cairo and the number of Christian churches and institutions that had been targeted "reportedly in retaliation to the incidents in Cairo".
21. On 22 August 2013 Human Rights Watch said that since 14 August 2013, attackers had "torched and looted scores of churches and Christian property across the country, leaving at least 4 people dead". 42 churches were identified as having been burned or damaged since 14 August 2013. The list of churches burned or damaged and churches attacked not damaged is given at Appendix C.
22. Most of the attacks occurred in Upper Egypt. The Acting Middle East Director states that "for weeks everyone could see these attacks coming, with Muslim Brotherhood members accusing Coptic Christians of a role in ... Morsi's ouster, but the authorities did little or nothing to prevent them". The report says that sectarian attacks against Christians had increased even before the 14 August actions: while a few Muslim Brotherhood leaders had condemned these attacks, they needed to tell the group's followers to stop inciting violence by insinuating the Coptic minority is responsible

for the crackdown. Local groups and religious leaders had also incited the groups to target Christians.

23. Shedding light on events in the first half of 2013 the UK Parliament House of Commons Library document “Coups in Egypt 04/07/2013”, chronicles growing popular disaffection with the Morsi regime from November 2012 onwards. Noting that Morsi ignored large protests in bringing forward a referendum on his new constitution, this document records that the constitution was approved by about 57% of the votes on a turnout of perhaps one-third of the electorate, a figure which starkly underlined the growing disillusionment with the democratic process as offered by the Muslim Brotherhood. On the anniversary of Morsi’s installation as President enormous demonstrations were organised by the Tamarud movement (primarily a youth movement). Millions took to the streets, especially in Cairo.

UKBA COIS Egypt: Bulletin, 17 April 2013

24. This bulletin identifies numerous sources finding that discrimination and sexual harassment and violence against women in Egypt is widespread. Social class and economic background tend to be the main factors in determining the manner in which poverty affects women.

UK Home Office Border Agency, Operational Guidance Note: Egypt (v1, 7 May 2013) 7 May 2013

25. This guidance note observes that inter-religious bloodshed has been increasing in recent years, with Christians suffering most of the violence. Through inaction the government failed to prevent violence against Christians or stop the destruction of churches and religious minority owned property. There is inadequate protection against sectarian violence. In addition Christians face official and societal discrimination. Two key paragraphs are 3.9.18 and 3.9.19:

“3.9.18 Conclusion: The constitution allows for the freedom of citizens to practise one of the three monotheistic religions, i.e. Christianity, Islam or Judaism. However in practice, Christians in Egypt do face generalised societal discrimination and in recent years, levels of violence and ill-treatment have become increasingly severe and more overt. Christians may face intimidation and serious harassment which in many cases will amount to persecution. Case owners must carefully consider each case on its facts. The authorities frequently fail to provide effective protection to Christians, or to investigate and prosecute instances of serious harassment and ill-treatment. Where an individual is able to demonstrate that they are at serious risk of persecution on account of their particular individual circumstances and internal relocation is unavailable, a grant of asylum will be appropriate.

3.9.19 Christian converts from Islam face serious risks of severe ill-treatment ... Where it is accepted that the applicant is a Christian who has converted from Islam, a grant of asylum will be appropriate in the majority of cases.”

26. In a letter of 5 August, 2013, the FCO (Egypt desk) estimates the Coptic Christian population of Egypt as between 7-11 million. Since the military's removal of Morsi there has been a rise in the number of violent sectarian attacks. The response of the police and the state more widely to sectarian violence has been inadequate. NGOs report an increase in the number of arrests of Coptic Christians charged with blasphemy during Morsi's presidency. NGOs report that it is becoming more difficult for Coptic Christians in Upper Egypt to find housing, school facilities and jobs and more difficulty with single mothers.

### **Case Law**

27. In the case of ME v France (app no. 50094/10) 6 June 2013, the European Court of Human Rights (ECtHR) Court held at paragraph 50:

“On the general situation in Egypt, the reports consulted decry the many acts of violence and persecution suffered by the Coptic Christians of Egypt in the course of 2010 and 2011, as well as the reluctance of the Egyptian authorities to prosecute the aggressors. The parties adduce no evidence that would indicate that the situation of the Copts improved in 2012. In spite of that, the Court, given the information available to it, is of the opinion that it is not permissible to conclude that there is a general risk, for all Copts, that would suffice to entail a violation of Article 3 in the event of a return to Egypt.”

### **Expert Evidence of Mr Marshall**

28. We received written and oral evidence (by way of video-link) from Mr Paul Marshall who is a Senior Fellow of the Center for Religious Freedom, Hudson Institute, Washington, D.C. He has authored or co-edited over 20 books including seven that deal with freedom in Egypt, the latest being “Persecuted: The Global Assault on Christians”, 2013. He has given expert testimony in cases to a number of US government bodies. He has been certified as an expert witness before a number of US immigration courts. He has written for numerous newspapers and media outlets, including the New York Times and the Wall Street Journal. He states that he is in regular contact with Egypt, frequently interviewing Egyptian religious figures and human rights workers, he maintains research files on Egypt and acts as host to visitors from Egypt.

### **Written Report: 6 June 2013**

29. In a report dated 6 June 2013 Mr Marshall summarises general conditions in Egypt, highlighting general changes since February 2011, he notes the fact that in the November 2011 - 3 January 2012 elections for the lower House of Parliament, the Salafists Al-Nour party won 45 seats (25%) and the Muslim Brotherhood won 150 seats (46%).
30. Mr Marshall explains that there is no uniform system of reporting attacks on Copts or other religious minorities, which makes it difficult to document religious

persecution, but he is confident that attacks on Copts from extremists and security forces have continued since Mubarak's resignation "and have markedly increased". Copts are described as "suffer[ing] from a systemic pattern of persecution from Islamic extremists". He notes that Article 2 of Morsi's new constitution had provided for an official role for Al-Azhar to give its opinion on all matters pertaining to the Sharia. "[T]his new article", he states "places a non-elected religious body above the Egyptian parliament as arbiter and explainer of state laws". He describes this constitution as a "clear set-back for religious freedom".

31. We should explain that Al-Azhar is a university in Cairo which dates back to 970 AD and combines the study of Islam and Islamic law with a secular curriculum. It is widely considered the chief centre of Arabic literature and Islamic learning in the world. Its Islamic schools render edicts (fatwas) on disputes submitted to them from all over the Sunni Muslim world. In July 2012 after the law restricting Al-Azhar's autonomy was modified by President Morsi, Al-Azhar's governing Council was reformed. The Al-Azhar Council, is tasked with nominating the Grand Mufti of Egypt (subject to Presidential approval) and electing the Grand Imam of Al-Azhar mosque in Cairo. Although this Council's decisions are not binding, it is considered difficult for the Egyptian Parliament to pass laws and decrees without support from the Council. Al-Azhar is strongly opposed to Salafist tendencies in Egyptian society.
32. Mr Marshall notes that since 1992 some Islamic groups (including the Muslim Brotherhood under its previous leader) have maintained that non-Muslims (in this context Christians and Jews) should be given "*dhimmi*", i.e. a separate and subordinate status, under Sharia law, and must pay a special tax, *jizya*, to secure their protection. Those who refuse to pay may have their homes or businesses attacked, and themselves or their families beaten, maimed or killed: "several reports suggest that thousands of Christians have paid *jizya* in recent years and that many Christians have been killed for failing to pay" (3.4.1).
33. Mr Marshall states that most reporting agencies depict the situation of Copts as having worsened since February 2011. In response to the USSDIRF report stating that the rate of killing of Copts decreased in 2012 from 2011, Mr Marshall writes that this is only a function of the fact that major incidents occurred in 2011.
34. Mr Marshall states that there is a general climate of impunity concerning attacks on Copts, indicating that the Egyptian government is either unwilling or unable to provide protection to Copts. In response to a Home Office statement made in the reasons for refusal letter that many Egyptian Muslims do not support human rights abuses, Mr Marshall writes:

"However, in terms of persecution of Copts, the fact that most Muslims in Egypt do not persecute Copts tells us little. If only 2% of Muslims in Egypt were to persecute Copts, or tolerate the persecution of Copts by others, or might be whipped into attacks on Copts by radical Imams, then Copts would be endangered by over a million people. The real existence of moderates does not obviate the real and pervasive persecution of Copts."

35. On the issue of the geographical spread of violence against Copts, he writes that while certain areas such as Upper Egypt have proportionately more attacks on Copts, "there is no area of the country where harassment and persecution of Copts does not occur ..."
36. Mr Marshall refers to the pervasiveness in Egypt of sexual harassment and sexual assault. On the evidence regarding abduction of Coptic women and girls, he says that whilst it is true there are instances where voluntary conversion, elopement or marriage is described as an abduction, the threat of kidnapping of Coptic women and girls "is real".
37. In a section headed "Discrimination" Mr Marshall opines that there are virtually no Copts in senior government, in the senior echelons of public universities, and mentions discrimination in payment of taxes (which include an element for mosques, Muslim schools and universities and Imams).

Supplementary Written Report: 18 July 2013

38. On July 18 2013 Mr Marshall produced a supplementary report addressing eleven questions from the Home Office. He states that Copts throughout Egypt are threatened by attacks or are at risk because of their religion in ways they would not be if they were not Copts. This was as true for Copts living in high percentage Christian areas such as Upper Egypt as elsewhere. Proportionately Copts suffer more attacks in Upper Egypt.
39. Asked if it was his view that particular groups of Coptic Christians may be targeted, arrested, imprisoned and physically attacked by government agents, Mr Marshall writes that government agents had targeted converts, people who work with them, those accused of proselytising, those accused of being sexually or romantically involved with a Muslim woman, those who are outspoken about their religion and those who work visibly in the community, or are involved in church construction or repair. "These categories of Copts are more likely than the average Copt to be targeted by government agents".
40. He does not consider that the US Department of State 2012 Report of May 2013 and its statement that "...recognised and unrecognised religious minorities mostly worshipped without harassment" conveyed anything about other aspects of freedom of religion such as building or repairing places of worship, raising one's children in the faith, maintaining educational, social and welfare projects, training clergy, access to and use of media, freedom to propagate and changing one's religion etc. This was therefore a "very weak claim, and could be true even if [sic] while there is ongoing widespread persecution of Copts".

41. Mr Marshall says he accepts many claims of kidnapping of Coptic girls were designed to deflect shame from a Christian family if a daughter marries a Muslim, but adds that there are real instances of such abductions.
42. Asked to address the comment in the USSDIRF report of May 2013 that the rate of killing of Copts had decreased in 2012 from 2011, Mr Marshall says that was true but other forms of oppression and attacks continued or increased. He remarks that the same report noted an increase for 2012 in compelled expulsions and collective punishment. Since February 2011 nearly 100 Coptic Orthodox Christians have been killed due to sectarian violence, surpassing the death toll of the previous ten years combined.
43. In reply to a question as to whether there was any evidence to show that Coptic Christian women are subject or vulnerable to sexual assaults on account of their faith, Mr Marshall says that he knows of no evidence that Coptic women are more subject to this than women in general; but Coptic women were subject to a particular form of assault: abductions, kidnapping, coerced marriage and conversion.

#### Written Addendum Report: 18 July 2013

44. Because of changes in the political situation of Egypt, Mr Marshall produced an Addendum dealing with the situation since the ousting of Morsi. Attacks on Copts are said to have escalated in part because the new Coptic Pope attended the military's July 2013 public announcement of a 'roadmap' and because most Copts appear to have supported Morsi's ousting. Black crosses have been painted on Christian shops to mark them for arson and mobs have attacked churches and besieged Christians in their homes. Mr Marshall gives a list of attacks since 3 July 2013.
45. His Addendum concludes:

“3.2.6 The future is uncertain, but, given the degree of restrictions on religious freedom in Egypt, the widespread public sentiment sceptical of religious freedom, the limiting of religious freedom in the July 8 2013 constitutional declaration, the continuing influence of the Salafists and the upsurge in attacks since Morsi's ouster, my view of the likely situation of Copts is the same as [in my] June 6, 2013 report.”

#### Further Written Addendum Report: 15 September 2013

46. Mr Marshall produced a further addendum of 15 September “[b]ecause of the numerous attacks on Copts in Egypt”. In it he notes the interim cabinet appointed on 16 July 2013 had three Copts as ministers (out of 33) and that the 50-strong committee set up to draft a new constitution includes four Copts. He then details attacks on Copts since 14 July 2013, dealing in a separate sub-section with “Major Attacks of August 14-16, 2013”. The list he gives for the latter is that produced by the Maspero Youth Union on 14 August 2013, which is, he states, a list referenced by

Amnesty International and the New York Times. The list and his subsequent comments are set out at Appendix D below.

The comments he goes on to make regarding this list are as follows:

- “2.11.4 Some additional features of the attacks were:
- 2.11.5 There are reports from several governorates that before many of the attacks, Christian homes were marked with graffiti or crosses to distinguish them.
- 2.11.6 Military spokesmen stated that it would assist in rebuilding the destroyed churches.
- 2.11.7 On August 16, 2013, Islamists gathered and held Muslim prayers in three of the churches they had attacked and burned in the Minya region in Upper Egypt. The three churches were the Holy Virgin and Anba Abra’am in Dalga, the Evangelical church in Badini, and the church of Anba Moussa al-Aswad in the town of Minya. This action is believed to be an attempt to make sure that these churches are never rebuilt. The military has pledged to rebuild all the churches the Islamists destroyed but in Muslim tradition, any place in which they pray has to be turned into a mosque or place for Muslim prayers.
- 2.11.8 There were also attacks on some of Egypt’s cultural sites, such as the museum in Mallawi, and the great library in Alexandria.
- 2.11.9 My colleague Samuel Tadros, author of a new book on the history of the Copts, *Motherland Lost*, states that he believes that the period August 14-16, 2013 was the most extensive series of attacks on Copts since 1321, under the Mamluks, when a similar wave of church burnings signalled a centuries-long period of intense persecution that saw the Coptic Christian community decline from somewhat less than half of Egypt’s population to its current 10 approximately percent.
- 2.11.10 Attacks continued after August 16, 2013. On August 17, 2013, after burning a Franciscan school in Cairo, Islamists paraded three nuns on the streets like “prisoners of war” before a Muslim woman offered them refuge. Two other women working at the school were sexually harassed and abused as they fought their way through a mob.”

#### Mr Marshall: Oral Evidence

- 47. Mr Marshall said there had been no official survey of the numbers of Coptic Christians in Egypt but he followed the USSDIRF reports which said estimates ranged from 5-15 million and in terms of percentages he used 10%, that being a mid-point on the range of reasonable estimates. Of the religious minorities in Egypt, Copts comprised around 99%. The majority Muslim population were predominately Sunni Muslim.



48. Mr Marshall said he conceded the fact that for the past 15 years there had been cordial relations between the heads of the Coptic Church and the Sunni Muslims (Coptic Pope and Grand Sheikh), but he felt that this told us little about the levels of violence and persecution Copts suffered mainly at the hands of the Salafists and Muslim Brotherhood.
49. Asked whether he considered Egypt was in a state of emergency, he said that although Egypt's long-running official state of emergency had expired on 31 May 2012, the country remained in one functionally: restrictions on government powers had been lifted and the normal legal regime suspended. Officially Egypt had been declared as being in a state of emergency in 1981 upon the killing of President Sadat and this remained in force until the overthrow of President Mubarak. On 14 June 2012 the Supreme Court held the elections to the lower house of Parliament to be illegal and on 20 December 2012 President Morsi decreed his decisions were not subject to the court. Since President Morsi was deposed in July 2013, the country has been run by the military. The upper house of Parliament is now dissolved.
50. Cross-examined by Mr Wilding, Mr Marshall agreed that the Hudson Institute worked to promote religious freedom.
51. Mr Wilding enquired why, despite stating in his report that he had read the court documents relating to the appellant's case, he had gone on to give his assessment of her case on the assumption she had been telling the truth. Mr Marshall said he did not know whether the Upper Tribunal could revisit the facts: in the US, equivalent jurisdictions sometimes could, so he included section 5.1-5.13 in case. He had not read Judge Phillip's findings as excluding that the appellant had been the subject of attacks or that she had been the subject of abuse or harassment. His own opinion on the discriminations affecting Copts generally, in various areas of Egyptian society, taxes etc. was not conditional on a general assumption of credibility.
52. Quizzed as to whether he considered all Copts to be at risk, Mr Marshall replied yes, although he did not mean that they were all actively persecuted. Copts who had had problems before would be more at risk. Asked whether he was ignoring the positive improvements since the fall of Mubarak chronicled in the 2013 USSDIRF report, he said he did not think he was. He accepted there was a reduction in sectarian violence in 2012, but 2011 had seen two major incidents. He did not believe that there was a downward trend in 2013. Destruction of properties was increasing. His report had noted that the Morsi government had spoken about beginning to re-open some 50 churches and the fact that three drivers of vehicles used in the Maspero attacks had been convicted and sentenced, but the overall picture was negative by reference to the numbers killed or injured and by the number of instances of failure of protection. Only three low-level soldiers had been convicted and only for manslaughter due to neglect/mistake. There was a climate of impunity. The Al-Azhar University had spearheaded initiatives in support of freedom of religion but the new constitution planned by Morsi had effectively undermined that. He was not aware of any official

dialogue between the Copts and Al-Azhar. Al-Azhar was not having much effect and some of its activities were hostile to Copts. Dialogue was not having an effect on the ground. One cannot infer from this type of development that the Egyptian state wants dialogue and an end to attacks on Copts. For Copts at large state persecution was not the biggest problem. The biggest problem was attacks by Salafists and other non-state actors and he questioned the willingness of the government to protect Copts, although there has been protection on some occasions. The overall pattern was lack of protection. Sometimes the lack of protection was due to lack of resources, e.g. attacks by mobs on police stations, but when it came to attacks on Copts in Cairo, Alexandria and Suez, it looked rather more like a conscious decision not to intervene.

53. Mr Marshall was asked whether he thought there was a correlation between areas of Egypt (e.g. Minya in Upper Egypt) where there was a higher proportion of Copts, and areas where there was a higher levels of violence against Copts. He said there was. In Upper Egypt Islamic radicalism was everywhere. It was a poor region, so Copts were more vulnerable. At the same time, it was important to note that attacks on churches in Cairo included that city's outlying areas, so out of the 61 attacks identified, around eight were in Cairo or other big cities.
54. In Egypt as a whole there was a sectarian element, Copts were the ones targeted. There were mob attacks and the marking of crosses on houses, sometimes with messages sent beforehand threatening attacks. Whilst police are also targeted they are not in the same position as unarmed civilians. He had done his best to update the situation.
55. Asked about abduction and kidnapping of Coptic women, he said he considered the Christian Solidarity International USA report of July 2012 on the disappearance, forced conversion and forced marriages of Coptic women to be reliable, but on reflection he did not think that his reference in his report to a separate risk group of Coptic women with children was correct; having or not having children was not a separate factor, although having children may result in greater vulnerability. As regards age, women aged between 14 - 25 were the most at risk. Risk to such women was more prevalent in Upper Egypt, but there were instances outside.
56. Mr Wilding put to Mr Marshall that his report appeared to accept the statistics on kidnapping of Coptic women at face value despite the Freedom Report of 2012 noting that some instances were not in fact kidnapping and many of the reports were false. He accepted many were false reports, to disguise family shame and he believed his report had made that clear. The numbers were lower than the hundreds a month alleged by some Coptic activities. He did not agree with the statement of one Coptic leader that victims were limited to females who were "not educated"; they included university students. He considered levels of kidnappings were increasing.

57. Attention was drawn by Mr Wilding to the section of his report which referred to several reports suggesting that thousands of Christians have paid *jizya* notwithstanding that it was illegal under Egyptian law to impose such a tax. He said that in the village of Dalgarin in Minya, *jizya* had been paid by hundreds of people until the military intervened. It was a neglected area of research, but he thought the phenomenon of *jizya* occurred throughout the country, including Cairo, not just in rural areas, although it was more prevalent in the south.
58. In re-examination Mr Marshall said he did not know any reason why the occurrence of *jizya* would have dropped off. In relation to the kidnapping of Coptic women he believed some Coptic leaders chose to rely on the rationale that if they make a big fuss about it, the government would repress them, as they would perceive such statements as lowering the reputation of Egypt abroad. Having said that, Copts have become more outspoken since the fall of Mubarak and the new Coptic Pope is more outspoken.
59. Asked if there would be a risk to the appellant as a lone female Coptic woman with a disabled child, Mr Marshall said he considered she would be vulnerable and would also be a possible target for conversion by abduction or inducement. Women without men were relatively rare. It had also to be borne in mind that there was currently a climate of fear and threats, with church services being cancelled.
60. In reply to questions from the panel, Mr Marshall said he was not able to assist with the figures during the recent periods of civil unrest as to the number of deaths and injuries in the civilian population of Egypt as a whole or for homicides.
61. In relation to his statement that Egypt was “functionally” in a state of emergency, he said he considered that the authorities’ suspension of ordinary legal processes was justified in response to the widespread violence and the instability being experienced throughout the country, with radical Islamists now targeting government targets. It was possible the situation could tip over into civil war.
62. He agreed that in the areas where radical Islamists were most highly concentrated, e.g. Minya and Asyut, the risk to Coptic Christians was greater, but this did not mean there was no risk to Copts elsewhere. Asked about the reference in background materials to 100,000 Copts having left Egypt recently, he said it tended to be the wealthier Copts who were leaving.
63. Mr Marshall was asked about his written response to the following question from the Home Office – “Is it your view that particular groups of Coptic Christians may be targeted, arrested, imprisoned and physically threatened by government agents?” He said that he considered the list of categories he had given would also serve as a valid list for those threatened by non-state actors, although he would add to that list all Copts who are outspoken about their religion. He reiterated, however, that in his view Coptic Christians as a group are targeted, not just those particular categories, and supporters of ousted President Morsi saw them as responsible for his overthrow.

64. In questions arising, Mr Wilding asked whether the majority of deaths through violence since 2011 had been in the context of political clashes in Cairo and Alexandria. Mr Marshall said that was true but levels of violence against Copts were still on the increase and, unlike the situation of pro and anti-Morsi supporters involved in clashes, where guns were used, Copts were unarmed and the violence was all one-way.

### Legal Framework

65. Before summarising submissions we should first record that what we go on to say about the issue of availability of protection in Egypt applies the principles set out by Auld LJ in the Court of Appeal case of Bagdanavicius [2003] EWCA Civ 1605 at [54]-[55] (guidance unaffected by the subsequent decision of the House of Lords in the same case: [2005] UKHL 38), including propositions 11 -12 of [55] which read:

“11) In most, but not necessarily all, cases of ill-treatment which, but for state protection, would engage Article 3, a risk of such ill-treatment will be more readily established in state-agency cases than in non-state actor cases - there is a spectrum of circumstances giving rise to such risk spanning the two categories, ranging from breach of a duty by the state of a negative duty not to inflict article 3 ill-treatment to a breach of a duty to take positive protective action against such ill-treatment by non-state actors; Svazas.

12) An assessment of the threshold of risk appropriate in the circumstances to engage Article 3 necessarily involves an assessment of the sufficiency of state protection to meet the threat of which there is a such risk - one cannot be considered without the other whether or not the exercise is regarded as "holistic" or to be conducted in two stages; Dhima, Krepel, Svazas [2002] EWCA Civ 74.”

### Regulation 4 of the Protection Regulations

66. It will also assist to refer to relevant provisions of The Refugee and Persons in Need of International Protection (Qualification) Regulations 2006 which implement EU Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L304/12 of 30.9.2004 (hereafter "the Directive").

67. Mirroring Articles 9, 6 and 7 of the Directive, the Protection Regulations set out, *inter alia*, definitions of acts of persecution (regulation 5), actors of persecution or serious harm (regulation 3) and actors of protection (regulation 4). Regulation 5(1) states that:

“5.(1) In deciding whether a person is a refugee an act of persecution must be:

(a) sufficiently serious by its nature or repetition as to constitute a severe violation of a basic human right, in particular a right from which

derogation cannot be made under Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms; or

- (b) an accumulation of various measures, including a violation of a human right which is sufficiently severe as to affect an individual in a similar manner as specified in (a)."

68. Regulation 4 in its material parts provides:

"1) In deciding whether a person is a refugee or a person eligible for humanitarian protection, protection from persecution or serious harm can be provided by:

(a) the State; or

(b) any party or organisation, including any international organisation, controlling the State or a substantial part of the territory of the State.

(2) Protection shall be regarded as generally provided when the actors mentioned in paragraph 1(a) and (b) take reasonable steps to prevent the persecution or suffering of serious harm by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the person mentioned in paragraph (1) has access to such protection.

...".

69. The wording here is substantially the same as the text of Article 7 of the Directive save that regulation 4(2) omits the phrase "*inter alia*" immediately before "by operating". Article 7(2) states that "Protection is generally provided when the actors mentioned in paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, *inter alia*, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection".

70. Like the wording of Article 7(2) the wording of regulation 4(2) is unmistakably defeasible: "[p]rotection shall be regarded as *generally* provided ..." (emphasis added). It is not stated that the taking of "reasonable steps to prevent the persecution ... by operating an effective legal system ..." will amount to provision of adequate protection in every case, although it is said that it will in the generality of cases.

71. Given that we are concerned with a case alleging religious persecution, attention should also be paid to what was said about this very subject by the Court of Justice of the European Union in 2012 in Joined Cases C-71/11 and C-99/11, Germany v Y & Z (Y and Z) confining ourselves to paragraphs [63] (in part) and [64]:

"[63] ... Acts which may constitute a 'severe violation' within the meaning of Article 9(1)(a) of the Directive include serious acts which interfere with the applicant's freedom not only to practice his faith in private circles but also to live that faith publicly.

[64] That interpretation is likely to ensure that Article 9(1) of the Directive is applied in such a manner as to enable the competent authorities to assess all kinds of acts which interfere with the basic right of freedom of religion in order to determine whether, by their nature or repetition, they are sufficiently severe as to be regarded as amounting to persecution.”

72. The Court thereby made clear that unless they cumulatively give rise to a severe violation of a non-derogable human right, infringements of derogable human rights will not constitute persecution within the meaning of Article 9(1) of the Directive.

73. In accordance with the terms of Article 9(1), ascertainment of what constitutes a derogable human right must be by reference to Article 15 of the ECHR. This provides:

“1. In time of war or other public emergency threatening the life of the nation any High Contracting party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2 [right to life], except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7 shall be made under this provision.

3. ...”

74. We deal below at [120] with why we consider that Article 15 has relevance to the context of third countries in the context of assessing risk on return notwithstanding its reference to “High Contracting parties”. But in general terms, given that we are concerned under the Protection Regulations and under the Directive with "protection [preventative of] persecution" ( Article 7(2); regulation 4(2)), it follows that a state which is in a state of emergency within the meaning of Article 15(2) of the ECHR cannot be said to have failed to provide protection generally solely by virtue of its failure to prevent violations of derogable rights – even if the latter taken cumulatively give rise to the equivalent of a violation of one or more non-derogable rights. The converse of this proposition is that if a state in a state of emergency is generally able to afford protection of non-derogable human rights, its conduct does not amount to persecution.

75. We turn then to the parties' submissions concerning asylum-related issues; it is convenient to deal with their submissions on Article 8 separately later.

## **Submissions**

### **Mr Wilding**

76. In written and oral submissions Mr Wilding maintained that none of the evidence before us justified taking a different view from that expressed by the ECtHR in the

ME v France case which was that Coptic Christians were not in general at real risk of ill-treatment contrary to Article 3.

77. In relation to Mr Marshall's evidence, Mr Wilding asked us to attach limited weight to it. His report was a useful although sometimes selective collection of background evidence, but when he went beyond summarising those his analysis lacked depth. The fact that the entirety of section 5 of his June report was predicated on the acceptance that the appellant was credible showed a serious lack of attention to his brief as an expert.
78. The Tribunal should not downplay, as Mr Marshall sought to do, the significance of the initiatives to improve religious cohesion and co-existence and combat religious extremism undertaken by the Al-Azhar University. These were an important indicator at the top of the state structure that there was an intention to protect, not persecute, Copts. This more positive ideological orientation was reflected by the situation on the ground; reports showed that in the two years between January 2011-January 2013 there had been a reduction in sectarian violence. Over this period the number of Coptic Christians killed was only around 100, which, however regrettable, represented a small number out of a population of about 8-11 million. One quarter of that figure were composed of those killed at Maspero in October 2011. The main casualties in Egypt currently were those involved in political clashes between the government (and anti-Morsi supporters) and pro-Morsi groups. Since July 2013 reported incidents against Coptic Christians were isolated. In particular, there was very little evidence of attacks on individual Copts in Cairo; the bulk of incidents are in Upper Egypt; Luxor and Minya have been particular flashpoints. The 'lawless' province of North Sinai has also been afflicted by sectarian violence. Further, incidents of violence against Coptic Christians tend to have a catalyst, e.g. discovery of the body of a Muslim resident for whose death locals suspected that Coptic Christians were responsible. To many of the attacks there is a mob mentality at a localised level and in several of the anti-Copt incidents the police were also attacked. In some cases, e.g. in the August 2012 incidents in the Dahshur village in Giza, some Copts were also involved in the violence. The attacks on churches in areas of sectarian tension do not show individual Coptic Christians are being targeted.
79. As regards the evidence relating to *jizya*, it does not go so far as showing it is something demanded of every Copt, but it could well be a risk factor in certain cases.
80. Mr Wilding said that the fact that there were some influential Muslim scholars within Al-Azhar advocating tolerance to Coptic Christians was not negated by the fact that there were others preaching the opposite. Al-Azhar had the role in the Egyptian state of defining Sunni Muslim orthodoxy. Even if in an individual case there was established a real risk of persecution in a Coptic Christian's home area (be that Cairo, the South or other areas) there would be other areas of Egypt that would be safe. So far as concerns internal relocation the FCO's evidence pointed to increasing difficulties in housing, schooling and jobs for Copts in Upper Egypt, but

there was little more which pointed to there being undue hardship in relocating to the Northern cities such as Cairo and Alexandria.

81. Given that Mr Marshall agreed that the risk to Copts was predominantly greater from non-state actors, it was significant to note situations where the authorities had intervened or assisted, where for example the police have broken up mobs. And where there was a situation of civil unrest the authorities did not always have the resources to respond. The evidence showed a willingness of the state to prevent and prosecute sectarian violence.
82. As regards risk of kidnapping of Coptic Christian women and girls, Mr Marshall had accepted there was evidence that a significant number of allegations of this were false. None of the evidence points to kidnappings in Cairo. Coptic Christian women were not at an enhanced risk in Egypt. In terms of discrimination against women, class appears to play a more important role than religion. And in any event there was evidence that there were state or charitable networks of support for abandoned and divorced women. Also, so far as the appellant was concerned, she was not in the age range Mr Marshall identified as being most at risk. According to her evidence, she had lived for 11 years as a single mother bringing up her son. She was educated and had a profession as a teacher. Given the credibility findings already made there was no reason why she would be unable to recommence teaching.
83. Asked by the panel what he considered we should make of Mr Marshall's reply to a Home Office question about particular risk categories, Mr Wilding said that Mr Marshall's insistence that all Coptic Christians were at risk made that answer difficult to start with. The respondent would regard all of the proposed categories save for converts as very contingent on the individual facts. For example, it did not appear that those who preached to other (non-Coptic) Christians (as opposed to Muslims) would have problems. The Home Office questions were put a month before President Morsi was deposed. The background evidence did not point to mobs attacking Coptic Christians because they were proselytisers.
84. It was significant, argued Mr Wilding, that Mr Marshall had accepted that Coptic Christians were at greater risk in areas where there is a concentration of radical Islamists. The obverse was surely that in areas where there was not a significant number of radical Islamists, the risk was lesser.
85. As adumbrated earlier, Mr Wilding's submissions on Article 8 are set out separately later.

#### Ms Benitez

86. In her written and oral submissions Ms Benitez said that whilst Mr Marshall's assumption of the appellant's truthfulness justified disregarding some aspects of section 5 of his report, the rest stood and indeed his observations on discrimination applied in any event. We should find Mr Marshall an informed expert who also had



given sufficient references and reasons to back up his findings. His finding of an upward trend of violence against Copts which goes unpunished or is insufficiently protected against was sound. Mr Marshall's list of attacks enumerated 86 incidents since January 2011, some of them being multiple attacks. The message from the authorities was they would not protect Coptic Christians. The pattern was slowly establishing itself of Coptic Christians being seen as acceptable targets for violent acts unworthy of protection. The respondent seemed to disregard the fact that the 'sectarian violence' has been solely or primarily directed at the Coptic Christian community. Moreover, the evidence was that most of these attacks were planned and concerted attacks, not mob attacks. There was an increase, not a reduction, in sectarian violence. The reduction had been in the death toll only, not in violent incidents and threats and attacks on churches and homes. Since February 2011 until June 2013 Mr Marshall had cited at least 59 dead, 25 churches attacked, 912 Copts wounded, 141 families forced to evacuate and 14 Copts tried for blasphemy. It was also extremely likely that the number of attacks perpetrated against Copts is much larger than that reported in that since the fall of Mubarak there is no uniform system of documenting religious persecution.

87. The size of a minority population such as the Coptic Christians tells us nothing about whether they are currently at risk in Egypt. Whilst there are large Coptic populations in Cairo and Alexandria, most of the deaths have been in these cities, showing that ill-treatment is most likely to be widespread rather than the opposite. It was dangerous in any event to say 100 deaths between January 2011 - January 2013 was small when there was a clear trend on the part of pro-Morsi supporters and Salafists to target Copts. The Salafists, often instigators of violence against Copts, have received a great deal of foreign financial support in the recent past and nothing had been done to stop it. They previously held 25% of the seats in the people's assembly, the lower house of Parliament and were now in alliance with the present military leadership. Unlike those active in civil unrest, Copts had done nothing to attract this violence. Mr Wilding's submission that most incidents involving violence against Coptic Christians had a catalyst such as a Muslim man being found dead was very dangerous. Whatever the pretext, violence ensued and there were only two instances of this in any event.
88. The fact that Christian communities and Al-Azhar have cooperated to try to prevent religious extremism told us nothing about the situation of religious freedom for the Copts or the risk of persecution. Both the suspended constitution of ex-President Morsi and the current constitutional declaration awaiting approval in a referendum reflected an increased role for conservative interpretations of Sharia law.
89. The Al-Azhar group was not a political group, but a university group of scholars and some of its own pronouncements were actually advocating that Copts pay *jizya*. The rhetoric used by Salafists and the Muslim Brotherhood was no less strident than in 2011 when 1,000 Copts had been killed. These two groups were not involved or working with Al-Azhar.

90. As regards the question of what significance should be attached to Mr Marshall's identification of particular risk categories, this list identified those at risk over and above that facing Copts in general and there was no evidence that attacks by non-state actors related to any of these categories, although for some of these categories it was a matter of common sense they would be at greater risk.
91. The European Court of Human Rights in ME v France had limited background evidence before it and this case was decided in July 2012 and since then the political landscape has materially changed. The evidence relating to *jizya* was alarming, affecting 20,000 inhabitants in one village in Minya and it was not just in Minya.
92. It was unrealistic to say there was safety in Cairo or other big cities as Cairo had had the biggest death toll and there had been attacks throughout the country. The fact that there was a concentration of radical Islamists in certain areas did not preclude threats elsewhere. The threats were more serious since the Muslim Brotherhood had lost power, as they blamed the Coptic Christians for conspiring with the army to achieve that. On any view the evidence demonstrated that there is no valid geographical difference in the nature or level of risk of persecution and ill-treatment of Copts either at the hands of the state or the Muslim population. Copts are persecuted throughout the country. Violence was now widespread with the pro-Morsi movement becoming an insurgency. This backdrop meant that there would not be any viable option for Copts of internal relocation. As state agents are one of the feared persecutors and they are presumed to act throughout the country, an internal relocation alternative is not available and alternatively there is an insufficiency of protection against non-state actors.
93. The discrimination of Copts together with much day-to-day harassment and violence creates a background against which further extremes of abuse could be perpetrated with impunity. Copts are underrepresented in all spheres of public life. There is widespread societal discrimination. Government restrictions generally and public opposition to religious pluralism have also increased.
94. As regards sufficiency of protection, in the first place state actors participated in abuses committed against Copts. Whilst there had been a change of government the law enforcement agencies remain unchanged, with the same personnel, premises and behaviour. Human rights organisations reported that the Egyptian police continue systematically to deploy violence and torture. In addition the authorities had demonstrated an unwillingness and inability to protect Copts. It was not enough to point to instances where local police themselves lacked resources. The military could have helped but had not even done so when attacks on Coptic Christians had been pre-announced. There is a marked failure to intervene when sectarian violence arises, lack of arrests and prosecutions, lack of adequate investigation, failure to put in place measures to avoid further violence and a flagrant failure to punish the perpetrators. In many instances the police encouraged 'reconciliation' as an alternative to the implementation of the law where the non-Copt is found guilty of violence, thereby facilitating the impunity of the aggressors. The issue was one of

total impunity. There had only been two cases of prosecution. There had only been one conviction to date, of a police cadet on 11 January 2011 (sentenced to death 14 May 2012).

95. As regards the position of women, police routinely fail to investigate violence and harassment against women; the authorities do not enforce the law prohibiting rape. Recently women have faced brutal treatment, including sexual abuse, at the hands of the security forces. During the protests religious and political leaders openly stated that women protestors were to blame for the beatings and rapes. There was little or no participation of women in the formulation of government policy, including constitutional and legal frameworks and virtually no women in public office. The FCO states that single mothers have difficulties in finding housing, schooling for their children and jobs generally and that there is no state support for single mothers. Coptic Christian women are subject to a particular form of assault, namely abductions, coerced marriage and conversion to which Muslim women would not be subject. Anti-Christian employment discrimination was evident and extensive.
96. Turning to the appellant's circumstances, she is a lone mother who faces additional risks including discrimination amounting to persecution, sexual attacks and harassment, abductions, coerced marriage, conversions and kidnapping. Ms Benitez highlighted the cases of abduction of Coptic Church women who had been older women and also educated women. Whilst it was true the appellant had lived in Cairo as a single mother for nearly 12 years, the country had radically changed. She would be isolated, without any male or familial support network and would be returned to a country in a functional state of emergency. As regards the significance of the fact that the country was in a state of emergency, that may well mean citizens could not expect their derogable right to be protected in the ordinary way, but the risks to Coptic Christians were primarily to their non-derogable rights.

### **Our Assessment**

97. In assessing the country guidance issues at stake in this case we must conduct a holistic assessment which takes account of a wide range of considerations.

### **ME v France (app no. 50094/10) and Strasbourg Case Law**

98. As the Tribunal has made clear in the previous cases, e.g. AMM & ors (conflict; humanitarian crisis; returnees; FGM) Somalia CG [2011] UKUT 00445 (IAC) and AK (Article 15(c)) Afghanistan CG [2012] UKUT 00163 (IAC), whilst Strasbourg cases dealing with Article 3 risk on return to broad categories of persons are not binding on the Tribunal they have persuasive value, particularly when the assessment (1) is based on comprehensive background materials; and (2) is still current. However, in ME the parties only brought the Court's attention to three reports, namely the Amnesty International report of 12 January 2010 and the USSDIRF reports published in November 2010 and July 2012 respectively. In effect its findings were based on only one recent report (albeit one which itself sought to distil other sources). Further,

since the events chronicled in the July 2012 report there has been a significant change in the political situation with the army, supported by huge anti-Morsi demonstrations, ousting President Morsi. In such circumstances we agree with Ms Benitez that ME is of limited assistance. We also observe that it does not appear to have been pre-identified or heard by the Court as a “lead case”. Further, whilst it is correct to say the Court rejected the contention that Coptic Christians *per se* were at real risk of ill-treatment, they did find that for France to seek to return ME, a devout Coptic Christian who, along with his family had suffered a number of attacks and was sentenced to three years for proselytising, would violate Article 3, so in that regard its judgment does at least suggest that in certain circumstances Coptic Christians were then able to demonstrate a real risk of ill-treatment.

99. We note several reports which refer (in somewhat vague terms) to the number of Egyptians receiving asylum in the US (most thought to be Copts) as having jumped five-fold in recent years and of the Dutch ambassador saying in a TV interview that his government had been prompted to make the asylum process easier because of reports of persecution of Copts and a lack of adequate government protection. We should emphasise that we do not know what background evidence was before the US or Dutch authorities and in any event we must assess the situation on the evidence before us and give an *ex nunc* assessment.

#### Mr Marshall's Evidence

100. We reject Mr Wilding’s invitation to count against Mr Marshall’s expertise that he had disregarded instructions not to assume the appellant’s account was credible. We accept he did this out of an abundance of caution, being unsure what remit the United Kingdom Upper Tribunal had to revisit findings of fact about credibility. We agree with Ms Benitez that in any event section 5 of his June 2013 report contains observations of a general nature which merit taking into account.
101. We see some force in Mr Wilding’s characterisation of Mr Marshall’s use of evidence as “selective”, at least inasmuch as for the most part his reports do not identify positive features of the situation in which Coptic Christians find themselves, but we put that down to his concern to draw attention to what he clearly feels, in common with a number of informed observers, is an alarming situation to which the world needs to wake up.
102. Mr Wilding did not seek in terms to portray Mr Marshall as a partisan witness, although he clearly wanted us to keep in mind that Mr Marshall was associated with a network of commentators who strongly sided with the cause of religious freedom and Christian religious freedom throughout the world. In any event, we wish to make it clear that we do not regard Mr Marshall's or any of the Christian NGO evidence as of any less value simply because they seek to promote and defend religious freedom. It is often the case that situations of persecution are only brought to the world's attention by dedicated scholars and/or activists.

103. In general we find Mr Marshall an informed and helpful witness who had considerable grasp of detail and of the history of the Copts and of recent events. That is not to say we do not have concerns about some features of his evidence over and above a tendency (in parts) to selectivity.
104. Some passages in his reports suffer from serious imprecision. For example at 2.4 of his June 2013 report he states that attacks on Copts “from extremists and from security forces have continued since Mubarak’s resignation, and have markedly increased”. Assuming for the moment that was considered correct in relation to attacks from extremists, it is nevertheless palpably inaccurate in relation to attacks from security forces since June 2012 when Morsi became President. Between June 2012 and the present there are virtually no documented instances of attacks by security forces on Coptic Christians.
105. Some passages in Mr Marshall’s written reports belie an unduly dismissive approach to questions. For example, when asked by the Home Office in a written question what he made of the observation in the May 2013 USSDIRF Report that “... recognised and unrecognised religious minorities mostly worshipped without harassment”, he described it as a “weak claim”. It is clear from what he goes on to say, that this is not because he considered it was incorrect but because there were other aspects or dimensions of freedom of religion. But there is nothing to suggest the authors of the USSDIRF Report were unaware of these other dimensions. Further, as then described by Mr Marshall, these other dimensions included several which were not identified in either the background evidence or his own reports as aspects of Coptic Church persecution (e.g. raising one’s children in the faith). Theoretically, he is of course right to say in a reply to another written question that being able to worship without harassment could occur even when there was widespread persecution of a religion in other respects, but that should have been addressed by reference to the evidence, not rhetorical responses. In any event, it is hard to see how the mere statement of fact about the lack of harassment to worship generally could be regarded as a “claim”, let alone a weak one.
106. Another example is Mr Marshall’s characterisation of the statement found in the USSDIRF reports that in most cases Muslims and Christians do live peacefully as neighbours as a “weak claim” because “[t]he real existence of moderates does not obviate the real and pervasive persecution of Copts”. Once again, it is not at all clear why Mr Marshall sees fit to depict this statement as a “claim” let alone a weak one. On its face it is at least evidence that it is only a minority of the population who act towards Copts in a persecutory way.
107. Our principal concern is the lack of correspondence between Mr Marshall’s assessment of the situation of Copts and that found in the major country reports, including the USSDIRF. Were Mr Marshall’s reports based on his own direct research there may be justification for such a lack, but he is adamant in each of his reports (and was adamant in his oral evidence also) that the evidential foundation for his conclusions is predominantly the major country reports and he says nothing to

suggest he disagrees with anything of significance which they state. Whilst these reports do say in terms that the Egyptian state has been unable and unwilling to protect Copts against attacks, they do not state, or convey, that there is a general risk to Copts as such in Egypt which amounts to the level of persecution or Article 3 ill-treatment. The authors of these reports are closely familiar with international human rights norms and if they considered that the levels of violence had reached the high threshold necessary to establish that Coptic Christians as a class faced persecution or treatment contrary to the prohibition on torture or inhuman or degrading treatment, we would expect them to say so either in terms or comparable language.

108. We might have been prepared to overlook Mr Marshall's seemingly loose use of words or expressions identifying Copts as existing in a state of persecution if he was an expert unfamiliar with asylum and human rights law. But from his CV it is clear he has frequently given expert evidence in the US asylum courts. Whilst we have no reason to doubt that his expertise in such contexts has been seen in a positive light, we can only go by the reports of his that are before us, which in our opinion do not, as we have emphasised, merit unqualified endorsement. (We should also note that it has not been suggested that the US courts have held that Coptic Christians as a class have a well-founded fear of persecution).
109. There are also occasional overbroad generalisations not backed up by sufficient evidence, e.g. in his 18 July report, describing the post-President Morsi situation, Mr Marshall states at 2.5 that black crosses have been painted on Christian shops to mark them for arson, without specifying where, when or on how many occasions. In his September Addendum he does say that there have been reports from several provinces saying this, but it does not appear he has any detailed information. We would have expected more care in making that clear. His observation about *jizya* being widespread affords another example. When pressed by Mr Wilding he had to agree that he only had limited evidence regarding this and there was a need for more research. To the extent that in support of his claims about the prevalence of *jizya* reliance is placed on the Assyrian International News Agency report of 13 September 2013, that focuses on the shooting dead of two Copts in the village of Sahel Selim in Assuit Province, for refusing to pay *jizya* and then on the situation in the village of Delga, Deir Mawas, 160 miles south of Cairo in Minya where Muslim Brotherhood gangs are said to completely control the village after the ouster of ex-President Morsi. "They target the 20,000 Coptic inhabitants by imposing *jizya* on them allegedly to "safeguard" them from acts of violence and vandalism to their homes and shops..." The report ends by noting that "[m]any Egyptian activists have sounded the alarm on what is happening to Christians. In an open letter to the Egyptian provisional government prominent journalists Fatma Nahoot said "Where is the government, the Interior Minister and General al-Sisi on what is happening to the Copts in Minya, including harassment, murder, intimidation, displacement and imposing *jizya* on them?" There is a further report from the Washington Times of 10 September 2013 dealing with the same village (Dalga village) and the *jizya* tax. There is also an article by Raymond Ibrahim of 6 March, 2013 about statements made by one of the professors of Al-Azhar University who exhorted that the Copts should pay *jizya*.

Such evidence falls well short of establishing the practice is widespread throughout Egypt.

110. Accordingly, whilst finding Mr Marshall's reports edifying, we are not able to attach unqualified weight to them.

#### Home Office OGN: 7 May 2013

111. Although Mr Wilding did not make it a central plank of his submissions, we should point out that this particular OGN is unusual in that it is largely comprised of summaries of background sources. We take them into account but recall what is said in the Home Office Asylum Policy Instructions about OGNs of this kind at paragraph 265, namely that insofar as they include background material, that material "is to be regarded like any other background information, subject to the fact that its selection may not have the same objectivity and is not independently scrutinised". So far as concerns the policy position set out in this OGN, we again take it into account but note that at least as concerns sufficiency of protection it is much less sanguine than Mr Wilding's own submission. A similar comment could be made about the FCO letter of 5 August 2013.

#### Reliability of Figures Relating to Violence

112. We note that there is no systematic monitoring of violence in Egypt including the number of deaths, wounded, attacks on properties and the like. Ms Benitez has argued that it is very likely there is under reporting. Whilst we do not see any firm evidence to support that proposition we note that in the background materials there is little dispute about the figures given by Amnesty International and Human Rights Watch even though it might possibly be said they draw uncritically on reports by Coptic activists in Egypt. We consider such figures can therefore be treated as broadly accurate. We make allowances for possible under reporting but that is mainly out of an abundance of caution rather than clear evidence.
113. It is pertinent next to identify the main actors who have been responsible for incidents of violence and threats to the Coptic communities in Egypt.

#### State Actors

114. It is incontrovertible that both before and after the popular revolution that led to the resignation of President Mubarak in February 2011, and whilst the SCAF was in power there were incidents of state aggression against Copts - attacks against Coptic Christians by soldiers, attacks whose nature and extent went well beyond the reasonable use of force: e.g. the storming of the 4<sup>th</sup> Century St Paul monastery near the Red Sea on 20 February 2011, the use by soldiers of live ammunition against unarmed Copts during a land dispute at St Bishop monastery in Wadi Natroun and on February 23 of the same year against the monastery of St. Makarios of Alexandria in Wady el-Fayoun. Undoubtedly the most notorious incident occurred on 9 October

2011 in the vicinity of the Maspero TV station in Cairo when soldiers killed 23 Copts and injured 300.

115. However, in the period when President Morsi was in power from June 2012 – July 2013, there were virtually no incidents of active state persecution in the form of attacks by soldiers, security forces or police, although there were incidents of unjustified conviction and seemingly blatant political use of the blasphemy laws. There is of course, as observed by the Court of Appeal in Svazas, a spectrum of circumstances spanning state and non-state actors, but the pattern during this period was one of state complicity in (or state inaction in the face of) non-state actor attacks or actions. The same is true of the period since the ousting of Morsi to the present.

### Non-State Actors

116. Turning then to non-state actors, according to the available evidence, the two principal organisations which have either conducted or incited many of the attacks on Coptic Christian targets in the period since the resignation of Mubarak have been the Salafists and the Muslim Brotherhood, although both in different ways interconnect with what is generally described as the ultraconservative tendency in Egyptian society. The main political party of the Salafists is the Al-Nour party, which is the second largest political party in Egypt and which currently is in uneasy alliance with the military leadership. If one aggregates the votes cast in recent elections for the Muslim Brotherhood and the Al-Nour party, it is clear they comprise a large majority. It is true that certainly within the Muslim Brotherhood there are various factions, some advocating tolerance towards Coptic Christians, some advocating violence and vendettas. But the evidence does not suggest that the factions advocating tolerance have been able to halt the actions of other hostile to Coptic Christians.

### International Concern

117. Open Doors International, World Watch List (WWL) on 8 January 2013 said that Islamic extremism was the “main persecution dynamic in Egypt” and that Egypt ranks as 25<sup>th</sup> on its WWL, in the category “Severe Persecution”. The USCIRF in its April 2013 report described Egypt as one of seven “countries of particular concern” (CPC), the six others being Iraq, Nigeria, Pakistan, Tajikistan, Turkmenistan and Vietnam. In July 2013 the Pew Research Center calculated that Egypt had an overall score of 8.9 out of 10 on the 2011 Government Restrictions [on Religion] Index, a score much higher than Middle Eastern-North African countries as a whole, where the median score index is 5.9.

### State Protection

118. Whilst it is a well-established principle that a well-founded fear of persecution will not obtain if there exists a sufficiency of protection against serious harm (see Horvath [2000] UKHL 37) it is an equally well-established principle that when assessing



whether there is a well-founded fear of persecution we are to conduct a holistic inquiry (see [12] of Lord Justice Auld's judgment in Bagdanavicius) in which evidence showing ineffective protection can shed light on whether such well-founded fear exists.

119. For the past few years Egypt has been under a *de jure* or *de facto* state of emergency and Mr Marshall's view was that in the face of widespread civil unrest and breakdown of law and order the police and security forces and the army were justified, in accord with international human rights norms, in suspending a range of derogable human rights protections. Mr Marshall did not for one moment mean to suggest by that that all of the actions of the Egyptian army over the past decade or so have been proportionate or justified by the exigencies of the situation, but he did mean, we think, that imposition of a state of emergency has had a valid function as a response to the law and order situation and its factual existence was relevant to the issue of the extent of the state's duty to protect against a wide range of human rights violations, derogable as well as non-derogable.
120. This evidence is important because when assessing the adequacy of protection in a country in which there exists a valid state of emergency, at least in respect of measures taken that are strictly required by the exigencies of the situation, a state cannot be expected to secure the non-derogable rights of its citizens. That is made clear by the wording of regulation 5(1) of the Protection Regulations (and the corresponding text of Article 9(1) of the Qualification Directive):

"In deciding whether a person is a refugee an act of persecution must be: (a) sufficiently serious by its nature and repetition as to constitute a severe violation of a basic human right, in particular a right from which derogation cannot be made under Article 15 of the [ECHR]."

Where Article 15 operates, a state cannot be expected to protect against non-securement of derogable rights because such non-securement does not amount to persecution. A very similar provision is to be found in Article 4 of the International Covenant on Civil and Political Rights (ICCPR) and its treaty monitoring body, the Human Rights Committee, has indeed dealt on occasions with issues about the proportionality of emergency measures taken by state authorities in Egypt (see e.g. Concluding Comments on Egypt (1993) UN doc.CCPR/C/79Add.56, [13]). Of course, Article 15 of the ECHR is drafted with a view to defining the obligations of "High Contracting state" parties to the ECHR, but the jurisprudence of the ECtHR has not excluded Article 15 from having extra territorial effect in the context of assessing risk on return to a country of origin (its application is far more problematic in the different context of extra-territorial jurisdiction under Article 1: see e.g. app.no. 52207/99 Bankovic and others v Belgium and 16 Other Contracting States (Grand Chamber) and the recent Supreme Court case of Smith and others v Ministry of Defence [2013] UKSC 41 at [60]); and there is in logic no reason why Article 15 should not have such extra-territorial effect. Indeed, although regulation 5(1)(b) and Article 9(1) recognise that persecution can arise not just from a violation of non-derogable rights but from "an accumulation of various measures, including a

violation of a human right which is sufficiently severe as to affect an individual in a similar manner specified in (a)” (to use the wording of regulation 5(1)(a)), that is made expressly subject to Article 15. If Article 15 had no application to assessment of persecution and protection in a country of origin, it would be quite illogical to have expressly relied on it in Article 9. Hence assessment of persecution and protection must be different, depending on whether there is a state of emergency falling within the conditions specified in Article 15. What this means in the context of Egypt currently is that in order to establish ineffective protection on the part of the state against serious harm by non-state actors, it is necessary to demonstrate a general inability to secure non-derogable rights against which the state cannot adequately protect, given the existence of a functional state of emergency. A general inability to secure derogable rights will not suffice.

121. The situation of Coptic Christians is such, in our opinion, that where an individual appellant can establish a real risk of serious harm, by virtue of some characteristic additional to merely being a Coptic Christian, it is quite unlikely he or she will have available protection, even when we limit that to mean protection against violations of non-derogable rights. Physical attacks and threats to life are of course the clearest example.
122. We do not mean by this to assert that the evidence relating to the protection of Copts is all one way. There is evidence that on certain occasions the police and security forces have been willing and able to take action to prevent attacks, e.g. on 3 July 2013, in Qena and Luxor, soldiers were successful in thwarting scattered attempts to attack churches. There are also instances where Copts have been able to exert effective legal remedies. In March 2012 a Coptic priest sentenced to six months imprisonment and a fine for violating a repair permit (by building too tall a church steeple) won his appeal against conviction and never served jail time. It can also be seen that there were many instances of actions by the authorities which could be said to afford partial protection: e.g. in January 2012, after a visit by parliamentarians to the village of Sharbat near Alexandria after Muslim residents sacked homes and shops of Christian residents resulting in an order by police and local leaders to evict eight Christian families, the eviction was overturned.
123. But predominantly the evidence of what has been occurring before, during and after attacks on Christian targets indicates a failure to protect (even confining ourselves as we must to general failure to secure non-derogable rights). Indeed, despite Mr Wildings’ animadversions to the contrary, both the Home Office OGN and the FCO August 2013 letter accept that protection is broadly ineffective. In our view the Amnesty International assessment in April 2013, that the Egyptian government is constantly failing to protect and defend Copts and does not punish their attackers, closely accords with the emerging evidence. It is unnecessary for us to decide to what extent this failure stems from an unwillingness to protect or an inability to protect, although it seems to us that whether it is one or the other or both depends on the particular time and place and the specific actors involved. Ms Benitez is right to identify incidents in which the police and/or security forces and army have

appeared to collude in the attacks, but there are also many where there is no suggestion of such conduct. Mr Wilding is right to point out that in some incidents, it would appear that efforts by the police and security forces to protect have been frustrated by lack of manpower and/or resources, but that does not negate the fact that protection was not forthcoming. Overall there has been and is an insufficiency of state protection.

### Attacks and Discrimination

124. Attacks and discrimination against Coptic Christians are, sadly, nothing new. Under President Mubarak there were at least fifteen major attacks on Copts. Under the SCAF, the military body which ruled between the downfall of President Mubarak in February 2011 and the election of Morsi as President in 2012, things did not improve. On 7 October 2011 there occurred the worst act of violence against Egyptian Christians in modern history, when the army began shooting at Christian protestors marching through Cairo in the vicinity of the TV station Maspero. Under President Morsi, Egypt witnessed a rise of sectarian rhetoric by Muslim Brotherhood members and supporters and attacks on churches and other Christian targets continued, in many cases with the police and security forces providing inadequate protection.
125. Among the attacks on churches which took place under Morsi's presidency was the 8 April 2013 attack on St Mark's Cathedral in Cairo, the central church for the Coptic Orthodox, which was set upon by a large mob. Although security forces turned up and fired tear gas, Human Rights Watch said there was concrete evidence of police failing to intervene and in fact shooting at the cathedral walls. Coptic Pope Tawadros II said afterwards that this church had been a national symbol for 2,000 years and had not been subjected to anything like this even during the dark ages.
126. Discrimination is prevalent in many areas of society. Copts are significantly underrepresented in Egypt's military, judiciary, diplomatic corps, academia and almost all electoral bodies.

### Levels of Violence

127. We are handicapped in assessing the levels of violence experienced by Copts by the lack of any uniform monitoring or the existence of statistics that have wide agreement. At the same time we note that Amnesty International and Human Rights Watch have generally accepted reports given by leading Christian NGOs and some Coptic Christian organisations as reliable and we are not aware that any international observers have sought to dispute their general reliability. Therefore, we see no reason to disagree with the USSDIRF report assessment that 2012 saw a reduction in sectarian violence. However, the USSDIRF report went on to note that alongside this decline there was an increase in compelled expulsion and collective punishment.

128. In any event, whilst 2013 is not yet completed, it is clear that even to September 2013 the level of sectarian violence in 2013 has already been worse for Copts than 2012. Attacks on Christian churches and other Christian targets have increased as Christians have been the target of a sudden pro-Morsi backlash which blamed them for supporting the army and openly criticising Morsi as divisive. We reject Mr Wilding's submission that there has not been an increase and observe that that submission is difficult to square in any event with the FCO letter of 5 August which at paragraph 5 states that "[s]ince the military's removal of President Morsi from power on 3 July, there has been a rise in the number of violent sectarian attacks".
129. Mr Wilding has argued that much of the anti-Copt violence has comprised localised and spontaneous mob violence, but we do not think it would be safe to read the evidence that way. That is not only because as Ms Benitez has pointed out some of these attacks by mobs have been announced beforehand but because in general terms there are clearly anti-Coptic extremists operating at national and local levels whose agenda is inciting local populaces to acts of violence and hostility. It also seems to us to be irrelevant that some of the incidents seem to have a catalyst. Incidents of religious persecution often do.
130. Nevertheless, whilst the levels of violence against Copts have risen in the immediate aftermath of the ousting of President Morsi, we do not think that they are or are likely to be for the foreseeable future at such a level as to cause Copts as such to be at real risk of persecution and serious harm. Figures of deaths, woundings, attacks on churches and Coptic Christian homes etc are concerning but we cannot ignore their limited scale and intensity relative to the size of the population of over 80-85 million and also relative to the number of Copts which is generally estimated as between 8-10 million. It is relevant for example that in 2013 the number of churches attacked in the August 2013 reprisals taken by pro-Morsi supporters who blamed the Copts for his ousting constituted less than 3% of the total number of Coptic churches in Egypt (i.e. 61 out of 2,869 churches) and that the preponderance of attacks have taken place in Upper Egypt and in areas in which radical Islamists have a strong presence.
131. As regards *dhimmi* statutes for Christians and imposition of *jizya*, whilst we consider that Mr Marshall's observations on this went beyond the evidence presently available, it is certainly a factor that some Islamist extremists have sought to impose *jizya* and that, while there has been no formal ideological sanction for such practices, there is at least one professor at the Al-Azhar University who has openly championed it. The fact too that the Al-Nour Party, a fundamentalist Salafist movement, is said to have formed an alliance with the liberal and secular forces to oust the Muslim Brotherhood may mean that it can apply as a price more pressure to re-introduce *jizya*, but it remains that *jizya* is illegal under Egyptian law and that (see below) it does not appear reasonably likely that the next planned elections will lead to a government that actively pursues an Islamist agenda.

### Displacement and Emigration

132. It is a relevant factor pointing to continuing difficulties affecting Coptic Christians in Egypt that a significant number of Copts have left Egypt. Precise figures and research are hard to come by, but it is said by several sources that some 100,000-200,000 Copts have fled the country since the fall of Mubarak in February 2011 and Egyptian nationals, mostly Copts, are said to form the second largest group to be granted political asylum in the US. At the same time, whilst alarming we note that this represents roughly 1-2% of the Coptic population and Mr Marshall, in common with several sources, considers that those fleeing are predominantly the wealthier Copts. That feature alone does not lessen the significance of the numbers and indeed it might be said that flight by persons in this category will have a greater knock-on effect in terms of the economic confidence and security of those remaining; but it remains, in our view, that present figures do not indicate that the situation for Copts who remain has crossed the threshold of persecution or serious harm.

### Prognosis

133. We are unable to derive from the background evidence any clear indication of how events will unfold in Egypt. We know that Egypt's economy remains in a poor state, which is very likely to fuel or at least maintain civil unrest. Mr Marshall fears the country could slide into civil war, other commentators disagree. Given the very large popular support shown to the military during its ousting of President Morsi notwithstanding its use of excessive force and serious abuses of human rights we consider we should do more than regard the likely situation as one in which the army will be the main enforcer of law and order with the country facing an uncertain period until promised elections are held and a new constitution voted on. We shall need to keep the situation in the country under close review.

134. We also think it of importance that since the fall of President Morsi the army has not itself engaged in acts of aggression against Copts and its present leadership under General al Sisi has seen fit to seek and obtain the support for its interim regime from Pope Tawadros II. This had immediate negative consequences in terms of provoking attacks on Copts by pro-Morsi supporters in August 2013 but it is some indication that the authorities themselves are no longer involved in attacking Copts or responding violently to Coptic demonstrations etc. The military has also publicly pledged to help the rebuilding of destroyed or damaged Coptic churches and although that was also promised under Morsi without much evidence of delivery on those promises, it is still an indication that the authorities are not actively supporting increased marginalization of Copts. It is also pertinent that the Egyptian authorities are likely to be influenced by the approach taken by the US towards maintaining its large amount in aid. Threats or action to withdraw such aid are likely to be significant levers on the direction the military is likely to take and US foreign policy is subject to strong lobbying by Christian organisations domestically. Whilst it is unclear precisely what will be the political orientation of the civilian government that is expected to govern once elections are held, it is most unlikely to be one that pursues an Islamist agenda as actively as did the former Morsi government and even if the Salafist parties are given a role it will not be to implement such an agenda. We

do not read too much into the fact that the new cabinet sworn in on 16 July contained three Copts and three women, but it does suggest that the general pattern of discrimination against Copts in political and social life is not absolute.

135. So far as concerns the constitutional position, even though the army has removed some of the Islamist provisions favoured by ex-President Morsi, its interim constitutional declaration still seeks to emphasise that Islam is the religion of the state. In terms of the recent history of elections, the evidence demonstrates a heavy domination by Islamist parties, the Muslim Brotherhood and the Salafist Al-Nour Party between them obtaining a large majority of the votes. At the same time, notwithstanding the current alliance between the army and the Al-Nour Party, we do not think we can ignore the evidence as to the events surrounding the ousting of Morsi in which the army's coup was supported by huge popular demonstrations, even when there were incidents of excessive and lethal violence being deployed against pro-Morsi supporters. There has been a broad consensus that there has been a widespread reaction against Morsi and the Muslim Brotherhood's attempt to move Egypt in the direction of a more Islamist agenda and a concern that the government of the country should concentrate on repairing the economy and attending to everyday concerns separate from religion.
136. We would agree with Ms Benitez that the conciliatory approach advocated towards Coptic Christians by Al-Azhar does not necessarily have any impact on local Islamists, but we concur with Mr Wilding that the great eminence and respect accorded to Al-Azhar by Egyptian state institutions and under the interim constitution indicates that at the level of state ideology there is no official support for a campaign of persecution against Copts, even though there are one or two professors of this university who publicly voice hostile sentiments.

### Geographical Dimension

137. Miss Benitez has urged us to accept Mr Marshall's position that it is unhelpful to consider whether Copts are persecuted in particular parts of Egypt because they are persecuted throughout Egypt. Given that we have not accepted that there is persecution of Copts in Egypt as a whole, we need to clarify whether we accept nevertheless that there is persecution of Copts in particular parts of the country. In our judgement, it is highly likely that in respect of certain areas of the country Coptic Christians will face a real risk of persecution. On the available evidence they do not face such risk in the large cities but rather in certain areas outside them and in locations where radical Islamists have a strong foothold and where there have been recent attacks on Coptic Christians (or attempts to bring blasphemy charges against some of them) or their churches or business or properties. Examples of such areas (at least during the periods specified) would include: the village of Rafah, near the Egyptian border of the Gaza Strip, where Copts had suffered attacks on their churches in February 2011 and twice in September 2012; the village Delga in Minya province the majority of whose population of 165,000 Coptic Christians were forced to flee following attacks on two churches (Independent, February 9 August 2013) and

where in September 50 families among the 20,000 Coptic inhabitants had left the village after pro-Morsi supporters took control and sought to impose *jizya* on all Copts in the village, without exception. Other examples based on 2013 incidents would include the village of Dahshour, Wasta in Beni Suef; and Arish city in northern Sinai. There will very likely be others. In general terms, the enhanced vulnerability of Copts in these areas appears to result from the combination of a strong presence of radical Islamists and local police and political leaders with an animus against Copts.

138. At the level of provinces Minya would appear to be the province where Copts are most at risk but we lack enough evidence to decide whether its Coptic Christian population is at general risk.
139. If, however, a claimant is able to establish they come from an area where the local Coptic population faces a real risk of persecution, it will not necessarily follow that they qualify as refugees or as beneficiaries of subsidiary protection or Article 3 ECHR protection. That will depend on whether they can show they would not have a viable internal relocation alternative. In such cases there will be need for a fact-specific assessment but in general terms we agree with Mr Wilding that resettlement in an area where Islamists are not strong would appear to be a viable option. In general Coptic Christians at real risk of persecution or ill-treatment in their home area will be able to relocate in safety to large cities such as Cairo or Alexandria or areas where radical Islamists do not have a significant presence, but (it must be emphasised) that is not to say in particular cases where there are relevant circumstances creating undue hardship that individuals will have much difficulty in establishing that it would be unreasonable to expect them to relocate.

#### Particular Risk Categories

140. This case was identified to address the issue of risk to Coptic Christians generally, but in the light of our negative conclusion on it, and the observations made by Mr Marshall about particular categories of Copts which he considered were at enhanced risk, we sought submissions from the parties as to whether, if we found Copts in general were not at risk, we should nevertheless find particular categories at risk. We remind ourselves that Mr Marshall's treatment of this issue arose in the context of a written question from the respondent as to his view as to whether particular groups of Coptic Christians may be targeted, arrested, imprisoned and physically attacked by government agents. His written response was that government agents had targeted converts, people who work with them, those accused of proselytising, those accused of being sexually or romantically involved with a Muslim woman, those who are outspoken about their religion and those who work visibly in the community, or are involved in church construction or repair. He stated that: "[t]hese categories of Copts are more likely than the average Copt to be targeted by government agents". In his oral testimony he said the same categories were also at risk from non-state actors and he said that he would add to them all Copts who are outspoken about their religion [it seems to us that in point of fact such a category is

already covered by his category concerned with those who are “outspoken about their religion”: see [39] and [63] above, but nothing hangs on that]. In closing submissions Mr Wilding said the respondent accepted that Christian converts may well be a particular risk category and he also accepted that in certain areas action by local Islamists to impose *jizya* may be a risk factor.

141. Given that the issue of particular risk categories was not flagged at the case management stage we are hesitant about attempting to make definitive findings, but concerned at the same time not to avoid any comment at all, given that we may not deal with such issues in a country guidance case in the near future and that in the meantime decision-makers, including judges, may encounter cases of persons who fall into such categories or arguably do. We have the expert evidence of Mr Marshall as a starting-point.
142. As regards Christian converts we note that the respondent in the May 2013 Egypt OGN accepts that such persons are in a risk category. Given that the Egyptian Supreme Court as recently as July 2011 ruled that Christian converts could reconvert and be identified as Christians on their national identity and birth certificates, it does not seem to us that there is obvious state persecution of Christian converts, but in view of what we have found about ineffective state protection of Coptic Christians we think that persons in this category – confined to converts to Coptic Christianity – must be unusually vulnerable to harm from non-state actors who may also seek to have them prosecuted for blasphemy.
143. We consider the suggested addition “people who work with them” too vague; certainly we have not been directed to any clear body of evidence to support it and in our view too much would depend on the circumstances in which such persons work closely with Christian converts to make this a viable category in itself.
144. We also think Mr Marshall’s suggested additional category of those who are outspoken about their religion and work visibly in the community is overbroad because there is little evidence that Christian activists have been targeted in attacks or that Coptic Christian political organisations have been targeted. On the other hand in an individual case, if a Christian activist is able to establish that he or she has been or would be targeted, that may well suffice to cause them to be at greater risk than ordinary Copts.
145. As regards “those who are involved in church construction or repair”, which in context appears to mean church construction or reconstruction/repair, we consider it likely, given the scale of attacks on churches, that persons who are involved in construction or reconstruction/repair of churches that have been the target for recent attacks run a greater risk than ordinary Copts.
146. We would accept that “those accused of proselytising” is likely to be a risk category if the accusations are shown to be made in a serious, rather than a casual, manner. Whilst the numbers of Copts charged with blasphemy is relatively small, it is clear



that once accused in this way there are both ineffective protection and a heightened risk of laws against blasphemy being used as instruments of persecution.

147. We think that “those accused of being sexually or romantically involved with a Muslim woman” are also likely to be at real risk of persecution, so long as it can be established that the accusation has not merely been made or would only be made casually without anything to suggest it will be pursued seriously. We prefer, however, to phrase this category slightly differently, in terms of “physical or emotional involvement”: see below [151].
148. One specific issue that was identified as a country guidance issue in this case was that concerning risk to Coptic women who were single mothers and divorced without any other familial or male support in Egypt.
149. Working from the general to the particular, we note that it has not been argued before us that women in Egypt generally are at real risk of persecution, although Ms Benitez accurately in our view drew attention to the fact that women faced a number of problems, not least a range of societal discrimination and a society prepared to tolerate a significant incidence of sexual harassment and violence and domestic violence against women.
150. As regards Coptic women, the evidence does demonstrate in our opinion that they face additional difficulties, arising out of the fact that some elements of the Sunni Muslim community have undertaken forced disappearances, abductions and forced conversions of such women. At the same time, we attach considerable weight to Mr Marshall’s concern to distance himself from some observers who consider this problem as being a widespread one. Whilst the evidence clearly indicates this is an additional dimension of risk for Coptic women, it seems to us that any assessment of whether it crossed the threshold of persecution or serious harm would depend very much on the particular circumstances of any case and the degree of vulnerability and isolation such circumstances disclose. Despite Ms Benitez’s efforts to persuade us that the risk of women being the victims of such actions affects a wide range of women, not just young or uneducated women, the broad thrust of the evidence taken as a whole does not go that far. Rather it broadly supports what Mr Marshall said in oral evidence, namely that it is Coptic women aged between 14-25 years and who do not have a male protector who are the main victims. That caveat needs to be borne in mind in any individual assessment. For women outside this category it will be significantly more difficult to establish a real risk of persecution or ill-treatment contrary to Article 3.

### **Summary of Conclusions**

151. Drawing together the above we have arrived at the following conclusions:

#### Law

In relation to a country which is in a state of emergency affecting the life of the nation and which takes measures strictly required by the exigencies of the situation, its ability to afford adequacy of protection under Directive 2004/83/EC (the Qualification Directive) is to be assessed by reference to its general securement of non-derogable rights as set out in the ECHR.

### Country guidance

1. Notwithstanding that there is inadequate state protection of Coptic Christians in Egypt, they are not at a general risk of persecution or ill-treatment contrary to Article 3, ECHR.
2. However, on current evidence there are some areas where Coptic Christians will face a real risk of persecution or ill-treatment contrary to Article 3. In general these will be (a) areas outside the large cities; (b) where radical Islamists have a strong foothold; and (c) where there have been recent attacks on Coptic Christians or their churches, businesses or properties.
3. On the evidence before the Upper Tribunal, the following are particular risk categories in the sense that those falling within them will generally be able to show a real risk of persecution or treatment contrary to Article 3, at least in their home area:
  - (i) converts to Coptic Christianity;
  - (ii) persons who are involved in construction or reconstruction/repair of churches that have been the target for an attack or attacks;
  - (iii) those accused of proselytising where the accusation is serious and not casual;
  - (iv) those accused of being physically or emotionally involved with a Muslim woman where the accusation is made seriously and not casually.
4. Coptic Christian women in Egypt are not in general at real risk of persecution or ill-treatment, although they face difficulties additional to other women, in the form of sometimes being the target of disappearances, forced abduction and forced conversion.
5. However, depending on the particular circumstances of the case, Coptic Christian women aged between 14-25 years who lack a male protector, may be at such risk.
6. If a claimant is able to establish that in their home area they fall within one or more of the risk categories identified in 3 (i)-(iv) above or that they come from an area where the local Coptic population faces a real risk of persecution, it will not necessarily follow that they qualify as refugees or as beneficiaries of subsidiary protection or Article 3 ECHR protection. That will depend on whether they can show they would not have a viable internal relocation alternative. In such cases there will be need for a fact-specific assessment but, in general terms, resettlement in an area where Islamists are not strong would appear to be a viable option.

7. None of the above necessarily precludes a Coptic Christian in Egypt from being able to establish a real risk of persecution or ill-treatment in the particular circumstances of their case, e.g. if such an individual has been the target of attacks because he or she is a Coptic Christian.

## **The Appellants**

### Asylum-Related Grounds

152. Insofar as the appellant and her son rely on general risk of persecution to them as Coptic Christians, we have already concluded their appeals cannot succeed. Their home area is a suburb of Cairo and it is not an area where relative to their numbers Copts are currently facing severe difficulties.
153. Insofar as the grounds rely on the first appellant's position as a lone Coptic woman, first of all we cannot accept that she would be returned as a lone or single woman. We do not consider she has given a credible account about this. Our reasons are set out below at [184]-[199] when we consider her Article 8 grounds. In any event, we have not accepted that there is a general risk category of lone Coptic women: see above.
154. Insofar as the appellants rely on the second appellant's position as a disabled child, we note that Ms Benitez expressly stated that the appellants did not put their case forward as a "health" case based on there being difficulties in obtaining adequate treatment sufficient to amount to violations of Article 3. For reasons given below at [192]-[197] we do not accept, in any case, that the second appellant would not have available an adequate level of care for his disability. It would not be optimal, but that is not the relevant test.
155. In considering the position of the appellants together, even taking account of their circumstances in the round, so as to include in particular the fact that they would be returning to a country where there are currently very significant difficulties facing the Coptic Christian community and insufficient protection for those at real risk of serious harm, we are not satisfied they have demonstrated either a real risk of persecution or serious harm or treatment contrary to Article 3.

### Article 8 of the ECHR

156. As we have made clear, the error of law found by Designated Judge Shaerf related only to the First-tier Tribunal's findings on the asylum and Article 3 claims. Its decision and findings on Article 8 were specifically preserved. Whilst there has been no further challenge to that decision, we are asked to revisit the issue of whether the appellant's removal and that of her son would breach Article 8 on the basis of a change in the family's circumstances. That change is two-fold and consists of the grant of indefinite leave to remain on 17 April 2012 to the appellant's mother, AA, (a date subsequent to the hearing before the First tier Tribunal judge) and her claim that

she would not return to Egypt with the appellant and her grandson, and the enrolment of the appellant's son in full-time education in the United Kingdom. Although Mr Wilding sought to oppose any re-opening of the Article 8 claim, we considered, as noted earlier, that we were bound to assess the circumstances at the date of the hearing before us and, as such, to make findings on the impact of the change in the circumstances on the appellant's claim.

157. We would emphasise that there has never been any suggestion that the appellant could meet the requirements of the Immigration Rules and Article 8 was pursued only in its wider context. As a result of the Court of Appeal judgment in MF (Nigeria) [2013] EWCA Civ 1192 we must look afresh at the position of the appellant and her son in a two-stage way under the Immigration Rules.
158. Accordingly we heard further oral evidence from the appellant, her mother AA and her brother MS, but on the clear understanding that that evidence was to relate only to events subsequent to the decision of the First-tier Tribunal and that the findings of fact of the First-tier Tribunal continue to be preserved.
159. We set out a general summary of all the evidence, before the First-tier Tribunal and the Upper Tribunal, as follows.

### **Summary of the Evidence**

#### **Evidence before the First-tier Tribunal**

160. The evidence before the First-tier Tribunal consisted of the record of the appellant's asylum interview of 2 February 2012, her appeal statement of 21 March 2012 and that of her mother and brother of the same date and their oral evidence. Insofar as the Article 8 claim is concerned, we summarise the evidence and the findings of the First-tier Tribunal as follows.

#### **Asylum Interview**

161. The appellant stated that she was born in Saeed and lived there until her marriage in 2000, when she moved to Shubra, Cairo. Her father died in 2004 and her mother came to live with her and her husband at that time. Her sister lived in Saeed. Her brother MS had lived in the United Kingdom for approximately twenty years and was a British citizen. She and her mother were currently staying with him. Her son was born in August 2001 and her husband left her three months after his birth in November 2001. She was still legally married to her husband although she did not see him at all. They were unable to divorce because of their Coptic Christian faith. Her mother had travelled to the United Kingdom with her and would be returning to her sister in Egypt when her visa expired. She could not stay with her sister herself as her sister was married with children. Her son was not permitted to attend school in Egypt because of his medical condition. He was born with water on his brain and had a valve inserted in his brain when he was ten days old. He was on a lot of

medication and last had an operation in Egypt in February 2010. She was able to buy his medication from the chemist without a prescription and it was easily available. He was not attending school in the United Kingdom.

#### The Appellant's Statement of 21 March 2012

162. In a statement produced for her appeal, the appellant gave details of her son's medical condition, stating that he was so severely disabled that he did not have much speech but he understood quite a lot. He could not eat or drink unaided and was incontinent. He could not walk or move without help and was partially blind. His hip had been dislocated during a session of physiotherapy and she had been advised by doctors that that could not be remedied. Her son was also epileptic and took medication for that condition. In the United Kingdom he was able to move around in a wheelchair but in Egypt he had to be kept indoors, as disability was frowned upon. He was extremely dependent upon her mother and had formed a strong bond with her. The appellant stated that she had had three years of unpaid leave after his birth and looked after him during that time, but in 2004 she decided that she needed more help and so her mother moved in with them. In Egypt she had only one cousin and a sister who lived in Northern Cairo where she was a French teacher. Her sister's husband refused to support her and her son and did not like them staying at his house. Her sister and husband lived in a one-bedroom flat and could not afford to move. With regard to her husband's flat, where she had lived prior to coming to the United Kingdom, she would not be allowed to move back in and the neighbours had told her that her husband had recently taken possession of it and had moved back in. They would have nowhere to go if they returned to Egypt and had no savings. Her cousin could not accommodate them.

#### AA's Statement of 21 March 2012

163. The appellant's mother, AA, confirmed that the appellant's statement was correct and true. She was no longer able fully to look after her grandson because she was frail. She could not carry or move him. He had had six operations in total. They were very much attached to each other. He had changed a lot since coming to the United Kingdom and was now a happy child.

#### MS's Statement of 21 March 2012

164. The appellant's brother, MS, confirmed that the appellant's statement was correct and true. He said that aside from a cousin and a sister, they had no family in Egypt. The appellant would have no support and no income to return to. He could support her in the United Kingdom but could not afford to pay for a carer for her son and for all their living expenses.

#### Oral Evidence before the First-tier Tribunal

165. The oral evidence of the appellant, AA and MS is summarised in some detail at paragraphs 27 to 50 of the First-tier Tribunal's determination.
166. The appellant, in response to an enquiry as to why a UK BUPA medical report produced in support of the appeal referred to a court case in Egypt, stated that she had commenced proceedings in a court in Cairo to order her husband to pay compensation to her and child support for their child. The case was still ongoing. She was not aware of any plans to raise a court case from England, although there had been neglect by the hospital. With regard to her son, she would be able to obtain the required medication for him through her connections. Her brother had assisted her with paying for the medication. Prior to leaving Egypt, she had lived in a flat owned by her husband and was living there legally as she was her son's caretaker. According to the judiciary she could stay there until further notice. A neighbour had told her that her husband had taken over the flat when he found out that she had left.
167. The appellant's mother, AA, stated that it was only her and the appellant who cared for her grandson.
168. The appellant's brother, MS, stated that he was present at the time of the BUPA medical examination and that the reference to submission of the report to a court in Egypt was not correct. The report was intended for submission to a court in the United Kingdom. The doctor who saw the appellant's son gave some hope of further treatment with a view to enabling him to start walking, but that would take a long time. He had been supporting the appellant financially and would continue to do so within his limits. He worked as a director of a company importing and exporting fruit and vegetables and also as the director of a hotel company. The appellant's son had been seen in Egypt by a physiotherapist and a neurosurgeon, paid for privately by himself and the appellant. With regard to the court case in Cairo, it had taken too long and the appellant would get nothing from her husband. The family had no relationship with her husband. He had been informed by neighbours that her husband now occupied the flat where she had lived. They had not divorced because divorced women were looked down upon in their community.

#### Findings of the First-tier Tribunal

169. The First-tier Tribunal noted a "concerning" discrepancy in the evidence about the purpose and preparation of the BUPA medical report for the son, in that the report referred to the family looking into submitting reports from various consultations in London to a Court in Egypt, but the appellant denied there being any such plans and referred only to the current court action in Cairo about compensation and child support. The appellant's brother had added further confusion as he said that the reference to the submission of medical reports to a court in Egypt was a mistake. The Tribunal accordingly had doubts about the appellant's intentions when the report was prepared. The Tribunal found that the appellant had accommodation in Egypt protected by judicial proceedings in order to provide for a home for her son and that that accommodation would be available to her on return to Egypt.

170. The Tribunal did not accept that family life had been established between the appellant and her brother MS and neither did they accept that private life had been established. However, they went on to consider proportionality in the alternative and found as follows: that the appellant and her son had been in the United Kingdom for only a short period of time and the appellant had always been fully aware that she did not have settled status here; that the appellant had a protected right to remain in her accommodation in Egypt because of her son; that there was ongoing court action in Egypt regarding compensation and maintenance; that the appellant's job was still open to her in Egypt; that whilst her son had significant disabilities, the appellant was able to care for him and had not had any difficulty obtaining medication for him in Egypt; that the evidence did not show that the appellant's son's life expectancy or developmental progress would be reduced or limited by return to Egypt and that the appellant's brother MS would continue to provide the appellant and her son with financial support. The Tribunal agreed with the respondent's conclusion, that the appellant's son's best interests would be best served by returning with her to Egypt and that if AA chose to remain in the United Kingdom any separation would be a matter of choice rather than of necessity. The Tribunal concluded that the appellant's removal to Egypt and that of her son would not be in breach of Article 8.

### **Evidence and Submissions before the Upper Tribunal**

#### **The Appellant's Statement of 29 July 2013**

171. The appellant relied upon her previous statement and gave details of the changes to her circumstances since coming to the United Kingdom. She stated that her son had changed a lot and had started to integrate in society and make friends and acquaintances outside the family which he had not done previously. He had received various forms of treatment: he had been given glasses; he had had some teeth removed which had improved his speech; he had received physiotherapy to soften the muscle in his left leg which would then enable him to have an operation to move the bones. He had been attending school for one month and was in a class for children with special needs and loved school. His confidence had increased. In Egypt he was not able to go to school and was confined to the house. The appellant said that she had not seen her husband since three months after their son's birth and had had no contact with him at all since that time. She lived in the United Kingdom with her mother and her brother's family. Her mother took care of her son some of the time and they were very close. He got on well with her brother's children. Her husband's house was no longer available to her in Egypt as he had repossessed it. She had only a sister and cousin in Egypt and her sister's husband had made it clear that she could not go to live with them and would not support them.

#### **AA's Statement of 29 July 2013**

172. AA relied on her previous statement. She confirmed that she had been granted indefinite leave to remain in the United Kingdom. She lived with her son and his

wife and children, together with the appellant and her grandson. She still cared for her grandson some of the time and would wash him and feed him and speak with him. He had changed considerably since coming to the United Kingdom. He had got much better since starting school and had started socialising. He spoke more and was generally happier. He was not happy in Egypt and could not go to school. He went out only to attend church once a week. She would stay in the United Kingdom if the appellant and her grandson had to return to Egypt, as she was on medication and was dependent upon her son.

#### MS's Statement of 29 July 2013

173. MS stated that the appellant and her son and his mother lived with him and his wife and children in the United Kingdom. He and his wife assisted the appellant in the care of her son and the appellant and his mother helped him and his wife looking after his children. The appellant's son had changed a lot and was thriving in school and had come out of his shell. He was starting to speak some English.

#### The Appellant's Statement of 17 September 2013

174. The appellant relied on her previous statements and sought to clarify differences between her evidence in her statements and the information provided in her visa application form. She had used a translation office to prepare the application forms as she did not speak English and had answered the questions put to her. On her son's application it stated that he was a student, but he had in fact never been to school in Egypt. She had merely been told to give the name of something and so had named the [day care] because that was where he had attended as a baby. The institute was a kind of day care centre for very young children with physical disabilities but it was not a school. She had attempted to enrol him in three different schools when he reached school age, but none had accepted him. With regard to the information in her application form, she had told the translation company that she was married, because that was still the case, but the agency must have presumed that she was still living with her husband as was usual in Egypt. She was not specifically asked if she was living with him. She did not want to say that she was separated from her husband because that was frowned upon. She had not lived with her husband since approximately three months after the birth of their son. The translation agency must also have assumed that her husband would be paying for her travel to the United Kingdom, as that was normal in Egypt, but she had stated that only she and her brother were funding her trip.

#### The Appellant's Oral Evidence

175. The appellant relied on her previous three statements. She said that the school her son was attending had a mixture of ordinary and special needs children. Her son had radically changed since attending school. His pronunciation of words had greatly improved and his ability to engage in conversation had developed considerably. He had a great social life and had integrated with the other children and formed



friendships. He could move his right hand as a result of physiotherapy and could eat by himself. He was happy that he was learning English and he looked forward to music lessons. Generally it was the case in Egypt that neither state nor private schools provided any resources for children with learning difficulties. Private schools were very expensive and could cost about 25,000 pounds a term, whilst she had earned at the most 1500 pounds a month. In Egypt they had generally not gone out of the house, except to attend church on Sundays. On occasions some teachers would attend the church and give her son some lessons. It was difficult for them to go out as the pavements were not designed for wheelchairs and she would be exposed to sexual harassment. There were no facilities for disabled people on public transport.

176. The appellant said that it would be nearly impossible for her to return to her work in Egypt as she had left suddenly because of the problems she was facing and the school was full of Islamists. It would be difficult also from the point of view that her son would not be accepted into any schools and she would have to be available to care for him. It would also break his heart if he had to be taken out of school here. He had no friends in Egypt and was isolated. Her son was very close to her mother and considered her as another mother and it would be very difficult to go back there without her.
177. When cross-examined the appellant confirmed that she had a cousin in Nasser City in Cairo but, when asked why he could not assist her, said that he held dual Egyptian and American nationality and was currently in the USA. He would not offer her help in Egypt, in any event. He worked in Egypt but was always travelling between Egypt and USA. She was not sure when he last went to the USA and was not really in contact with him. Her sister's husband had made it clear that she and her son could not live with them as he could not afford to be responsible for them and it was a burden to look after a special needs child. Her sister and her husband lived in Suhaj, in Upper Egypt and had always lived there. Her evidence in her statement that her sister lived in Cairo was wrong. Her sister lived in an apartment complex on the fourth floor and there was no lift for the wheelchair. In response to questions about the information given in her visa application, the appellant again said that the translation company must have assumed that she lived with her husband and that he was paying for her trip, as that was the culture there. Her husband would not give her money for her son's medication and was ashamed of him. With regard to the information on her son's application form, she had had to state, when getting a passport, that he was in school as she could be charged for not having him in school and the translation company must have got the information from the passport.
178. When asked about the court case mentioned in the First-tier Tribunal's determination, the appellant said that the case was about maintenance and divorce. Her husband had requested permission from the church for a divorce but had been refused. She had taken him to court for maintenance payments but there had been no progress as the judicial proceedings were on hold in Egypt owing to the conflict and the setting on fire of lots of the courts. With regard to the flat in which she had been

living in Egypt, she said initially that it was legally in her name but her husband had entered it and was squatting there, but when asked to clarify that evidence, she said that the flat was in his name but he had left it and moved in with his parents whilst she and her son were living there. He had now returned to the flat.

179. The appellant said that her son had attended the [day care] until he was three years of age. He had received physiotherapy there. He attended for one year and from then on had no education whatsoever, aside from some lessons given at the church. She had tried to get him into various schools but they would only take him if he could stand up with crutches, which he could not do. There were Coptic schools in Cairo but they were private and very expensive. When asked if the courts had awarded her accommodation in the flat, she said that they had not and that she had only been able to live there because of the circumstances. Her husband had kicked her out once but her uncle had managed to persuade him to let her return. That had occurred a year and a half after her marriage, after the birth of her son. Her uncle was no longer alive. She had been thrown out of the house by her husband several times and he had physically abused her as well.

#### AA's Oral Evidence

180. The appellant's mother, AA, said that her grandson had changed since attending school and was able to feed himself and spoke a lot clearer and enjoyed games with other children. He was not allowed to attend school in Egypt as he could not stand, even with crutches. Her daughter and grandson could not return to their flat in Egypt because her husband had repossessed it and had probably sold it by now. When cross-examined she said that they had received a telephone call from neighbours who told them that they had not seen him at the flat because he had sold it. He had another key. AA said that the only family she had in Egypt was her brother-in-law's children. They lived in Cairo. She then said that she was not sure if they were currently in Egypt as they could be in the USA staying with their brother. There was no contact with the appellant's husband. When re-examined, AA said that she had a daughter in Suhaj but the appellant could not live with her because there were a lot of Islamic terrorists there. Her daughter could not move to Cairo because her husband was a doctor and could not transfer his work. In response to our further enquiries, AA said that it was correct that there were incidents when the appellant's husband threw her out of the flat. It happened after 2002 and 2003. She confirmed that it was one and a half years after her grandson was born.

#### MS's Oral Evidence

181. MS said that the appellant's child had completely changed and was self-confident and sociable. He had attended a health centre in Egypt, where he had physiotherapy, but had only been there for a year until he was three years old. He could not go to school. MS said that he had tried to find a private school for children with disabilities but there were none. He needed to be independent and to walk with crutches. His mother had moved in with the appellant after the death of his father, so that she

could go back to work. The appellant's son was very attached to his mother. The flat where they were living in Egypt was in her husband's name and after they left the neighbours told them that he had taken over it. He did not know if he had sold it. The appellant could not live with their sister as she had no children and her husband was very sensitive and did not like noise or having children around. His sister had refused to have them living there. MS said that he had been supporting the appellant and her son and would continue to do so for as long as he could. They had a cousin living in Nasser City but he could not assist them. With regard to the court case in Egypt, the court had refused the appellant's husband permission to divorce her and she had asked for maintenance but he was not sure if she got any. Her husband stopped giving her money and the court case ended after one or two payments. He thought that the court case was closed before she came to the United Kingdom. He did not know anything about judicial proceedings allowing her to remain in the property.

### Submissions

182. Mr Wilding submitted that the changes in the appellants' circumstances since the First-tier Tribunal's decision had not altered the position as regards Article 8. The First-tier Tribunal had made findings on the basis that the appellants' removal would involve a separation between the second appellant and his grandmother and the grant of indefinite leave to remain did not, therefore, change the situation. The First-tier Tribunal had made significant adverse credibility findings against the appellant, finding that she had accommodation available to her in Egypt. The education upon which the second appellant had embarked in the United Kingdom was relatively recent. There was no question of him not receiving medical treatment in Egypt. Education was a factor in the consideration of best interests, but that was only part of the proportionality exercise. The evidence about the court proceedings was very confusing. It was difficult to know where the truth lay in particular as regards the appellant's husband. Her explanation for the evidence contained in her visa application form was not credible. There were inconsistencies in the evidence about her family in Egypt. The only finding that the Tribunal could make was that the appellant was not telling the truth. The appellant and her son would be able to return to Egypt. There was evidence of special needs education there. The evidence of MS was that he was currently able to assist financially. Removal would not be disproportionate.
183. Ms Benitez submitted that the primary findings, which were not undermined by the adverse credibility findings, were that the son and his grandmother had an unusually strong bond, that she had been his main carer since 2004 and that she was like a mother to him; that AA would not return to Egypt as she was elderly and ill and would be a burden on the first appellant and that there would therefore be a separation between them; and that the son had had no schooling in Egypt and would not have schooling available to him. It was unrealistic to suggest that he could have a shadow teacher at a special needs school, as referred to in the IPS report, and in any event that would prevent him having contact with his peers, an integral part of his

development. The idea of having a tutor was vague and there was no evidence to show that tutors would be available or that that would be a sufficient substitute for school. Ms Benitez conceded that the son's health needs were not part of the consideration as he would have access to facilities in Egypt. It was not in the son's best interests to leave his school in the United Kingdom. The appellant would have to look after him in Egypt and would therefore be unable to work. The evidence about accommodation was not inconsistent and it had always been the evidence that the flat in which they were living was in the appellant's husband's name. That was consistent with the background information about women's rights in Egypt. Her evidence about the information contained in the visa application forms was plausible and was consistent with the reports showing the stigmatisation of divorced and separated women. The appellant was not receiving maintenance. Removal would be in breach of Article 8.

### **Our findings on Article 8 of the ECHR**

184. The effect of the changed circumstances since the hearing before the First-tier Tribunal is that the appellants' Article 8 claim is pursued primarily on the basis of the family life established by the son with his grandmother, AA, and the private life he has established in the United Kingdom. With regard to the former, the First-tier Tribunal did not make specific findings on family life between him and his grandmother, but considered in any event that any interference would be through choice, given that it was open to her to return to Egypt with the appellants. We accept, on the basis that the son has lived continuously with AA since 2004 and that she has provided a level of care for him jointly with the appellant, that family life exists between them. Proceeding on the basis that AA would not return to Egypt with the appellants (although we cannot be entirely sure that that is the case), the appellants' removal would clearly interfere with that family life. With regard to the latter, there is no doubt that removal would interfere with the son's private life, and accordingly also with the private life of the appellant, in the United Kingdom. The issue in this case is thus one of proportionality.
185. As case law has established, a primary consideration when assessing proportionality is the best interests of the child, in this case the son. The starting point in the case of the son, which is not in dispute, is that his best interests lie in remaining with his mother, the appellant, his main carer. However, it is claimed that she would not be able to care and provide for him in Egypt and that accordingly his best interests lie in remaining with her in the United Kingdom, where he would have access to all necessary resources in terms of family support, accommodation, educational and developmental needs.
186. Turning first of all to the question of family support and accommodation, it is the case that the appellants live in the United Kingdom with MS who provides for them financially and with AA who assists with the son's basic needs such as feeding him. It is claimed, however, that in the event that they are required to return to Egypt, although MS would continue to provide financial assistance to the limits of his

ability, bearing in mind his own family responsibilities, they would have nowhere to live and no further source of income owing to the appellant's inability to work. We have given careful consideration to that claim, which we note is based on little more than the oral evidence of the witnesses. Unfortunately, however, we find the oral testimonies of the witnesses to be lacking in reliability, not only on the basis of the findings of the First-tier Tribunal, but also on the basis of the inconsistent and contradictory evidence they presented before us.

187. It is the appellant's claim that her estranged husband had taken over the flat that she and her son had previously occupied with her mother, following their departure from the country. That was her case before the First-tier Tribunal and remained her case before us. The First-tier Tribunal, having noted inconsistencies in the evidence before them in that regard, concluded that the appellants had accommodation available to them which had been secured by way of judicial proceedings. We find no reason to depart from the finding that the accommodation remained available to the appellants. The evidence before us regarding the current situation was equally inconsistent, with differing accounts given from each of the three witnesses. The appellant maintained that she had been informed by neighbours that her husband had moved into the flat and it was her understanding that he was living there. Her evidence was initially that the flat was legally in her name but her husband had occupied it. She then changed that account when asked for clarification and said that it was in his name but that they had had a right to stay there by law whilst they remained in Egypt, a right they had lost following their departure. Her mother's evidence, however, was that the neighbours had informed them that her husband had sold the flat and that he had not been seen there. The third witness, MS, was not sure if the appellant's husband had taken over the flat or if he had sold it.
188. Indeed, the entire account of the appellant's relationship with her husband and the status of their marriage was full of contradictions. The First-tier Tribunal did not make specific findings on the matter but it is clear from its references to court proceedings in relation to maintenance that it proceeded on the basis that the claim that they were separated was not a matter of dispute. However, the evidence produced before us raises further issues in that regard. Of particular note is the information provided in the appellants' visa application forms, dated 26 June 2011, in which the appellant stated that her husband currently lived with her and that he was to pay for her travel to the United Kingdom. That was supported by the reference in the son's application form to the financial support provided by his parents. The appellant's explanation, that the information was provided on the basis of assumptions made by the agent who completed the application forms, is not one that we can accept, given that other recorded answers in the appellant's visa application form referred to payments to be made by her brother. We also bear in mind the overall adverse credibility findings made by the First-tier Tribunal and other contradictions arising between the first appellant's evidence in her statement of 29 July 2013 and her evidence before us as to the contact she had had with her husband. Whilst her evidence at paragraph 4 of her statement was that she had not seen her husband or had any contact with him since three months after the birth of the second

appellant, her evidence before us was that her husband had thrown her out of the flat on several occasions after the birth of their son but they had reconciled following the intervention of an uncle. Her mother AA confirmed that that occurred a year and a half after the birth of her son and several times since then in 2002 and 2003.

189. With regard to the question of court proceedings in Egypt, we note that that arose before the First-tier Tribunal as a result of a reference in a letter dated 21 March 2012 from BUPA to reports from medical consultations being obtained for submission to a court in Egypt. The First-tier Tribunal noted inconsistencies arising between the evidence of the appellant and MS in regard to the purpose of the medical report and in regard to court proceedings for maintenance and compensation in Egypt. The evidence before us was similarly inconsistent, with the appellant claiming that such proceedings were on hold as a result of the conflict in Egypt and remained unresolved, but with MS claiming that the case was closed after his sister's husband ceased making payments of support.
190. Further inconsistencies arose in the evidence about other family members living in Egypt. It was common ground between the witnesses that the appellant had a sister and a cousin there, although the evidence as to whether the cousin was permanently residing in Egypt or whether he was in the USA differed between the witnesses. More significant, however, was the inconsistent evidence about her sister. In her asylum interview the appellant stated that her sister lived in Sohag, as was the claim of all three witnesses in the evidence before us. However we note that the evidence in her statement of 21 March 2012 before the First-tier Tribunal, as confirmed in the statements of AA and MS, was that her sister lived in Northern Cairo. Different reasons were given as to why the appellants could not live with her if they returned to Egypt. The appellant said that her sister's husband could not afford to be responsible for her son and that the accommodation was unsuitable for him since they lived in a fourth floor apartment without a lift. The reason given by AA was that the sister's husband was a doctor and could not move from Sohag because of his work and that she would not wish her daughter to live there because of the presence of Islamic terrorists. The reason given by MS was that his sister and her husband had no children and that her husband did not like to be disturbed by the noise of children. That in turn does not sit easily with the appellant's response to question 126 of her interview, that she could not live with her sister because she was married with children.
191. Having regard to such highly discrepant evidence we find that we cannot be satisfied that we have been presented with a genuine and reliable account of the circumstances to which the appellants would return in Egypt. The evidence simply does not support the claim that there is no accommodation or family support available to them on return or even that the appellant would be returning to Egypt as a single woman without the presence and support of a spouse. We do not accept that they would be returning to the situation claimed and find that there would, at the very least, and even on the basis that the circumstances of the marriage were as claimed, be support available to them from family members. We do not accept that

the appellant would be unable to find employment. The First-tier Tribunal did not accept her claim in regard to her problems at her place of work and were not satisfied that her job as a teacher would no longer be available to her. Whilst we accept that the general security situation in Egypt has deteriorated since the Tribunal made their decision and whilst we have accepted, to the extent stated, the difficulties faced by the Coptic Christian community, we do not find that the evidence demonstrates that she would not be able to find work. We note that in the school where she worked previously there were several other Coptic Christians employed there. However, even if it were the case that the absence of AA would prevent her from returning to employment, we find that the appellants would have adequate means of support through the financial assistance of MS and other family members in Egypt.

192. We turn next to the impact on the son of returning to Egypt, in terms of his education and development. We note that the Article 8 claim has never been pursued on the grounds of absence of medical care and treatment and Ms Benitez confirmed that that remained the case.
193. The son suffers from various medical conditions which are detailed in a report dated 23 July 2012 from Ealing Hospital and which include congenital hydrocephalus and cerebral palsy. As a result of those conditions he has severely delayed development and is confined to a wheelchair. Since the end of April 2013 he has been attending school and a report on his progress has been submitted in evidence. Although we have not been provided with any other evidence of his developmental progress, we note the evidence of the first appellant that he has developed substantially since commencing school, in terms of his pronunciation of words, his engagement in conversation and his integration with his peer group and that as a result of physiotherapy his range of movement has increased. He is now able to move his right hand and feed himself and is extremely happy at school. It is claimed that he had no access to education in Egypt and that, as a disabled child who was not able to move independently, he was denied entry to schools and lived a solitary life, leaving his home only to attend church and Sunday classes.
194. Reliance is placed upon the findings of the Upper Tribunal in the case of MK (best interests of child) India [2011] UKUT 475 with regard to the impact on the best interests of the son of being deprived of the educational and developmental opportunities available to him in the United Kingdom. Particular reference is made to paragraph 41 of MK:

“When it comes to the subject of education in the context of Article 8 we must consider a child’s educational development and also the issue of any “loss of educational opportunities” (para 30 of ZH (Tanzania)), so as to pay proper regard to how his or her educational progress is likely to be affected in a broad sense and not just in the short-term. That entails in this case having regard not only to the children’s past and present educational setting but also to the educational setting likely to confront them if returned to their country of origin.”

195. The evidence before us in regard to facilities available to disabled children in Egypt is extremely limited. It comprises little more than an Inter Press Service report entitled "Egypt: Looking Away from the Disabled" which we accept paints a dismal picture of the circumstances, although we note that that report dates back to April 2010 and has not been supported by more recent information. The report is based, for the most part, upon extracts from an interview with Hanaa Helmy, the regional coordinator of MOVE Middle East, a NGO working to improve the mobility of children with severe disabilities. Whilst we note that the report supports the claim that disabled children encounter difficulties accessing education in public and private schools, we also note that it refers to state schools for special needs children, albeit stating that such schools may require parents to hire a shadow teacher at a cost that many could not afford. It is thus clear that such schools exist. Indeed, whilst the appellant has maintained throughout the proceedings that her son received no education or schooling in Egypt, her claim was contradicted by the information provided in the second appellant's visa application form referring to him currently being a student at the [day care]. The first appellant's explanation was that she was required to provide some information of education and that her son had, in the past, attended that institute, which was no more than a day care centre for very young children with physical disabilities, as a baby. Her evidence before us, and that of her mother and brother, is that he attended there for one year until the age of three. However in view of the unreliability of her evidence and that of the witnesses in other respects as outlined above, we simply cannot be satisfied, on the limited evidence before us, that we have been told the truth about her son's inability to access any form of education and schooling in Egypt since the age of three. Indeed, given that the lack of such facilities largely forms the basis for the appellants' Article 8 claim and given the claimed severity of the circumstances in Egypt for disabled children, we are somewhat surprised that such little documentary evidence was produced.
196. Nevertheless, mindful of the difficulties faced by those with disabilities, as referred to in the IPS report, we proceed on the basis that access to educational and developmental opportunities for the second appellant in Egypt would fall well short of those available to him in the United Kingdom. We do not, however, accept that he would be denied any form of education in Egypt and consider that the appellant would have a level of financial assistance available to her to provide at the very least home schooling for her son. She has been involved in the teaching profession herself for many years in Egypt, as was her father, and we consider that she would have the contacts and tools available to her to provide her son with an adequate level of educational and developmental care.
197. Taking all of the above into consideration, in particular the level of care available to the son in terms of his education and development and immediate family support, and considering also the current general situation of unrest and in particular that facing the Coptic communities in Egypt, and despite the adverse findings we have made, we are willing to accept, on balance, that it would be in the best interests of the son to remain in the United Kingdom with the appellant and his grandmother AA,



although, as we have outlined, we do not consider that his welfare in Egypt would be neglected. However, that is clearly not the end of the matter and is only one, albeit a primary consideration, in assessing proportionality.

198. The appellants are Egyptian citizens and have cultural, religious and linguistic ties with Egypt. For the reasons given above, we have found that they would not be at risk on return on the basis of their religion. They have family remaining there and we are not satisfied that those family ties are as limited as the appellants claim. On the contrary, we have found that the appellants would have accommodation and family support available to them. We note, as accepted, that the son has had access to more than adequate medical treatment in Egypt and it is not disputed that such treatment would be available to him on return. Whilst we accept that family life has been established between the son and his grandmother and that the appellants' removal would result in their separation, we see no reason to depart from the findings of the First-tier Tribunal that that separation has an element of choice and would not in any event be disproportionate. Although AA has now been granted indefinite leave to remain, and whilst the appellants' grounds of appeal assert that the decision for AA to remain in the United Kingdom ought not to be considered as one of choice, given her ill-health and age, the fact remains that she came to the United Kingdom as a visitor and, at the time the appellant was interviewed about her asylum claim, it was her claimed intention to return to Egypt. In any event, on the basis of the evidence of AA's own care needs, it is clear that the level of care that she is able to give the son is limited and, whilst their separation may be emotionally difficult, it cannot be considered to be disproportionate in the light of all the circumstances.
199. We bear in mind the weight to be attached to the public interest in maintaining a firm but fair immigration control. The appellants came to the United Kingdom as visitors with a stated intention of returning to Egypt and have no other basis of stay here. They do not meet the requirements of the Immigration Rules. They have been here for a relatively short period of time, of still less than two years. Whilst the son has commenced schooling here and is said to be content and progressing well, he has in fact been in attendance for only five months to date. The appellant has presented a claim for asylum which has been comprehensively disbelieved. She has been untruthful about her ties to Egypt and has given an account which is significantly contradicted by the information she provided when applying for entry clearance. Although we have the utmost sympathy for her in the situation in which she finds herself in terms of her son's needs and the responsibilities that that entails, and similarly for her son who appears to be happy and settled at school, we must consider the circumstances within the confines of the law. We find that the balance has to fall in favour of removal and that requiring the appellants to return to Egypt would not put the United Kingdom in breach of Article 8 of the ECHR.

200. We re-make the decision as follows:

The appellants' appeals are dismissed on asylum and human rights grounds (Articles 3 and 8 ECHR). The appellants are not entitled to the grant of humanitarian protection.

201. The writing of this determination is one to which each of the panel has contributed.

Signed

Date

Upper Tribunal Judge Storey

## APPENDIX A

### Documentary Evidence before the Upper Tribunal

Item	Document	Date
1.	Assyrian International News Agency (AINA), "Two Christians Murdered in Egypt for Refusing to Pay Jizya to Muslims" by Mary Abdelmassih <a href="http://www.aina.org/news/20130913143703.htm">http://www.aina.org/news/20130913143703.htm</a>	13 September 2013
2.	Washington Times, "Egypt's Muslim Brotherhood to Coptic Christians: Convert to Islam, or pay 'jizya' tax" by Jessica Chasmar <a href="http://www.washingtontimes.com/news/2013/sep/10/egypts-muslim-brotherhood-convert-islam-or-pay-jiz/print/">http://www.washingtontimes.com/news/2013/sep/10/egypts-muslim-brotherhood-convert-islam-or-pay-jiz/print/</a>	10 September 2013
3.	Human Rights Watch, "Egypt: Mass Attacks on Churches"	22 August 2013
4.	The Guardian, "Egypt's Coptic Christians report fresh attacks on churches"	15 August 2013
5.	United Nations Press Release, "Statement by Mr. Adama Dieng, United Nations Special Adviser on the Prevention of Genocide, and Ms. Jennifer Welsh, United Nations Special Adviser on the Responsibility to Protect, on the situation in Egypt"	15 August 2013
6.	BBC News, "Egypt's Coptic Christians dread further backlash" by Caroline Wyatt <a href="http://www.bbc.co.uk/news/world-middle-east-23662698">http://www.bbc.co.uk/news/world-middle-east-23662698</a>	12 August 2013
7.	BBC News, "Egypt" Article	9 August 2013
8.	Cairo Institute for Human Rights Studies, "Islamist Groups Must Stop Inciting Sectarian Violence; Protection of Christians Responsibility of the State"	7 August 2013
9.	Foreign & Commonwealth Office (Egypt Desk) letter	5 August 2013
10.	Amnesty International, "Egypt: Security forces abandon Coptic Christians during deadly attack in Luxor"	23 July 2013
11.	Human Rights Watch, "Egypt: Sectarian Attacks Amid Political Crisis"	23 July 2013

12.	Amnesty International, "Egypt: 'There was no door on which I did not knock': Coptic Christians caught in attacks and state's failures"	23 July 2013
13.	World Watch Monitor USA, "Pro-Morsi backlash turns deadly for some Christian Communities"	18 July 2013
14.	BBC News, "Egypt's Coptic Christians pay price of political tumult" <a href="http://www.bbc.co.uk/news/world-middle-east-23337659">http://www.bbc.co.uk/news/world-middle-east-23337659</a>	17 July 2013
15.	Barnabas Aid (UK), "Kidnapped Christian man found beheaded in Egypt amid Islamist backlash"	16 July 2013
16.	Aid to the Church in Need (UK) "Egypt: UK head of Aid to the Church in Need appeals for peace after sudden increase in attacks on Christians"	16 July 2013
17.	Voice of the Copts, "Egypt Christians Greet Revolution Against Muslim Brotherhood" by Peter Jesserer Smit <a href="http://www.voiceofthecoets.org/index.php/categories/oped/10521-egypt-christians-greet-revolution-against-muslim-brotherhood">http://www.voiceofthecoets.org/index.php/categories/oped/10521-egypt-christians-greet-revolution-against-muslim-brotherhood</a>	15 July 2013
18.	WJLA, "Coptic Christians escape religious persecution in Egypt"	9 July 2013
19.	Morning Star News, "Christians in Egypt Fearful after Five Copts Killed"	8 July 2013
20.	The Independent, "Now Egypt's Christians targeted in sectarian violence"	7 July 2013
21.	The Independent, "Egypt analysis: Post-Morsi chaos is the moment the Salafist Al-Nour Party has waited for"	7 July 2013
22.	Human Rights Watch, "Egypt: Threat of Escalating Street Violence"	7 July 2013
23.	Morning Star News, "Morsi Supporters Attack Christian Targets in Egypt after Removal of President"	6 July 2013
24.	The Telegraph, "Egypt: Coptic Christian priest shot dead"	6 July 2013
25.	Reuters, "Coptic priest shot dead in Egypt attack: sources" <a href="http://www.reuters.com/article/2013/07/06/us-egypt-protests-priest-idUSBRE96505O20130706">http://www.reuters.com/article/2013/07/06/us-egypt-protests-priest-idUSBRE96505O20130706</a>	6 July 2013

26.	Ecumenical News, "Egyptian Coptic Pope supports ousting of Morsi" by Timothy Fowler <a href="http://www.ecumenicalnews.com/article/egyptian-coptic-pope-supports-ousting-of-morsi-22324">http://www.ecumenicalnews.com/article/egyptian-coptic-pope-supports-ousting-of-morsi-22324</a>	6 July 2013
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28.	UK Parliament, "Coup in Egypt" Commons Library Standard Note SNIA/6680 by Ben Smith <a href="http://www.parliament.uk/briefing-papers/SN06680">http://www.parliament.uk/briefing-papers/SN06680</a>	4 July 2013
29.	Morning Star News, "Church Permit from Morsi Viewed as Token, Given Difficulties Egyptian Christians Face"	2 July 2013
30.	NBC News, "Egypt's Coptic Christians say they are 'no longer safe'"	20 June 2013
31.	Amnesty International, "Egypt's worrying rise in criminal blasphemy cases"	11 June 2013
32.	Morning Star News (USA), "Teacher in Egypt Sentenced for 'Defaming' Islam"	11 June 2013
33.	European Court of Human Rights, Press Release issued by the Registrar of the Court "Removal of a Coptic Christian to Egypt would expose him to a risk of torture and inhuman or degrading treatment" ECHR 169 (2013) (Case of <i>ME v France</i> (Application No.50094/10))	6 June 2013
34.	Arabic Network for Human Rights Information (via International Freedom of Expression Exchange), "Coptic Egyptian lawyer accused of defaming Islam sentenced to prison"	4 June 2013
35.	Index on Censorship (via International Freedom of Expression Exchange), "Coptic Egyptian teacher faces jail for allegedly insulting the Prophet"	28 May 2013
36.	Amnesty International, "Annual Report 2013: Egypt"	23 May 2013
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40.	Morning Star News (USA), "Jail Time Extended for Teacher Accused of Blasphemy in Egypt"	13 May 2013
41.	UK Border Agency, "Operational Guidance Note: Egypt" (v.1 7 May 2013)	7 May 2013
42.	US Commission on International Religious Freedom, "United States Commission on International Religious Freedom Annual Report 2013: Egypt"	30 April 2013
43.	Mail Online, "Egyptian police refuse to protect Coptic Christians during gun and machete attack on mourners at cathedral"	27 April 2013
44.	US Department of State, "2012 Country Reports on Human Rights Practices: Egypt"	19 April 2013
45.	UK Border Agency, Country of Origin Information Service Bulletin on Women in Egypt	17 April 2013
46.	The Independent, "Coptic Christians under siege as mob attacks Cairo cathedral"	8 April 2013
47.	The Independent, "Coptic Christians: The minority who are an easy target in tough times"	7 April 2013
48.	Morning Star News (USA), "Christian Killed in Attack on Coptic Mourners in Egypt"	7 April 2013
49.	Amnesty International, "Egypt's Coptic Christians must be protected from sectarian violence"	27 March 2013
50.	Refugee Documentation Centre (Legal Aid Board, Ireland) (via UNHCR Refworld Website), "Egypt: Information on Christian – Muslim issues between March 2012 and March 2013. Information on the Muslim brotherhood intimidating Christians in an attempt to get them to convert to Islam"	26 March 2013
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52.	Magharebia, "Benghazi Coptic Church torched"	15 March 2013

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58.	Egyptian Initiative for Personal Rights, "State crimes remained unpunished: the Interior Ministry is above the law and the Public Prosecution is missing in action"	22 January 2013
59.	Christian Solidarity Worldwide (UK), "Egypt: Coptic church building destroyed"	17 January 2013
60.	Wilson Centre (USA), "Women's Rights Under Egypt's Constitutional Disarray"	16 January 2013
61.	Freedom House, "Freedom in the World 2013: Egypt"	16 January 2013
62.	Open Doors International, "World Watch List 2013: Egypt"	8 January 2013
63.	BBC News, "Worry taints Egyptian Coptic Christmas" by Bethany Bell <a href="http://www.bbc.co.uk/news/world-middle-east-20896896">http://www.bbc.co.uk/news/world-middle-east-20896896</a>	3 January 2013
64.	Washington Times, "FRANKS: Future looks bleak for Egypt's Coptic Christians" by Rep. Trent Franks <a href="http://www.washingtontimes.com/news/2012/dec/21/future-looks-bleak-for-egypts-coptic-christians/">http://www.washingtontimes.com/news/2012/dec/21/future-looks-bleak-for-egypts-coptic-christians/</a>	21 December 2012

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66.	Amnesty International, "Brutality Unpunished and Unchecked: Egypt's Military Kill and Torture Protestors with Impunity"	2 October 2012
67.	US National Public Radio (NPR), "Coptic Christians in US fear 'Terrible' reaction in Egypt to Muhammed Film" by Krishnadev Calamur	14 September 2012
68.	Copts United, "Ismailia: Leaflets by Terrorist Groups Incite Killing Christians"	15 August 2012
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74.	Christian Solidarity International (USA), ""Tell My Mother I Miss Her": The Disappearance, Forced Conversions and Forced Marriages of Coptic Christian Women in Egypt (II)"	17 July 2012
75.	CNS News Group, "In Egypt, Clinton Fends Off Allegations of U.S. Support for Muslim Brotherhood" by Patrick Goodenough	16 July 2012
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91.	Compass Direct (USA), "Massacre in Egypt Said to Cost Government All Credibility"	1 November 2011
92.	Compass Direct (USA), "Egyptians Mourn Massacre of Coptic Christians"	10 October 2011
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97.	Refugee Review Tribunal of the Government of Australia (RRT), "Egypt - EGY38986 - Coptic Christians - State Protection - Employment"	26 July 2011
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101.	Refugee Review Tribunal of the Government of Australia (RRT), "Egypt - EGY38823 - Coptic Christians - Current Situation - State Protection"	30 June 2011
102.	Jihadwatch, "Egypt: More Christian girls abducted, forced to convert to Islam"	27 June 2011
103.	Amnesty International, "Annual Report 2011: Egypt"	13 May 2011
104.	Freedom House, "Freedom in the World 2011: Egypt"	12 May 2011
105.	US Department of State, "2010 Country Reports on Human Rights Practices: Egypt"	8 April 2011
106.	Refugee Review Tribunal of the Government of Australia (RRT), "Egypt - EGY38046 - Evangelical Christians - Churches - Presence - Activities - Treatment Proselytising"	4 February 2011
107.	Minority Rights Group Egypt Report, "State of the World Minorities" (Extract)	2011

108.	Inter Press Service, "Egypt: Looking Away From the Disabled" by Cam McGrath <a href="http://www.ipsnews.net/2010/04/egypt-looking-away-from-the-disabled/">http://www.ipsnews.net/2010/04/egypt-looking-away-from-the-disabled/</a>	7 April 2010
109.	Freedom House (via UNHCR Refworld), "Women's Rights in the Middle East and North Africa 2010 - Egypt" <a href="http://www.refworld.org/docid/4b990125f.html">http://www.refworld.org/docid/4b990125f.html</a>	3 March 2010
110.	UNHCR, "Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees"	22 December 2009
111.	Compass Direct (USA), "Two Copts in Egypt Imprisoned after Reporting Attack"	20 August 2009
112.	Compass Direct (USA), "Police Collusion Suspected in Attack on Church in Minya, Egypt"	17 July 2009
113.	UK Border Agency, "Country of Origin Information Key Documents - Arab Republic of Egypt"	13 July 2009
114.	Compass Direct (USA), "Two Clashes Shake Egypt's Coptic Community"	7 July 2009
115.	UNHCR, "UNHCR Guidelines on Determining the Best Interests of the Child"	May 2008
116.	Immigration and Refugee Board of Canada, "Egypt: Treatment of Christians, including Coptic Christians, and availability of state protection"	26 February 2007
117.	Compass Direct (USA), "Coptic Christian Dies after Muslims Set Fire to Church"	20 January 2006
118.	Unicef, "Egypt"	Undated

## APPENDIX B

### Expert Evidence before the Upper Tribunal

Item	Document	Date
1.	Hudson Institute, addendum to Expert Report by Mr Marshall	15 September 2013
2.	CV and Biography of Expert from the Hudson Institute, Mr Marshall	12 September 2013
3.	Email exchange with Hudson Institute's expert, Mr Marshall	11 September 2013
4.	Responses to Respondent's questions in relation to the Hudson Institute Expert Report by Mr Marshall dated 6 June 2013	18 July 2013
5.	Hudson Institute, addendum to Expert Report by Mr Marshall	18 July 2013
6.	Respondent's questions to Mr Marshall, Expert from the Hudson Institute	10 July 2013
7.	Hudson Institute, Expert Report by Mr Marshall	6 June 2013
8.	Mark Henderson & Alison Pickup, "Best Practice Guide to Asylum and Human Rights Appeals" - Chapter 22 "The Expert's Role"	31 May 2012
9.	Annex A - Summary of reported attacks on Coptic Christians (extracts from the Expert Report and addendums by Mr Marshall of the Hudson Institute) and summary of assaults/attacks since 15 July 2013 provided by Maspero Youth Union as referenced by the New York Times and Amnesty International	Undated

## APPENDIX C

### List of Churches Burned or Damaged since August 14

1. Al-Amir Tadros Coptic Church	Minya city
2. Al-Anba Mousa Church	Minya city
3. Evangelical Church	Minya city
4. Al-Rasuliya Apostolic Church	Minya city
5. Mar Meena Coptic Church	Minya city
6. Mar Meena Church	Minya – Bani Mazar
7. Evangelical Church	Minya – Bani Mazar
8. Baptist Church	Minya – Bani Mazar
9. Saints Mary and Ibram Coptic Church	Minya – Dalga
10. Al-Mashyakhia Evangelical Church	Minya – Malawi
11. Good Shepherd Catholic Church and School	Minya – Malawi
12. Mar Yohanna Church	Asyut city
13. Adventist Church	Asyut city
14. Al-Rasuliyya Church	Asyut city
15. Mar Gergas Coptic Church	Asyut city
16. al-Qowsiyya Bishopric and Chruch	Asyut city
17. Evangelical Church	Asyut city
18. St. Therese Church	Asyut city
19. Nahdet al-Qadasa church	Asyut city
20. St. George Coptic Church and Diocesan Office	Sohag city
21. St. Mary Church	Fayum city
22. St. Mary Church	Fayum – al-Manzala
23. Al-Amir Tadros al-Shatbi Church	Fayum – al-Manzala
24. Al-Shaheeda Damyana Church	Fayum – al-Zurbi Village
25. Evangelical Church	Fayum – al-Zurbi Village
26. Al-Amir Tadros Church	Fayum – al-Sarg, Ebshtway
27. Al-Mallak Church	Giza – Kirdassa
28. St. Mary Church	Giza – Deir Hakim
29. Karmet al-Rosul Church	Giza – Atfih
30. St. Mary Church	Giza – al-Mansouriya
31. Al-Younaniyya al-Qadeema Church	Suez city
32. Good Shepherd Catholic Church and School	Suez city
33. Saviour’s Anglican Church	Suez city
34. Franciscan Church and School	Suez city
35. Mar Gerges Church	North Sinai – Al-Areesh
36. Mar Gerges Church Services Building	Bani Suef – al-Wasita
37. Franciscan Catholic Church and School	Bani Suef city

### Churches Attacked, Not Damaged

1. Al-Malak Church	Asyut city
2. Abu Teeg Bishopric	Asyut city
3. Franciscan Church and School	Asyut city
4. St. George Hadayeq Church	Helwan city
5. Abu Sifin Church	Cairo – Ezbet al-Nakhl

## APPENDIX D

### [MASPERO YOUTH UNION] SUMMARY [of Attacks since 14 August 2013]

38 Churches completely destroyed, burned and looted  
23 Churches attacked and partially damaged

In addition to the following:

- 58 Houses owned by Copts in different locations burned and looted
- 85 Shops owned by Copts
- 16 Pharmacies
- 3 Hotels (Horus, Susana & Akhnaton)
- 75 Cars, buses owned by churches
- 6 People killed based on their religious Christian identity
- 7 Coptic people kidnapped in upper Egypt governorates

#### ***I - Churches completely destroyed, burned and looted:***

- 1 - Mary & Saint Ebram Coptic Orthodox Church, services building, children daycare, the Bishop resting house - Delga village - Menya
- 2 - Saint Mina church - Abu Hilal area - Menya
- 3 - Baptist church - Bani Mazar - Menya
- 4 - Prince Toadros - Sidnawy circle - Menya
- 5 - Third Evangelical church - Menya
- 6 - The Evangelical church - Gad ElSayed area - Menya
- 7 - Saint Moses - Abu Hilal area - Menya
- 8 - Khalas AlNefous - Palace circle - Menya
- 9 - Saint Mina - Markaz st., Bani Mazar - Menya
- 10 - The Evangelical church - Malawy - Menya
- 11 - Saint Georges Coptic Orthodox church - Sohaj
- 12 - Saint Marc - Kahraba st, Suhaj
- 13 - Saint Mary Coptic church - Suhaj
- 14 - Saint Tadros monastery - Nazla village - AlFayoum
- 15 - Saint Mary Coptic church - Nazla village - AlFayoum
- 16 - Saint Demyana church - Zerby village - AlFayoum
- 17 - The evangelical church - Zerby village - AlFayoum
- 18 - Prince Tadros Coptic church - Dessya village - AlFayoum
- 19 - The Franciscan church & school - st, 23, Suez
- 20 - The Old Greek church - Bradis st., Suez
- 21 - The Evangelical church - AlGeish st, Suez
- 22 - Saint Georges Coptic church - Qulta st., Assuit
- 23 - Apostolic church - Namess church, Assuit
- 24 - Saint John Coptic church - Abnab district, Assuit
- 25 - The Adventist church - Youssry Ragheb st., Assuit
- 26 - Al Esslah church - Assuit
- 27 - Saint Theresa - Assuit
- 28 - Saint Mary Coptic church - 10thst, Kerdassa district, Giza
- 29 - Saint Mary Coptic church - Kerdassa - Giza

- 30 - Saint Georges Coptic church - Arish, Northern Sainai
- 31 - The Good Shepard nuns monastery and school - Suez
- 32 - The evangelical church - Manshyet Badeen - Menya
- 33 - Saint John the baptizer Diocese, Elquussia center, Assiut
- 34 - The Holy Family church for Coptic catholics, beside Malawi police station, Malawi center, Menya
- 35 - The Evangelical church beside the police station, Malawi center, Menya
- 36 - Saint George and Abu-seifin, Lahassa village, Maghagha center, Menya
- 37 - The apostolic church and its medical center, Omar street, Ezbet iskandar abu hilal, Menya
- 38 - Marimina church, Bani Mazar center, Menya

**II - Churches attacked and partially damaged:**

(Molotov Cocktails, rock throwing, shootings)

- 1 - Saint Marc Catholic church, Abu helal area - Menya
- 2 - The Jesuit fathers church, Abu helal area, Menya
- 3 - Virgin Mary church, El gazagreen street, Abu helal area, Menya
- 4 - Maryouhanna the Baptist Diocese, El-quussia, Assiut
- 5 - Virgin Mary church, Houd 10, Quena
- 6 - Atfih Diocese, Giza
- 7 - The Two Saints church of Sol village, Atfih, Giza
- 8 - Saint March Church, El-saff - Giza
- 9 - The Jesuit school, Menia
- 10 - Saint George church, Bakous, Alexandria
- 11 - Saint Maximus 45<sup>th</sup> st. - Alexandria
- 12 - Malawi Diocese, Malawi center, Menya
- 13 - Coptic Orthodox Diocese, Deir Mawas, Menya
- 14 - El-MALAK Church, Nemis st., Assuit
- 15 - Coptic Orthodox Diocese, Abu Teeg center, Assiut
- 16 - The Holy Virgin Church, Kafr Abdo, 6<sup>th</sup> of October City
- 17 - Saint George Church, El-WASTA Center, Beni suef
- 18 - Abu-sefein Church, El rashah, Ezbet el nakhl, el Marg, Cairo
- 19 - The Holy Virgin Church, El-Mansoureya
- 20 - Abu-Fana Monastery, Malawi, Menya
- 21 - Saint George Church, Cotsica, Maadi
- 22 - Marimina Church, Bani Mazar, Menya
- 23 - Saint George Church, Hadayek Helwan, Giza

**III - Coptic Schools completely burned and looted:**

- 1 - Coptic School for boys, EL Hussein st., Menya
- 2 - Saint Joseph School and monastery, Menya
- 3 - The Good Shepard school - Menya
- 4 - The Franciscan nuns school - Beni Suef
- 5 - The Franciscan nuns school - Suez
- 6 - The Good Shepherd Coptic Catholic school, Malawi, Menya

**IV - Coptic Buildings - completely burned and looted:**

- 1 - Friends of the Holy Book - Al Fayoum

- 2 - Coptic Youth club - Menya
- 3 - Soldiers of Christ orphanage - Menya
- 4 - The Bible library - Menya
- 5 - Jesuit community - Menya
- 6 - Aidahbya boat owned by the evangelical church - Menya
- 7 - The Bible library - Assuit

***V - In addition to the following:***

- 58 Houses owned by Copts in different locations burned and looted
- 85 Shops owned by Copts attacked
- 16 Pharmacies
- 3 Hotels (Horus, Susana, Akhnaton)
- 58 Cars, buses owned by churches
- 6 People killed based on their religious Christian identity
- 7 Coptic people kidnapped in upper Egypt governorates.