

**THE FREEDOM OF THE RIGHT TO RELIGION OF MINORITIES:
A COMPARATIVE CASE STUDY BETWEEN KENYA AND EGYPT**

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DECLARATION

I, **Attiya Waris**, hereby declare that this dissertation is original and has never been presented in any other institution. I also declare that any secondary information used has been duly acknowledged in this dissertation.

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DEDICATION

This dissertation is dedicated to my family.

Thank you for all the love, support and sacrifice.

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I could not have achieved the completion of this dissertation without the grace of God.

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LIST OF ABBREVIATIONS

African Commission	African Commission on Human and Peoples' Rights
Arab Charter	Arab Charter of Human Rights
AU	African Union
Cairo Declaration	Cairo Declaration on Human Rights in Islam
Charter of Paris	Charter of Paris for a New Europe (1990)
CHR	Commission on Human Rights
DEDR	Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief
DRM	Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities
ECHR	European Convention of Human Rights
European Commission	European Commission for Human Rights
European Court	European Court of Human Rights
Egypt	Arab Republic of Egypt
Egyptian Constitution	Constitution of the Arab Republic of Egypt
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICEAFRD	International Convention on the Elimination of All Forms of Discrimination Based on Religion or Belief
ILO	International Labour Organisation
Kenya	Republic of Kenya
Kenyan Constitution	Constitution of the Republic of Kenya
OAU	Organisation of African Unity
UDHR	Universal Declaration of Human Rights
UIDHR	Universal Islamic Declaration of Human Rights
UN	United Nations (Organisation)
UNGA	United Nations General Assembly

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CHAPTER 1

INTRODUCTION

1. NATURE AND SIGNIFICANCE OF THE STUDY

Every country has religious minorities. Any study of religious minorities and the protections afforded to them must also examine the significance of minorities per se. Minorities have no internationally accepted definition. Definitions are either broad and with little specificity or narrow and exclusive. Generally, two trends with regard to minority rights can be observed. On the one hand, in many countries, a comprehensive system of the legal protection of minorities has been introduced. Here the biggest problems stem from the difference between formal and informal rights. On the other hand, a number of countries have not legally committed themselves to the protection of minorities; ranging from inadequate safeguards to non-recognition of the minority.

National minorities have received broad, although not well-differentiated, reporting in the international media and attention in international organisations and its impact on the discourse on religious rights have been minimal. However, minority religious rights have featured less significantly on the public agenda. The implications of the status of national minorities and religious groups are that many minorities believe that the majority group generally receive privileged status in state structures, while the minorities are viewed with suspicion.¹

The issue of religious representation and safeguards arose within the Constitution of the Republic of Kenya (“Kenyan Constitution”) where there is a recently concluded Constitutional Review Commission that had the Christian majority object to the “excessive protection” being granted to the Muslim minority. There was a huge debate as to the extent of inclusion of Sharia in the resultant draft constitution as well as the protection of fundamental principles of human rights and Islam. The question thus arises, should one apply Sharia or enshrine in it in the constitution of a country or will this involve overprotection that may lead to long term exploitation of the law by the minority.

The Arab Republic of Egypt (“Egypt”) and the Republic of Kenya (“Kenya”) have been chosen as case studies as they are interesting reflections of the development of states in Africa. Kenya with a Muslim minority maintaining a hold on the application of Islamic law where there is a Christian

¹ Yagcioglu, Dimostenis “Psychological Explanations of Conflicts between Ethno cultural Minorities and Majorities - An Overview –” < <http://www.geocities.com/Athens/8945/sycho.html>> (accessed 26/10/04).

majority while in Egypt the Copt and Shia Muslim² populations are trying to assimilate into the state.

Sharia is of importance both to Kenya and Egypt. In Egypt the entire legal system is premised on the constitutional provision that Sharia is the principle source of law, thus some religious minorities in Egypt look for ways to maintain their identity and circumvent the application of Sharia provisions. Kenya with a Muslim religious minority is grappling with the concept of Sharia and how far it should apply to Muslims in a country. Thus these two countries have an inverse mirror image problem of each other as between the two major world religions, Christianity and Islam.

2. AIMS AND OBJECTIVES OF THE STUDY

This study investigates the freedom of the right to religion of minorities and the protections afforded to them in Kenya and Egypt. The general objectives of the study are:

- a) To discuss the current status of human rights of religious minorities with Egypt and Kenya as case studies.
- b) To identify the framework for policy and legal interventions in light of the constantly changing dynamics in conditions of religious minorities in the two countries.
- c) To make recommendations that would be useful not only for the two countries but for other countries in similar situations.

3. CONCEPTUAL FRAMEWORK

International law faces problems in definition of terms and extent of applicability of law both internationally and nationally on religious minorities.

4. TERMINOLOGY

There is no universally accepted definition of certain terms like minorities, discrimination and religion. All of these need to be discussed before going into the substance of the thesis. In my thesis the reference to the following terms will be as defined below:

4.1) Minorities

Minorities are

a group **numerically**³ inferior to the rest of the population of the State, in a non-dominant position, whose members- being nationals of the state (or of another state) ⁴- possess ethnic, religious or linguistic

² Freedom of Belief and the Arrests of Shi'a Muslims in Egypt, Report of the Egyptian Initiative for Personal Rights (Cairo 2004).

³ Emphasis mine.

⁴ The text in brackets is my own addition. Protection of minorities should be extended to all minorities both within and outside their borders as long as they are being discriminated against and are numerically inferior. Hence my minority analysis in chapter 2 includes refugees and migrant workers.

characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their cultures, traditions, religion or language.⁵

4.2) Religion

Religion can be a belief, identity or way of life.⁶ The formulation here has been adopted by Ontario Human Rights Commission. The Ontario Human Rights Code prohibits discrimination on the grounds of “creed” stating that:

Creed is interpreted to mean “religious creed” or “religion.” It is defined as a professed system and confession of faith, including both beliefs and observances or worship. A belief in a God or gods, or a single Supreme Being or deity is not a pre-requisite. Religion is broadly accepted by the Commission to include, for example, non-deistic bodies of faith, such as the spiritual faiths/practices of aboriginal cultures, as well as bona fide newer religions (assessed on a case by case basis).⁷

The approach of the European Court of Human Rights (“European Court”) to the interpretation of Article 9 of the European Convention on Human Rights (“ECHR”) has enabled the European Court to accept, in principle that religion extends to Druidism⁸ pacifism,⁹ veganism,¹⁰ the Divine Light Zentrum¹¹ and the Church of Scientology.¹² The European Court has said that Article 9 of the ECHR is a “precious asset for atheists, agnostics, sceptics and the unconcerned”.¹³ Every individual opinion or preference constitutes a religion or belief. The views must attain a certain level of cogency, seriousness, cohesion and importance.¹⁴ In *McFeely v UK* the European Commission defined belief as

more than just ‘mere opinions or deeply held feelings’; there must be a holding of spiritual or philosophical convictions which have an identifiable formal content.¹⁵

4.3) Discrimination

Discrimination is the purposeful and illegal denial of equality in any manner. It involves treating a person of the protected group, less favourably than others not of that group. Formal equality is a principle of equal treatment: individuals who are alike should be treated alike, according to their actual characteristics rather than stereotypical assumptions made about them. Any legislation on

⁵ Capotorti, (1979) *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*, United Nations Document E/CN.4/Sub.2/384/Rev.1 paragraph 568 and Pentassuglia, G (2002) *Minorities in International Law: An Introductory Study* Council of Europe Publishing 57.

⁶ United Nations High Commission on Refugees Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A (2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees paragraph 5.

⁷ Ontario Human Rights Commission, Policy on Creed and the Accommodation of Religious Observances <<http://www.ohrc.on.ca/english/publications/creed-religion-policy.shtml>> (accessed 26/10/04).

⁸ *Chappell v UK* (1987) 53 DR 241.

⁹ *Arrowsmith v UK* (1978) 19 DR 5.

¹⁰ *X v UK* (Commission) Application Number 18187/91 (10 February 1993).

¹¹ *Omkananda and the Divine Light Zentrum v Switzerland* (1981) 25 DR 105.

¹² *X and Church of Scientology v Sweden* (1979) 16 DR 68.

¹³ *Kokkinakis v Greece* (1994) 17 EHRR 397 paragraph 31.

¹⁴ *Campbell and Cosans v UK* (1982) 4 EHRR 293.

¹⁵ [1981] 3 EHRR 161.

religious minorities must include this principle of formal equality or consistent treatment, as the starting-point of any antidiscrimination measure.

There can be discrimination without any conscious motivation on the part of the discriminator.¹⁶ The question is essentially one of causation. Applied to religious discrimination this would be: but for the person's religion or belief would that person have been differently treated? Religion or belief would need to be the activating cause and the discriminator would need to have knowledge of another's religion.¹⁷

4.4) Sharia

There are two views on defining Sharia, the conservative interpretation is that it consists of a large body of specific timeless and enforceable rules. The more liberal interpretation, which will be the interpretation referred to in this thesis, is that Sharia is a body of principles. This principle has been propounded by the Supreme Constitutional Court of Egypt.¹⁸

5. HYPOTHESIS

- a) Human rights under both international human rights law and Sharia share similar principles and there is no excuse for intolerance of the identity, culture, and way of life and aspirations of all the peoples.
- b) There is a universal standard for the protection of religious minorities.
- c) Thus, do current practices in Kenya and Egypt meet international human rights standards.

6. RESEARCH QUESTIONS

- a) Are current protections to the freedom of the right to religion of minorities effective, efficient and practically applicable in a religiously mixed society such as Kenya and Egypt?
- b) How best would a state protect a religious minority in countries such as Kenya and Egypt?

7. METHODOLOGY

This study will analyse international human rights law on the freedom of the right to religion of minorities. It will analyse the jurisprudence of Sharia and international law in order to give a background to the laws on the protection of both Muslim and non-muslim minorities. It will also contextualise the background to Egypt's domestic laws and the applicable Sharia in Kenya.

¹⁶ *Nagarajan v London Regional Transport* [1999] ICR 877, House of Lords.

¹⁷ *Seide v Gillette Industries Ltd* [1980] IRLR 427 at 431. *H. J. Heinz Co v Kenrick* [2000] IRLR 144, with *O'Neill v Symm & Co. Ltd.* [1998] IRLR 233.

¹⁸ Lombardi, CB "Note: Islamic Law as a Source of Constitutional Law in Egypt: The Constitutionalization of Sharia in a Modern Arab State" 1998 37 *Columbia Journal of Transnational Law* 81 at 99

Egypt and Kenya demonstrate the applicability of Sharia in a state where there is a Muslim majority and a Muslim minority respectively. It is proposed to adopt a critical analysis and comparative approach in the study. The essential research data will be gathered mainly from literature with additional information through interviews of local religious leaders and legal scholars as well as members of Kenyan and Egyptian Non-Governmental Organisations, individuals and institutions and conversations with the Kenyan and Egyptian public.

8. LITERATURE SURVEY

- a) International Human Rights Legal Instruments.
- b) Regional Human Rights legal Instruments.
- c) Kenya's Draft Constitution as well as other countries with sizeable Muslim populations.
- d) Constitution of the Arab Republic of Egypt ("Egyptian Constitution").
- e) Articles and texts.

9. LIMITATIONS

- 1) Constraints in the consideration of the nature of a clash in culture and ideology, and which may militate against accommodation.
- 2) Language limitation may affect the capacity to obtain information, texts in Arabic have been almost impossible, to use in this instance.
- 3) Internal bias in responses must be seriously considered.
- 4) The scope of the paper was limited in terms of volume. This thesis is an overview and highlights the main areas but does not elaborate on aspects of minority rights.
- 5) Religion is a contentious issue and thus responses have been guarded or refused.

10. OVERVIEW OF CHAPTERS

Chapter one sets out the content of the research, identifies the problem and applies the methodology. Chapter two discusses the international and regional law on religious minorities with a regional emphasis on Africa and the Arab region. Chapter three discusses the Islamic Law on religious minorities, both Muslim minorities in non-muslim states and non-muslim minorities in Muslim states. Chapter four will focus on case studies comparing the protection accorded to the Muslims in Kenya with the Copts in Egypt and analysing the extent to which Kenya and Egypt have complied with international and regional law. Chapter five will set out recommendations and conclusions.

CHAPTER 2
INTERNATIONAL LAW ON THE FREEDOM OF THE RIGHT TO RELIGION OF
MINORITIES

Any mention of the freedom of the right to religion in any international, regional or national instrument will result in the consideration of the individual's and the group's rights. This chapter sets out the development of the rights of religious minorities in international and regional instruments.¹ Historically, the freedom of the right to religion was the first to develop in international law instruments.² Over the years the recognition of minority rights developed regionally and internationally with the crystallisation today of the freedom of the right to religion of minorities.

This chapter while referring to minorities emphasizes that the freedom of the right to religion as the violation of an individual's freedom of the right to religion in its very nature includes a violation of the freedom of the right to religion of the whole group.³

2.1) HISTORICAL BACKGROUND

2.1.1) International Instruments

The freedom of the right to religion of minorities is a fundamental human right and there are currently 26 international and regional instruments that deal with this right,⁴ resulting from the recognition of the problems faced worldwide by small religious communities.⁵

Although there have been forms of regional and national protection of this right, over the centuries the concern with the human rights in universal terms was first expressed in the League of Nations and then the United Nations ("UN") in the creation of the Universal Declaration of Human Rights ("UDHR") in 1948. Thus the freedom of the right to religion has the status of *jus cogens*. However, the UDHR is not judicially but politically binding.

¹ African and Middle Eastern human rights instruments.

² Code of Rhode Island of 1647 and Westfalen Peace Treaty of 1648.

³ See chapter 1 page 2.

⁴ Appendix A: Full list of all the major international and regional instruments and their relevant articles.

⁵ South Africa, Kristin Henrard (2002) *Minority Protection in Post-Apartheid South Africa: Human Rights, Minority Rights, and Self-Determination. Perspectives on the Twentieth Century* Series Westport: Praeger <<http://www.h-net.org/reviews/showrev.cgi?path=261571084830822>> (accessed 10/10/04), Kenya, Minority Rights Group "Kenyan Constitutional Review in Crisis Claim Minority and Indigenous Groups" 09/04/2004 <http://www.minorityrights.org/news_detail.asp?ID=247> (accessed 10/10/04) and Canada, Laura Trevelyan "Will Canada introduce Sharia law?" <http://news.bbc.co.uk/2/hi/programmes/from_our_own_correspondent/3599264.stm> (accessed 26/8/04) are all currently overhauling their laws in light of their Muslim minorities.

A proposal was made to include reference to God in the UDHR but was rejected.⁶ In the *travaux préparatoires* of article 18(3) of the UDHR the Commission on Human Rights (“CHR”) unanimously recommended a draft similar to the final text. The draft was then dealt with in the Third Committee of the General Assembly where a group of Muslim states, led by Saudi Arabia failed in their attempt to have the right to change one's religion removed arguing that the right could be abused by missionaries.⁷ Finally, the provision was accepted without dissent and no reservations were entered.⁸

The right of minorities was specifically excluded from the UDHR.⁹ The Soviet Union reopened this matter on the floor of the United Nations General Assembly (“UNGA”) suggesting a supplementary article on the right to self-determination and the linguistic and institutional rights of minorities, which failed.¹⁰ It did, however, result in the adoption of a resolution by the UNGA stating that the UN could not remain indifferent to minorities and thus requested the Economic and Social Council to ask the CHR and the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities to do a study.¹¹

While the UDHR is “soft law” the International Covenant on Civil and Political Rights 1966 (“ICCPR”) is the only international judicially binding text that expressly deals with the freedom of the right to religion of minorities. The ICCPR contains an explicit mention of minority rights as including religious minorities in article 27 and the freedom of the right to religion in article 18.¹² A Soviet Union proposal in the drafting work that the freedom to practice religion was subject to the limitations of domestic law was rejected, the Soviet representative then voted for the present text.¹³

Paragraph 2 of article 18 of the ICCPR states that no one is subject to coercion which would impair the right to change religion.¹⁴ Two aspects give the paragraph a wide range: Firstly, the word

⁶ Joannes Morsink, “The Universal Declaration of Human Rights: Origins, Drafting and Intent” 1999 quoted in Michael Freeman *The problem of Secularism in Human Rights Theory* (26) 2004 *Human Rights Quarterly* 275 at 391.

⁷ Scheinin, M “Article 18” in Alfredson, G and Eide, A (eds) (1999) *The Universal Declaration of Human Rights* 381. The draft clause was approved by 27 to 5 votes, with 12 abstentions. article 18 as a whole was adopted by the Third Committee by 38 votes to 3, with 3 abstentions. The Declaration as a whole was adopted by the General Assembly by 48 votes to 0, and 8 abstentions (Saudi-Arabia, South-Africa and 6 East-European states). Pakistan however voted for it.

⁸ Seventy votes to none, with two abstentions in the Third Committee, article 18 as a whole was adopted unanimously, and the Covenant as a whole was adopted unanimously by the General Assembly.

⁹ Lerner, N “Proselytism, Change of Religion and International Human Rights” Volume 12 (1998) *Emory International Law Review* 557.

¹⁰ 3(1) UNGA Annexes 545 UN Document A/784 (1948).

¹¹ The amendment was rejected by 34 votes to 8 with 14 abstentions. 3(1) UNGA Plenary Meetings (183d meeting) at 930 (1948).

¹² See note 3 above

¹³ See above, note 7 at 381-382.

¹⁴ The original proposal of this paragraph was set forth by Egypt.

"impair", which was deliberately chosen instead of "deprive". Secondly, the *travaux préparatoires* show that the word "coercion" was meant to cover both direct and indirect coercion.¹⁵

The International Covenant on Economic, Social and Cultural Rights ("ICESCR"), ratified by all states, in article 2(2) states that State Parties must guarantee the rights in the ICESCR "without discrimination of any kind as to...religion".

The drafting of the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief ("DEDR") of 1981,¹⁶ commenced two decades earlier but problems arose regarding the right to change religion. Muslim states wanted any reference removed arguing that a Muslim is not entitled to change religion. Non-muslim states found this unacceptable. As a compromise the non-Muslim states accepted a weak formula where article 2 of the DEDR uses the same words as the ICCPR article 18, but leaves out the words "or to adopt" and the phrase "to have" only.

In 1992 the United Nations set out in the Preamble of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities ("DRM") that the preparation of this declaration shows the increasing concern with the fate of minorities. The DRM considers that the UN has an important role to play regarding the protection of minorities and refers to minorities as contributing to the political and social stability of their countries.

2.1.2) Regional Instruments

The 1981 African Charter on Human and **People's**¹⁷ Rights ("ACHPR") had a wider scope of group rights than international instruments. The ACHPR refers to the principle of non-discrimination¹⁸ and religious¹⁹ rights and prohibits the mass expulsion of non-nationals on religious grounds.²⁰

¹⁵ It is questionable whether paragraph 2 gives the right a wider range than what follows from paragraph 1. However, paragraph 2 emphasizes that a breach of the obligation to abstain from prescribing or prohibiting a religion is a special sincere breach of the freedom of religion. Policies or practices having the same intention or effect, such as, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are inconsistent with article 18.2.

¹⁶ The 1981 UN General Assembly resolution 36/55

¹⁷ Emphasis mine.

¹⁸ Article 2.

¹⁹ Article 8. In its travaux préparatoires the Charter recognizes Freedom of Conscience and the right to profess and practice religion and freedom. No one was subject to law and order and manifestations are to be submitted to relative law and public order and thus such title could be restricted.

²⁰ Article 12.

However the ACHPR has no safeguards against the excessive use of limitations of states upon the freedom of the right to religion.²¹

All three documents in the Islamic system: the Arab Charter of Human Rights (“Arab Charter”), Cairo Declaration on Human Rights in Islam (“Cairo Declaration”) and the Universal Islamic Declaration on Human Rights (“UIDHR”) protect the freedom of the right to religion of minorities. The Cairo Declaration in articles 1, 9, 10 and 18; the Arab Charter in its preamble, articles 2, 27, 35 and 37, and in the UIDHR in its preamble, articles 3, 9, 10, 13 and 19. However, these treaties have application problems. First, the right to change religion as set out in the ICCPR, does not exist in any of the documents. Secondly, the Arab Charter is not ratified by member states while the Cairo Declaration and the UIDHR being declarations, have not been applied.²² Finally, these documents are continuously ignored by all the state parties.

In conclusion, movement from the UDHR to the DRM and regional developments like the European Convention of Human Rights (“ECHR”) show that although the Arab or muslim world in theory remain removed as to certain aspects of the freedom of the right to religion of minorities, the nations of the world are trying to balance the original, more universal concern for the individual with the protection of minority rights. The freedom of the right to religion of minorities and all that it includes has been an issue of discussion prior to its recognition in international human rights law, and continues to be an issue in every subsequent treaty that has any reference to the freedom of the right to religion from migrant workers to refugees and children.²³

2.2) ELEMENTS OF THE FREEDOM OF THE RIGHT TO RELIGION OF MINORITIES

The rights of religious minorities are divided into their right to have, practice or change their religion. The analysis below of the international law will follow this formula.

2.2.1) RIGHT TO HAVE A RELIGION

This meaning of the article is also expressed in the ICCPR General Comment of 1993 (paragraph. 5).²⁴

²¹ Whereas the muslim states were unsuccessful in the international instruments, they were more successful in the regional documents.

²² An-Naim, AA “Human Rights in the Arab World: A Regional Perspective” (2001) 23 *Human Rights Quarterly* 701 at 714.

²³ See above, note 3.

²⁴ This interpretation of article 18 is supported by judicial lecturers (see Nowak, M (1993) *UN Covenant on Civil and Political Rights, ICCPR Commentary* 316) and see chapter 2 footnote 5 Capotorti.

The Committee observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right **to replace one's current religion or belief with another or to adopt atheistic views**²⁵, as well as the right to retain one's religion or belief.

This compromise formula is weaker than the draft formula and UDHR article 18, because it refers to having or adopting a religion, and does not expressly mention whether this also covers to have or adopt **another**²⁶ religion. However, a right to have or to "adopt" a religion "of his choice", and the right to choose which religion is to be adopted, would be meaningless if it does not include the right to change a religion or belief.

This right has been extended to protect non-believers, and atheists who may have a similar sincere conviction.²⁷ In the United Kingdom, this right is being extended to devil-worshippers.²⁸

2.2.2) RIGHT TO PRACTICE A RELIGION

The right to manifest the chosen religion is laid down in paragraph 1 of article 18 of the ICCPR and mentions worship, observance, practice and teaching. Practice covers all the mentioned forms, and any other form of manifestation of a religion or belief. Accordingly, the state must for instance have rules that protect religious buildings from being destroyed and meetings in those buildings from being interfered with by people outside the congregation.²⁹ The state must also protect against indoctrination.³⁰ In *Boodoo v Trinidad and Tobago*³¹ the wearing of a beard or worshipping at religious services was seen as a violation of this right.

The European Commission held that states must institute mechanisms that make it possible to leave a state church,³² hence allowing a person the right to change from a state religion, as one would change attendance from a state church to another church. The view is repeated in paragraph 8 of General Comment number 18 on the ICCPR and is supported by case law of the ECHR³³ and ICCPR.³⁴ The private freedom to practice a religion or belief may not be subject to any restrictions pursuant to article 18 (3), as long as it does not touch upon the freedom and sphere of privacy of

²⁵ Emphasis mine.

²⁶ Emphasis mine.

²⁷ *Buscarini and others v. San Marino* (24645/94) [1999] ECHR 7 regarding oath for MPs that had a religious content.

²⁸ Royal Navy to allow devil worship <http://65.54.246.250/cgi-bin/linkrd?_lang=EN&lah=a96f9665fcf6c29344c7acdb6e94ef&lat=1098790070&hm__action=http%3a%2f%2fwww%2ecnn%2ecom%2f2004%2fWORLD%2feurope%2f10%2f24%2fuk%2edevilworship%2findex%2ehtml> CNN report dated 24/10/04 (accessed 26/10/04).

²⁹ Harris, O'Boyle, Warbrick, (1995) *Law of the European Convention on Human Rights* 360-361.

³⁰ This is an interpretation of the freedom to the right to religion under the ECHR.

³¹ Communication No. 721/1996 (13 June 1994), CCPR/C/74/D/721/19.

³² 4.12.84, Directive 40 at 284.

³³ See above, note 13 chapter 1, paragraph 18

³⁴ See above, note 6 513-514 and note 26 at 360 and 365-366.

others.³⁵ ICCPR General Comment Number 18 paragraph 9, states that where a certain religion is a state, official, traditional or majority religion, it shall not result in any discrimination against other beliefs, including discrimination regarding government service, economic privileges and special restrictions on the minority religion. General Comment Number 18 (on article 26 of the ICCPR) states that

...not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.³⁶

Three ICCPR elements limit this right. *First*, the limitation must be prescribed by law which must be sufficiently clear ensuring it is not open for abuse or arbitrary decisions³⁷. *Secondly*, the limitation must be necessary. The question of necessity assesses the need of the limitation, compared to the sacrifices of the freedom of their right to religion requiring a fair balance between the aim pursued and the limitation. This leads to the principle of proportionality as set out in ICCPR General Comment Number 18 paragraph 8.³⁸ Limitations grounded on religion are open for the same scrutiny according to article 18 as limitations grounded on secular norms.³⁹ If formal restrictions are used to hinder a certain belief or certain conversions, such an application will be disproportionate.⁴⁰ *Thirdly*, the limitation must serve one of the purposes of the exhaustive list. Paragraph 3 of article 18 does not attract national security considerations, only the following purposes may legitimize limitations:

Public safety: This phrase covers limitations aimed at protecting the security of persons and things, in situations which create a sufficiently clear danger. In *Serif v. Greece*⁴¹ the European Court used the argument of tensions between Muslims and Christians and between Greece and Turkey to state that the role of the authorities is not to eliminate pluralism, but "to ensure that the competing groups tolerate each other."⁴² Further, the clause does not mention national security, which implies that the interest of the state alone may not serve as grounds for limitations.

Public order: This legitimizes limitations that serve to avoid disturbances to the order in a narrow sense.⁴³ It is not necessary, for instance, for obtaining public order to demand registration of all religious societies or all religious manifestations.

³⁵ See above, note 21 at 319.

³⁶ For an example of a breach, see *Thlimmenos v. Greece* (34369/97) [2000] ECHR 161 (6 April 2000).

³⁷ See above, note 13, chapter 1 and *Hasan and Chaush v. Bulgaria* (30985/96) [2000] ECHR 509.

³⁸ See above, note 21 at 325.

³⁹ *Norris v. Ireland* (10581/83) [1988] ECHR 22 (26 October 1988) and See above, note 26 at 361. See above, note 21.

⁴⁰ See the *Manoussakis and Others v. Greece* (18748/91) [1996] ECHR 41 case paragraph. 48.

⁴¹ (38178/97) [1999] ECHR 169 (14 December 1999)

⁴² See note above paragraph 53.

⁴³ See above, note 26 at 327.

Public health and morals: Rituals which present a sufficiently clear danger to the physical or mental health of persons, or to morals, can be restricted.

Fundamental rights and freedoms of others: In contrast to similar limitation clauses in other articles of the Covenant, article 18 (3) only mentions the fundamental rights and freedoms of others. This implies a strict interpretation of this part of the clause. The European Commission reached the conclusion that Britain could uphold motorcycle helmet laws against a Sikh, in conflict with his religious obligations to wear a turban.⁴⁴ The same phrase is used by the European Court, where it has been suggested that the phrase is only referring to “order in places accessible to everyone”⁴⁵ to attending religious service in a mosque on Fridays.⁴⁶

2.2.3) RIGHT TO CHANGE ONE’S RELIGION

The right to change religion is included in the ICCPR article 18 and is also expressed in some regional instruments, such as the ACHPR,⁴⁷ ECHR⁴⁸ and the American Convention of Human Rights⁴⁹. Article 8 of the DEDR states that nothing in the declaration shall be construed as restricting or derogating from any right defined in the UDHR and the ICCPR. The interpretation being that the right to change religion was fully preserved, despite article 2. The declaration also contains different non-discrimination clauses, which are important to the right to manifest a chosen religion at article 6.⁵⁰

The Human Rights Committee has stressed in many General Comments that a person has the absolute right to change religion contrary to the policies of some Islamic states.⁵¹

2.2.4) IMPACT ON DOMESTIC LEGISLATION

The protection of the freedom of the right to religion of minorities can be set out in constitutions, domestic legislation as well as government policy and case law but subject to the obligations under international human rights law to remedy domestic legislation. The main elements of domestic legislation includes laws on proselytism, blasphemy law and registration requirements discussed below.

⁴⁴ DR 14 p. 234.

⁴⁵ van Dijk, P and van Hoof, GJH (1998) *Theory and practice of the European Convention on Human Rights* The Hague: Kluwer Law International chapter 9.6.

⁴⁶ 22 DR 27 p. 37-38

⁴⁷ Articles 2, 8 and 12.

⁴⁸ Article 9. A similar provision is found in a part of the CSCE Copenhagen Document paragraph. 9 (4) and the CSCE Vienna Document paragraph 16 at Appendix A at 67 and 69.

⁴⁹ Article 12.

⁵⁰ See above, note 1.

⁵¹ Concluding Observations on Jordan, Iran Nepal, Libyan Arab Jamahirya, Morocco and Yemen as quoted in

2.2.4.1) PROSELYTISM

The word proselytism is used to describe different ways of spreading one's belief and includes conversion, teaching or dissemination of religious views, missionary activities, and related situations.⁵² The phrase can cover informal discussion about one's faith, as well as missionary activities.

There is a clear tension between the right to change one's religion and proselytism. The ICCPR article 18 does not expressly mention this issue. Proselytism can be manifestation of a group's belief, and any regulation must fulfil the obligations set forth in paragraph 1 of article 18 of the ICCPR. This issue is highly contested and a constant issue for many Muslim states as Sharia refuses all forms of proselytism while some faiths like certain Christian sects actively require members to proselytise like Jehovah's Witness.

2.2.4.2) BLASPHEMY LAWS

Blasphemy is defined as words of malediction, reproach, or contumely pronounced against another's religious beliefs. This is a part of the right to expression but is tied in with proselytising and thus must be discussed under the freedom to the right of religion. On the one hand it may be a part of one's belief, whether religious or non-religious, to have opinions on another's beliefs that adherents to other beliefs experience as blasphemous. Legislative protection of freedom of speech can protect a person against certain kinds of blasphemy, and regulations may be seen as protecting the moral code of the society. For this reason, blasphemy laws are not in themselves in contradiction with ICCPR article 18. However, limits must be drawn on blasphemy laws, because they can be abused hindering the right to change to another belief. They should fulfil the provision of necessity and proportionality in paragraph 3 of article 18, as well as the non-discrimination provisions in article 2 and 26 of the ICCPR.

In *Otto Preminger Institute v. Austria*⁵³ the ECHR ruled that the freedom of the right to religion may include a positive obligation of states to protect believers from improper insults. The Austrian courts ordered the seizure and subsequent forfeiture of a film alleged to include trivial imagery and absurdities of the Christian creed holding that the movie was an abusive attack on the Roman Catholic religion according to the perception of the local Tyrolean public.

⁵² See above, note 6.

⁵³ (1995) 19 EHRR 34.

Currently there is a proposal in the United Kingdom parliament to abolish all blasphemy laws⁵⁴ while in Pakistan President Parvez Musharraf has put forward a proposal to abolish blasphemy laws.⁵⁵

2.2.4.3) REGISTRATION SYSTEMS

States can often adversely control religions through legislation particularly through registration of persons, institutions and groups. This issue is topical in light of the increased attention to terrorism resulting in the heightened regulation of groups and memberships in religious and quasi religious organisations.

1) Registration of the belief of each person

The one question in respect of the operation of domestic registration systems is whether the state can demand that their citizens disclose their religion. Such a demand may be grounded on "public order". It is not a "manifestation" of religion, **not to**⁵⁶ reveal one's religion;⁵⁷ however, the question was raised and answered in reference to ECHR article 9, which has similar language to the ICCPR article 18. The European Court concluded that the freedom of the right to religion includes the right not to disclose it.⁵⁸

2) Registration requirements for religious associations and societies

Registration requirements for religious associations and societies must fulfil requirements of international law in respect to freedom of association. Often registrations of religious societies, in addition to being required to fulfil regulations of societies and associations, are subject to a higher standard as a result of the use of organisations of this nature as fronts for terrorist activities.⁵⁹ Such rules may be a limitation to religious freedom grounded on public order, but they must also be lawful and "necessary".

Some states require mandatory registration of a society before any religious manifestations can be made. It is argued that such laws will not be able to fulfil the necessity and proportionality test.⁶⁰ However, it can be argued that the experiences of democratic states which do not have such

⁵⁴ Travis, Alan Blasphemy law to be scrapped Monday October 18, 2004 The Guardian < <http://www.guardian.co.uk/religion/Story/0,2763,1329823,00.html>> (accessed 26/10/04).

⁵⁵ Catholics Urge Pakistani to Abolish Blasphemy Law Following His Audience with the Pope 1/10/2004 <<http://www.zenit.org/english/visualizza.phtml?sid=59745>> (accessed 26/10/04).

⁵⁶ Emphasis mine.

⁵⁷ see ICCPR article 18 (3)

⁵⁸ See above, note 40 chapter 9.1 and note 26 at 361.

⁵⁹ See above, note 32 Hasan and Chaush v. Bulgaria where it was held that it was not necessary to apply article 11 after the Court had applied article 9.

⁶⁰ See the OSCE ODIHR Background Paper 1999/4.

restrictions indicate that such restrictions are not necessary for obtaining public order. In the case of *Serif v. Greece*⁶¹ the European Court ruled that Greece could not convict the non-recognised Mufti of a Muslim community for performing religious acts belonging to a Mufti, as long as the acts did not have any relation to governmental responsibilities, such as family law.

3) Registration requirements for religious venues and buildings

Many states demand that religious organisations obtain government authorisation to construct buildings that have a religious purpose like churches, mosques and temples. Worshipping together with other members of a congregation is a manifestation of religion, and the regulation of religious buildings and other venues must comply with article 18 (3) of the ICCPR. The aim of such legislation is to secure "public order", but it has been argued that regulations that are not "necessary" or that are discriminatory in any way cannot be supported. *Mannoussakis v. Greece*⁶² portrayed the way administrations may handle minority beliefs. The applicants used a room for worshipping without the compulsory government authorisation. The court stated that the authorities were obliged to control only the formal conditions regarding approval, and that Greek law requiring authorisation was often used to impose rigid or prohibitive conditions on non-orthodox societies, especially Jehovah's Witnesses. The members of the congregation could therefore not be punished for not waiting for the answer from the government, and the conviction of the applicants' breached article 9.⁶³

2.2.4) CONCLUSION

This chapter indicates that the right of religious minorities stems from a larger entitlement both of the freedom of the right to religion and the rights of minorities both of which are contentious. However, there is one strong thread that must be drawn for the discourse thus far: there is a general consensus shown in international instruments and jurisprudence that religious minorities have rights to be protected from discrimination however the exact provisions of protection remain unclear.

⁶¹ See above, note 36.

⁶² 26/9/96, Reports 1996 IV

⁶³ See above, note 50, paragraph. 86.

CHAPTER 3

ISLAMIC LAW ON RELIGIOUS MINORITIES

This chapter sets out the law on the treatment of religious minorities under Islamic Sharia law. This chapter is broken into the Sharia in the Qur'an and Hadith theoretically, the historical practice of Islamic states and the present practice of states with Muslim majorities. The purpose of this chapter is twofold. First, to provide a background to Sharia as reflected in Egyptian law today and recommend the increased use of Sharia principles in Egypt. Secondly, to give a foundation for the recommendation that Kenya should borrow principles from Sharia in the protection of religious minorities.

3.1) Islamic Sharia Law on Religious Minorities

According to the Islamic tradition belief is based on reason and therefore not subject to coercion

And if the Sustainer so willed, all those who live on earth would surely have attained to faith, all of them, do you think that you could compel people to believe.¹

The Islamic perception of rights differs from the western experience. These rights are not conferred by the state, but are guaranteed by the Sharia and the Muslim community, irrespective of the will of those in power. The rights of religious minorities are irrevocable and immutable. Mawdudi writes,

The rights which have been sanctioned by God are permanent, perpetual and eternal. They are not subject to any alterations or modifications, and there is no scope for any change or abrogation.²

If the state fails to observe these rights, it becomes an individual and collective obligation of the members of the Muslim community to uphold them. Mawdudi says

They are part and parcel of the Islamic faith. Every Muslim or administrators who claim themselves to be Muslims will have to accept, recognize and enforce them.³

Lewis adds that

For Muslims, the treatment of the religious other is not a matter of opinion or choice, of changing interpretations and judgments according to circumstances. It rests on legal texts, that is to say, for Muslims, on holy writ and sacred law.⁴

Muslims perceive diversity and pluralism as a divine design and a natural reality that is meant for a purpose that entails differences of views, doctrines, and beliefs. The Qur'an underscores this:

And among His wonders is the creation of the heavens and the earth, and the diversity of your tongues and colours.⁵

One purpose behind this diversity is to *recognize* and *know* others:

¹ Qur'an, 10:99. See also Qur'an, 2:256.

² Mawdudi, AA (1976) *Human Rights in Islam*. United Kingdom: The Islamic Foundation 15.

³ See note above at 14.

⁴ Lewis, Bernard (1998) *The Multiple Identities in the Middle East*. New York: Schocken Books 118.

⁵ Qur'an, 30:22.

O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to *know* one another.⁶

Another is “**To you be your religion and to me my religion.**”⁷

The value of justice is a universal, irreducible value that applies to everyone. The Qur’an contains about three hundred verses that relate to justice and sets a universal rule:

Behold, God enjoins justice, and the doing of good, and generosity towards one’s fellowmen; and He forbids all that is shameful and all that runs counter to reason, as well as envy; and He exhorts you [repeatedly] so that you might bear [all that] in mind.⁸

In conclusion, there are general principles and universal values that form the basis of an Islamic moral philosophy of tolerance and regulate the perceptions and relations with people that hold different doctrines and perspectives. First, the legitimacy and dignity of the human being is derived from its status as human beings. Secondly, diversity and pluralism must be recognised and acknowledged. Thirdly, belief is a matter of free choice. Lastly, difference in beliefs should not prevent the application of justice.

3.2) Muslim Minorities in Non-Muslim States

3.2.1) The Qur’an and Hadith

The Sharia grants Muslims certain irrevocable civil, political and social rights. The civil rights include the security of life and property, the protection of honour, the sanctity and security of private life, the security of personal freedom, protection of religious sentiments, the right to avoid sin, and equality of all before the law. The political rights involve the right to protest against tyranny, the rights of freedom of expression, freedom of association, freedom of conscience and conviction, protection from arbitrary imprisonment, and the right to participate in public life. The social rights entail the right to basic necessities of life.⁹ These rights are not very different from Western classifications,¹⁰ and Muslims carry them wherever they go.

Muslim people as individuals and collectively are entrusted with the obligations to fulfil Sharia. The state is an authority that represents, but does not necessarily replace, the people in achieving

⁶ Qur’an: 49: 13.

⁷ Qur’an 109:1-6 (Emphasis mine).

⁸ Qur’an, 16:90.

⁹ See above, note 2 at 25-37.

¹⁰ Marshall, T.H. (1964) *Class, Citizenship, and Social Development*. New York: Doubledy & Company; Kuhnle, S and Stein R (1972): “Marshall, T. H.,” in *International Encyclopaedia of the Social Sciences*, Biographical Supplement, Vol. 18. London: The Free Press and Donnelly J “The Universal Declaration Model of Human Rights: A Liberal Defence 12 Human Rights Working Papers <www.du.edu/humanrights/workingpapers/papers/12-donnelly-02-01.pdf> (accessed 17/10/04).

this objective. The objective of the state in the classical Islamic definition is “to defend the faith and manage the temporal affairs in accordance with its principles.”¹¹ According to Mawdudi,

...all individuals are equal. No one takes precedence over another or can deprive anyone else of his rights and powers. The agency for running the affairs of the state will be formed with the will of these individuals, and the authority of the state will only be an extension of the powers of the individuals delegated to it.¹²

The Qur'an never addressed or required a state to fulfil certain obligations, but the responsibility first and foremost always fell on the people whose obligations covered the spiritual, social, financial, legal, military, and political spheres.

The Sharia does not, however, clearly resolve the issue of Muslim residence in non-Muslim states.

The Qur'an states

As for those whose souls are taken by the angels [at death] while in a state of injustice against themselves, they will be asked by the angels: "What state were you in?" They will answer: "We were oppressed in the land." And the angels will say: "Was not God's earth large enough for you to migrate?" ... Whosoever migrates in the cause of God will find many places of refuge and abundance.¹³

However what does "a state of injustice against oneself" entail. What is oppression? And to where should one migrate? The reference to "God's earth being large enough" implies that migration could be to any land in which one can escape oppression. The earth was not Muslim when these verses were revealed and if one escapes to lands that are not Muslim, what becomes of the obligation to live by God's commands?

The Sunna is equally inconclusive. Some reports, attributed to the Prophet, forbid Muslims from residing in non-Muslim territories. Other reports contradict this injunction.¹⁴ A Muslim living in a land not dedicated to a discourse on the Sharia and not committed to applying any Sharia-based comprehensive view creates an intricate problem.¹⁵ Non-Muslim writers have argued that these questions present Muslims with irresolvable dilemmas.¹⁶ In fact, some writers claim that Islamic communities pose a major threat to the stability of Europe.¹⁷

¹¹ Shahin, E “Toleration in a Modern Islamic Polity: Contemporary Islamist Views” in Creppell, I, Macedo, S and Hardin R (eds) *Toleration on Trial* Princeton University Press (forthcoming) 10.

¹² See above, note 2 at 8

¹³ Qur'an 4:97-100.

¹⁴ El Fadl, Khaled Abou Islamic Law and Muslim Minorities: The Juristic Discourse on Muslim Minorities from the Second/Eighth to the Eleventh/Seventeenth Centuries, 1 *Islamic Law and Society* 141, 141-44 (1994).

¹⁵ El Fadl, Khaled Abou “Symposium: The Religious Voice in the Public Square: Muslim Minorities and Self-Restraint in Liberal Democracies” (1996) 29 *Loyola of Los Angeles Law Review* June 1525 at 1530.

¹⁶ Khaled Abou El Fadl, *Legal Debates on Muslim Minorities*, 22 *Journal of Religious Ethics* 127, 128 (1994).

¹⁷ Yossef Bodansky, *Target America & the West* 256 (1993). This quote was originally part of an unpublished report entitled "Iran's European Springboard?" issued September 1, 1992 by the House Republican Research Committee's Task Force on Terrorism and Unconventional Warfare. Bodansky was the Director of the Republican Task Force on Terrorism and Unconventional Warfare of the U.S. Congress.

3.2.2) Muslim Jurists¹⁸

The majority of Maliki jurists state that Muslims cannot reside in non-Muslim territories. Muslims, they argue, should always live where Sharia law is or could be supreme. Hanbali and Shi'ite jurists argue that it is preferable that Muslims reside in Muslim territory. However, if Muslims are able to practice their religion freely or are able to "manifest Islam," they may reside in a non-Muslim territory. Shafi'i jurists go further, arguing that if Muslims are able to maintain a degree of autonomy and self-protection, it is their obligation to continue residing in non-Muslim territory.¹⁹

Other classical jurists argue that regardless of the religion of a state. Muslims must migrate from states in which they feel insecure, where there is widespread corruption, or in which injustice prevails, where they can freely enjoin the good and forbid the bad.²⁰

It is unclear how much of Islam had to be manifested before residence in non-Muslim territory could be considered legal. Muslim jurists have argued that even if Muslims are not able to fully discharge Sharia obligations they do not have to migrate. The Hanafi school adds that the public laws of Islam consisting of commercial, civil, and criminal laws, are not applicable in non-Muslim territories. Other Islamic schools maintained that while the laws of Sharia morally bind Muslims wherever they may reside, these laws may not be enforced in non-Muslim territory. These schools argue that a Muslim who violates Sharia may not be prosecuted for the violation unless he or she enters Muslim territory.²¹ Grand Sheikh Tantawi of the Al Azhar University has issued a fatwa in response to the recent legislation in France banning all religious symbols including veils by stating that muslim women should obey the law of the land and remove their veils.²²

Other Muslim scholars have argued that the Sharia imposes a duty to protect the general welfare of Muslims and must never permit themselves to become powerless.²³ The majority of Muslim jurists who permit Muslims to reside in non-Muslim territory also argued that Muslims may serve as public officials.

¹⁸ See above, note 16, 17 and 18. The references to the different schools of muslim jurists in this section have not been specified as the abovementioned articles failed to mention exactly who the jurists were and what they said but due to the reliability of the author and the lack of information generally in English or French on this issue has necessitated reliance on El Fadl's summary.

¹⁹ See above, note 16 at 143-64.

²⁰ See above, note 16 at 152-53.

²¹ See above, note 16 at 172-81.

²² Gihan, Shahine Rejecting the veil ban 8 - 14 January 2004 Al Ahram Weekly, Cairo <<http://weekly.ahram.org.eg/2004/672/eg3.htm>> (accessed 26/10/04).

²³ See above, note 16 at 180. There are several legal maxims such as "hardship begets facility" or "necessities permit the forbidden" which are often cited in support of this argument. Mahmassani, Sobhi (1987) *The Philosophy of Jurisprudence in Islam* (translated by Farhat Ziadeh) 152-59.

3.3) Non-Muslim Citizens in Muslim States

3.3.1) The Qur'an and Hadith

Muslims are discouraged from believing in the superiority of one message over another. The Qur'an states:

Say: "We believe in God, and in that which has been bestowed from on high upon us, and that which has been bestowed upon Abraham and Ishmael and Isaac and Jacob and their descendants, and that which has been vouchsafed to Moses and Jesus, and that which has been vouchsafed to all the [other] prophets by their Sustainer: **we make no distinction between any of them.**"²⁴ And it is unto Him that we surrender ourselves.²⁵

Muslim scholars disagree on the interpretation of this and other verses to explain unbelievers as all persons of diverse faiths to include all other peoples not just the Zoroastrians, Manicheans, and Hindus.²⁶ In what relates to the initial relations between Muslims and non-Muslims, the Qur'an directs the Muslims:

As for such [of the unbelievers] as do not fight against you on account of [your] faith, and neither drive you forth from your homelands, God does not forbid you to show them kindness and to behave towards them with full equity: for, verily, God loves those who act equitably.²⁷

The traditions of the Prophet have set certain guidelines for the interactions between Muslims and non-Muslims. It has been narrated that a funeral passed before the Prophet who immediately stood up in respect. His companions informed him that the deceased was a non-Muslim. The Prophet responded, "but isn't it a human soul?" He was also recorded as saying, "They are entitled to the same rights and bear the same obligations as the Muslims." "Whoever harms a *dhimmi* it is as if he has harmed me."²⁸

Sayyed Qutb in 1949 also maintained that Islam grants non-Muslims complete political and religious freedom and protection to practice their religious duties without reference to which religion they belong.²⁹

3.3.3) The Covenant of Madinah³⁰

The Covenant of Madinah concluded in the 7th century between the Muslims and the residents of Madinah, is the earliest example of formal relations between Muslims and non-Muslims and laid down the principles of citizenship and tolerance in Islam. The covenant recognized the diversity of

²⁴ Emphasis mine.

²⁵ Qur'an, 2:136

²⁶ Umari, Akram Diya Al- (1995): *Madinan Society at the Time of the Prophet*. Translated by Huda Khattab. Herndon, VA: The International Institute of Islamic Thought. See above note 12.

²⁷ Qur'an, 60: 8

²⁸ See above, note 10 at 13.

²⁹ Qutb, S "Citizenship Rights of Non-Muslims in the Islamic State of Hakimiyya" Volume 13 Number 2 (2002) *Islam and Christian Muslim Relations* 163. During my interview of Mohamed Salim El-Awa, a lawyer, law professor Secretary General of the International Association of Muslim Scholars and the Chairman of the Egyptian Society of Cultural Dialogue in Cairo on 28/10/04 is also of the same opinion.

³⁰ See Appendix B.

the constituent members of the community, preserved this diversity and granted equality to the members of the various communities, and created a new bond that transcended tribal, blood, and ethnic basis. For centuries, the Covenant of Madinah has set the model for organizing the internal relations between Muslim and non-Muslim citizens.

In classical jurisprudence this term, *al-Dhimma* (Covenanted People) is defined as a sort of permanent agreement between Muslim political authorities and non-Muslim subjects which provides protection for non-Muslims and peaceful internal relations with the non-Muslim subjects. In return the latter accepted Islamic rule and paid the *jizya* (poll tax) **as a substitution for being drafted into the army.**³¹ Jurists were fully aware that, in turn, the Muslim state was obliged not only to tolerate non-Muslims' faith and religious practices and laws but also to provide them with protection of their lives and properties: 'Their blood is our blood and their possessions are as ours.'³²

The status of *dhimmi* can be best summarised by Professor Sheikh Showkat Hussain, who reflects Dr. Hamidullah:

The *dhimmis* or the protected subjects enjoy protection of life, liberty, property, and honour. Full freedom of conscience is given to them. They are exempted from compulsory military service and payment of *zakat*. However, their able bodied males have to pay *jizyah* in lieu of military service. Islamic state deals with the *dhimmis* of all denominations as **members of a community**,³³ not as individuals. *Sharia* governs the relations of the *dhimmis* with both individual Muslims and the Islamic state on the basis of religious distinction. All the internal relations of the *dhimmis* are left to be regulated by the laws of the religion to which they adhere. Hence it (the *Sharia* or Islam) regards the adherents of each religion as a community controlled by guardians of its sacred traditions. The individual *dhimmis* are to be obliged by the Islamic state to follow its tradition relating to internal relationship of the individuals and the community. They are exempted from application of Islamic penal laws to the extent these are not in conformity with their religious perceptions. Due to this unique position which the *dhimmis* enjoy in Islamic law their legal status has been subject of a great controversy.³⁴

3.4) ISLAMIC JURISTS³⁵

Abdullahi An-Na'im argues that a purely secular political order cannot successfully take root in an Islamic setting as it is inappropriate in modern circumstances. He calls for religious reform and he

³¹ Emphasis mine. Historically, this tax was collected from able-bodied male non-Muslims in return for their exemption from military service and guaranteeing the protection of Muslims. This tax was not collected from old men, women, children, monks, and non-combatants. Muslim citizens did not pay this tax, but simply served in the army, as a religious obligation. The *jizya* was viewed in lieu of obligating non-Muslims to perform the jihad, which is a religious duty for Muslims and not necessarily for members of other religions. However, in many recorded incidents non-Muslims participated along with Muslims in the defense of their territories and the poll tax was revoked. It was also returned when Muslims failed to protect non-Muslims. In addition, the poll tax was levied on Muslim Egyptian peasants, i.e., non-combatants, who were exempted from military service

³² AbuSulayman, A (1987) *The Islamic Theory of International Relations*. Herndon, VA: The International Institute of Islamic Thought 22.

³³ Emphasis mine.

³⁴ Doi, AR (1981) *Non-Muslims Under Sharia*, Lahore, Pakistan 73- 74

³⁵ Mayer AE "ISLAM AND THE STATE" 12 *Cardozo Law Review* 1015 at 1055

maintains that the reform of Islam entails the encouragement of free discussion and the toleration of political opposition which have been lacking in the Muslim world.³⁶

An-Na'im concentrates on the individual citizen³⁷ deprived of rights and freedoms by arbitrary and oppressive systems of government throughout the Muslim world. This stands in sharp contrast to the approach found in pre-modern Islamic thought, where the guarantee of good government was thought to lie in the religious piety of the ruler.

An-Na'im argues that integrating human rights within an Islamic framework may well indicate the direction in which Islamic thought is moving. Human rights organizations have sprung up in many parts of the Middle East and North Africa despite the dangers that advocacy of human rights entails, in some countries, denunciations of abuses of human rights are being voiced with growing frequency.³⁸ Thus, Muslims' interest in seeing human rights protected, coupled with their attempts to relate their religious tradition to contemporary political problems, may set the stage for a fruitful merger of these concerns.

3.4.1) Full Protection Of The Islamic State And Community Against Any External Aggression.

The jurist Ibn Hazm (d. 1064) states that,

Whoever is part of *al-Dhimma* in a Muslim land and was sought after by a belligerent people, it is the duty of the Muslims to fight the aggressors and die for this sake in defense of those who are in the protection of God and the Prophet. Surrendering him [to his enemies] is a violation of the covenant of *dhimma*.³⁹

Muslim jurists often cite the practical incident of Shaykh al-Islam Ibn Taymiyya, who appealed to the leader of the Tatar, following their conquest of Syria, to release the prisoners. That leader accepted to release the Muslim prisoners and denied freedom to the non-Muslims. Ibn Taymiyya objected to return without the release of all the Jewish and Christian prisoners.⁴⁰

3.4.2) Protection Against Internal Injustice Or Aggression.

The rights here include the protection of their life, possessions, access to social benefits, freedom of religion, the right of work, and of assuming public office (with the exception of positions that have

³⁶ These comments summarize the arguments presented in An-Na'im, AA "Islamic Law, International Relations, and Human Rights: Challenge and Response" 20 (1987) *Cornell International Law Journal* 317, 332-35 and An-Na'im, A "Religious Minorities under Islamic Law and the Limits of Cultural Relativism" 9 (1987) *Human Rights Quarterly* 1.

³⁷ An-Na'im, A (1990) *Toward an Islamic Reformation: Civil Liberties, Human Rights and International Law* 56.

³⁸ A review of some representative human rights activities by groups in Muslim countries can be found in MERIP Middle East Report November-December 1987.

³⁹ Qaradawi, SY (1984) *Ghayr al-Muslimeen fi al-Mujtama' al-Islami* [Non-Muslims in the Islamic Society]. Cairo: Maktabat Wahba 10.

⁴⁰ See note above.

religious connection). According to classical jurists, these are stipulated in the contractual relations between Muslim and non-Muslim communities, who are part of the Muslim land and the majority, went as far as prohibiting Muslims from applying any physical pressure or hardship on non-Muslims who fail to pay their financial obligations to the state. Regarding possessions, classical jurists have recognized group differences and developed rulings that would protect possessions of non-Muslims that are not customarily regarded as of any compensatory value to Muslims, such as alcohol or pigs, for example. These jurists have also recognized the right of non-Muslim citizens against defamation and humiliation.⁴¹

3.4.3) Access To Social Benefits And Financial Resources

Non-Muslims have the right to be secure in the case of disability, age, and poverty. Non-Muslim citizens also have the right to assume public office, except, according to classical jurists, for those that have a religious dimension, such as the leadership of the Muslim state and Muslim armies, judging between Muslims, and the administration of the state budget.⁴² Classical jurists viewed these positions to be civic as well as religious at the same time. The assuming of such positions will therefore require non-Muslims to practice the principles of a doctrine in which they do not believe. This is a demonstration of compulsion; and, according to the Qur'an, "There is no compulsion in religion."⁴³ It also involves the trusteeship of people who do not share the same ideological orientation with the rest of the community.

In conclusion, both Muslim and non-muslim minorities have their protections set out in Sharia. The diverse views on both sides is a further affirmation on the fact that although there is no fixed point of view the violation of the human rights of either minority under Sharia reflect international human rights law.

3.5 THE PRACTICE OF MUSLIM STATES

3.5.1) Historical Background

Beginning in the earliest years of the Muslim polity, the Muslim rulers reached accords with minority religious groups that allowed those groups self-regulation in the area of communal affairs, including family law. This formed the model that all Islamic states have used, up to and including the present. In India, for example, when the Muslim Mughal Empire ruled, the majority of the population were Hindus whose personal life and laws operated according to Hindu tradition. The Ottomans gave even broader autonomy to minority religious communities, allowing them not only

⁴¹ See above, note 30 at 16.

⁴² See above, note 12 at 17.

⁴³ See above, note 30 23-24.

to regulate their own family law, but to collect their own taxes and run their own educational system in Egypt.

Prior to the 19th century, the Ottoman Empire had adopted for over five centuries the *millet* system,⁴⁴ which granted autonomy and recognition to religious groups and gave them the right to administer their religious, social, and legal affairs. According to Kymlicka,

The Ottoman millet system is the most developed form of the group rights model of religious tolerance.⁴⁵

However, this system had its problems. It was based on the premise that everyone fits into one religious group or another, posing problems for atheists or religious individualists; since they cannot legally marry or divorce, as the law does not provide for non-religious civil marriage.

Despite this long history of coexistence and integration of *dhimma* modern Islamist thinkers go as far as viewing the entire concept of *dhimma* as a jurisprudential and a historical term that has become obsolete and unnecessary in the modern era. In Islamic societies the relations between Muslims and non-Muslims have an internal foundation on the basis of citizenship.⁴⁶

One of the most debatable and sensitive issues among contemporary Islamists is the question of whether non-Muslims can assume high positions, particularly the presidency and the judiciary, in an Islamic state or secular state with Islam as the state religion. Given the nature of the modern state, the highest positions are scrutinized because these positions symbolize the national and the state ideology. The dominant view is that non-Muslims should fully participate in the political process and should have access to senior positions, with the exception of those positions that directly carry commitment to Muslim religious obligations as this is a form of coercing people to carry out religious duties that are not part of their religions.⁴⁷

⁴⁴ The millet system was a system of millets, or religious communities. Each organized religious minority lived according to its own canon law under the leadership of recognized religious authorities who represented the millet to the outside world and supervised the millet's internal communal life. This form of organization preserved and nourished the religious differences among these peoples. < <http://reference.allrefer.com/country-guide-study/egypt/egypt81.html>> (accessed 20/10/04).

⁴⁵ Kymlicka, Will (1996) "Two Models of Pluralism and Tolerance," in Heyd, D (ed) *Toleration: An Elusive Virtue* Princeton, New Jersey: Princeton University Press 85.

⁴⁶ Al-Bishri, Tariq (1998): *Bayn al-Jami`a al-Diniya wa al-Jami`a al-Wataniya* [Between the Religious Association and Nationalist Association]. Cairo: Dar al-Shuruq 139; Mawdudi, See above, note 2 at 11.

⁴⁷ Mawdudi see above, note 2 at 11; Qaradawi see above, note 43; El-Awa, Muhammad Salim (1989): *Fi al-Nidham al-Siyasi li al-Dawla al-Islamiya* [On the Political System of the Islamic State]. Cairo: Dar al-Shuruq.; Ghannoushi, Rashid al- (1993a): *Huquq al-Muwatan: Huquq Ghayr al-Muslim fi al-Mujtama` al-Islami* [The Rights of Citizenship: The Rights of Non-Muslims in the Muslim Society]. Herndon, VA: International Institute of Islamic Thought and Huwaidi, Fahmi (1990): *Muwatinun la Dhimmiyun* [Citizens not Dhimmis]. Cairo: Dar al-Shuruq.

3.5.2) Contemporary Islam

Unlike the classical era of Islam, in which sects and schools of jurisprudence formed the major constituent blocs, it is argued that, contemporary Islam cannot be analyzed in isolation from the modern nation-state. While some states began their modern independence as traditional monarchies, socialist-influenced revolutions turned kingdoms into republics in Egypt, Yemen, and Iraq. Iran's monarchy was replaced by an Islamic revolution in 1979.

The first modern Muslim constitution was promulgated in Tunisia in 1861; Turkey and Persia soon followed, With the exception of the traditional Islamic monarchies of Saudi Arabia and Oman, all Muslim states eventually promulgated written constitutions. This development reflected a Middle Eastern trend toward secular nationalism replacing religion as a collectivist organizing mechanism.

Today, 34 states with majority Muslim populations have written constitutions. Of those, 23 (to which should be added Oman and Saudi Arabia) have officially proclaimed Islam to be the state religion and/or Sharia to be the principal source of law. A few, such as those of Turkey, the Gambia, and Senegal, are secular, while Iran, Saudi Arabia and Sudan's are Islamic theocracies. All the other constitutions are attempts at fusing the two perspectives, typically by relegating Sharia and Sharia court jurisdiction to a limited area such as family law.

It can be argued that the rights of religious and ethnic communities under the current nation-state have suffered considerably. Collective claims for recognition of ethnic, religious, linguistic group identity were often viewed as a threat to the state and were in many cases suppressed. The clash of ethnic beliefs, identities and loyalties became inevitable leading to violent eruptions that threatened the existence of the entire community for example Lebanon, Somalia, Sudan, Algeria and Afghanistan. In his analysis of the conditions of religious communities under the Islamic state and the modern nation-state, Lewis observes, "All too often, religious minorities were in fact worse off than before."⁴⁸

3.6) CONCLUSION

Classical Islamic law recognises that all minorities must be protected. There are significant protections for non-muslim minorities although Islamic states have not respected their full range of minority protections. In contrast, the status and obligations of a Muslim minority living in non-muslim states are less clear under Sharia. However, these provisions provide similar but better detailed protection for religious minorities than protections under international law instruments.

⁴⁸ See above, note 4 at 129.

CHAPTER 4

CASE STUDIES: A COMPARISON BETWEEN KENYA AND EGYPT

4.1) Background

This chapter will discuss the freedom of the right to religion of minorities in Egypt and Kenya. The choice of these two countries is for the following reasons. First, they are the inverse of each other; Egypt is a state with a Muslim majority and Christian minority and Kenya is a state with a Christian majority and Muslim minority. Secondly, there is a debate in Kenya and in the rest of the world today as to how states treat their minorities. Thirdly, both states apply elements of Sharia. Finally, both Kenya and Egypt are in Africa and currently have issues with the freedom of the right to religion of minorities. This chapter is thus, an attempt to make an African comparison of the two main religions and religious minorities in Africa. However this discussion is limited to the Copts in Egypt and the Muslims in Kenya.

4.2) Egypt

4.2.1) The Facts

Egypt has a population of approximately 70.5 million, of whom almost 90 percent are Sunni Muslims.¹ Shi'a Muslims constitute less than 1 percent of the population.² Approximately 8 to 10 percent of citizens are Christians,³ the majority of whom belong to the Coptic Orthodox Church.⁴ There are small numbers of Mormons and members of Jehovah's Witnesses, but the Government does not recognize either group. Non-Muslim and non-Coptic Orthodox communities range in size from several thousand to hundreds of thousands, the Baha'i community is estimated at between several hundred and two thousand while the Jewish community is less than 200 people.⁵

There are many foreign religious groups, especially Roman Catholics and Protestants who have had a presence in the country for almost a century and engage predominantly in education, social, and development work. The Government generally tolerates these groups if they do not proselytize.

¹ The CIA World Fact Book places the population breakdown at 94% Muslim and 6% Copt. <<http://www.cia.gov/cia/publications/factbook/geos/eg.html>> (accessed 9/10/04).

² Although they are outside the ambit of this thesis, Shiites in Egypt are also discriminated against on the grounds of religion. See Ahmed Qenamy, Shiites in Egypt Besieging and Preventing, <<http://www.hrinfo.net/en/discussion/2004/pr040420.shtml>> (accessed 17/10/04).

³ Annual Report on International Religious Freedom for 2004: Egypt (Washington, United States Department of State, Bureau for Democracy, Human Rights, and Labour, 2004) <http://www.state.gov/www/global/human_rights/irf/irf_rpt/irf_egypt.html> (accessed 9/10/04).

⁴ Brown, SK "The Coptic Church in Egypt: A Comment on Protecting Religious Minorities from Non State Discrimination" (2000) *Brigham Young University Law Review* 1049 at 1053 and footnote 29.

⁵ Barrett, DB and Others in (2001) Volume 1 *World Christian Encyclopaedia* 327.

4.2.1.1) Historical Background-The Copts

Copts are the indigenous inhabitants of Egypt. In AD 641 the Ottomans introduced Islam in Egypt which resulted in the Copts living with *dhimmi* status. As with many problems in the Middle East, tension between Egyptian Copts and Muslims has long historical roots and through the centuries there were periods of conflict and calm between the two communities.⁶

In the nineteenth century, the Copts' position began to improve under the stability and tolerance of the Muhammad Ali dynasty.⁷ Western powers also began to pressure the Ottoman Empire and Egypt to improve the plight of their Christian subjects. As a result of the Crimean War (1853-56) the *jizya* tax, was lifted in 1855, and in the same year Copts were allowed to join the army. In 1856, Sultan 'Abd al-Majid issued the Hatt-i Humayun decree, allowing for equality before the law of all the subjects of the Ottoman Empire regardless of religion. In 1866, the Copts served in the inaugural session of the Consultative Council, establishing a process of Coptic integration into the Egyptian political system.⁸ This Coptic civil revival was accompanied by a religious awakening of the community, triggered by the Coptic Patriarch, Cyril IV (1854-1861) who urged the raising of moral and educational standards and kindling a re-discovery of their distinct identity.

Despite the agreement between the Copts and the Ottoman empire, the twentieth century has seen distinct periods of extreme hostility between the Copts and the Muslim majority. The British High Commissioner, Sir Eldon Gorst (1907-11), introduced a system that effectively barred Copts from senior government positions.⁹ Muslims hardened their position against the Copts, adopting the idea of Egypt as a Muslim country and made it scandalous for Copts to discuss their problems outside Egypt.¹⁰ In protest, the Copts convened an historic Congress in Asyut in 1911, demanding better representation; equal access to civil service positions; equal access to state education; provision of Christian religious instruction in state schools; and designation of Sunday as a holiday.

The situation improved with the 1919 Revolution, when Copts and Muslims, united against the British occupation, worked together to build a new political order and mutual relationship. Neither before or since has Egypt witnessed such an upsurge in fraternization between Copts and Muslims,

⁶ Hasan, SS (2004) *Christians versus Muslims in Modern Egypt* Oxford: Oxford University Press.

⁷ Carter, BL (1986) *The Copts in Egyptian Politics: 1918-1952* Cairo: The American University in Cairo Press, 9.

⁸ Hall, PH (1999) *Traditional Egyptian Christianity: A History of the Coptic Orthodox Church* Greensboro: Fisher Park Press 133.

⁹ Mikhail, K (1911) *Copts and Muslims under British Control (Egypt)* London: Smith, Elder and Company 57-77.

¹⁰ Report by the Heliopolis Congress's Organizing Committee, quoted in Carter, B see above note 7 at 14.

the credit for which goes largely to two Muslims: Ahmad Lutfi as-Sayyid (1872-1963)¹¹ and Sa‘d Zaghlul (1856-1927)¹² who appealed to the Coptic community to join the struggle which took place successfully and resulted in uniting the Egyptian people.

4.2.1.2) Present Day Egypt

The rule of President Gamal Abdel Nasser suppressed the Islamic elements of discord in Egyptian society, without addressing the exclusion of the Copts from the Egyptian polity.¹³ Later, President Anwar Sadat implemented policies formalizing Islam, as enshrined in the 1971 Constitution of the Arab Republic of Egypt (“Egyptian Constitution”) that proclaimed

Islam is the religion of the state, Arabic its official language, and the principles of the Islamic Sharia a¹⁴ principal source of legislation.¹⁵

On 22 May 1980 the Constitution was amended to read that “the principles of Islamic Sharia are **the**¹⁶ principle source of legislation.”¹⁷ The change of the word ‘a’ to ‘the’ brought into question the whole philosophy of contemporary Egyptian judicial order¹⁸ and the resulting discontent of both Muslims and Copts resulted in rioting and 17 people were killed (nine Copts, 7 Muslims and 1 unidentified person) 112 people were injured, 171 buildings were damaged. President Sadat ordered 1,500 arrests, withdrew recognition of Pope Shenouda III banishing him to a monastery in Upper Egypt as a result of his request for self determination. The President was assassinated one month later.¹⁹ Current President Hosni Mubarak succeeded him and immediately proceeded to arrest an additional 2,000 people and declare the state of emergency that exists to date.²⁰

In many cases, in the period following the election, the Egyptian police and security forces showed incompetence in preventing attacks or collusion with attackers.²¹ Since 1981 more than two

¹¹ Salama Mousa, a Copt, attributed in his book ‘Today and Tomorrow’ the unprecedented unity, that was witnessed in the 1919 Revolution, between the Copts and Muslims, to Ahmad Lutfi al-Sayyid; rejecting the claim of some of the Copts that that unity was the result of the World War. See above, note 9 at 65.

¹² See above, note 7 at 65.

¹³ Ibrahim, SE (1996) *The Copts of Egypt* London: Minority Rights Group International 16.

¹⁴ Emphasis mine.

¹⁵ The Constitution of the Arab Republic of Egypt (1971), article 2.

¹⁶ Emphasis mine.

¹⁷ The Constitution of the Arab Republic of Egypt (1980) article 2 <<http://www.uam.es/ostroscentros/medina/egypt/egypolcon.htm>> (accessed 19/10/04).

¹⁸ Botiveau, B “Contemporary Reinterpretation of Islamic Law: The Case of Egypt” in Mallat, C (1993) *Islam and Public Law* 262.

¹⁹ Baker, R (1990) *Sadat and After: Struggle for Egypt’s Political Soul* 1.

²⁰ Farah, NR (1986) *Religious Strife in Egypt: Crisis and ideological Conflict in the 70s* 1.

²¹ Christians in Egypt: Church under Siege; Egypt: Violation of Freedom of Religious Belief and Expression of the Christian Minority (New York: Human Rights Watch, Middle East, 1994) 20.

hundred people have died in religious based clashes as documented by human rights organizations, however it remains unclear whether this was a result of emergency laws or religious intolerance.²²

Following 1981 Copts have continued to experience and or perceive themselves as subjects of intolerance or discrimination. A recent symposium set out resulted in the Copts setting out changes they want in Egyptian legislation as regards their treatment. The Copts asked at the symposium for equality before the law; safety for their lives; security for their property; full economic and social opportunity; and freedom to express their religion, language, and culture without hindrance. They want integration without assimilation. They seek accommodation without incurring loss in the distinctiveness of their identity.²³ Such a list would indicate that all previous issues have been resolved.

4.2.2) The Law

4.2.2.1) International Law

In 1948 Egypt was the only African state party to the UN when the UDHR was adopted and took part in the drafting, discussions and proclamation.²⁴ Egypt is a state party to the ICESCR,²⁵ ICCPR²⁶ and the ACHPR.²⁷ Egypt is also a party to the Arab Charter, the Cairo Declaration and the UIDHR. However, we note as previously, the Cairo Declaration²⁸ contains no provision for equality of rights for non Muslims, excludes non Muslims from the right to serve in public office and forbids non Muslims from marrying Muslims.²⁹ The Arab Charter on Human Rights³⁰ and Universal Islamic Declaration are both considered non-binding and ineffective by human rights activists and Islamists in Egypt as not being legitimate human rights.³¹

²² Karas, SF (1986) *The Copts since the Arab Invasion: Strangers in their Own Land* New Jersey: American, Canadian, and Australian Coptic Associations 107-156, 179-204; See above, note 20 at 19-31 and note 13 at 17-21.

²³ Resolutions of the First International Coptic Symposium Conference held in Zurich - 09/25/2004 <http://www.copts.net/detail.asp?id=577> (accessed 19/10/04).

²⁴ Samnoy, A "The Origins of the Universal Declaration of Human Rights" in Alfredsson, G and Eide, A (eds) (1999) *The Universal Declaration of Human Rights: A Common Standard of Achievement* The Hague: Martinus Nijhoff Publishers 3, 10. Egypt was a member of the UN and was one of the 48 states that assented to the adoption and proclamation by General Assembly Resolution 217 A (III) of 10 December 1948.

²⁵ Ratified 3 January 1996 < <http://www.unhchr.ch/tbs/doc.nsf/0/80256404004ff315c125638b005df883?OpenDocument> > (accessed 18/10/04)

²⁶ Ratified 23 March 1967 <http://www.unhchr.ch/tbs/doc.nsf/0/80256404004ff315c125638b005d73b4?OpenDocument&ExpandSection=1#_Section1> (accessed 18/10/04).

²⁷ Ratified 20 March 1984 <<http://www1.umn.edu/humanrts/instree/ratz1afchr.htm>> (accessed 18/10/04).

²⁸ The Charter was adopted by the Council of the League of Arab States by its resolution 5437 (102nd regular session) on 15 September 1994 but has not been ratified any state including Egypt to date.

²⁹ Mayer, AE (1995) *Islam and Human Rights: Tradition and Politics* 22.

³⁰ The Charter was adopted by the Council of the League of Arab States by its resolution 5437 (102nd regular session) on 15 September 1994 and has not been ratified yet.

³¹ This was a result of various discussions with lawyers and human rights activists in different areas of human rights all over Egypt during August 4 to October 30 2003.

4.2.2.2) Domestic Law

There is a constant and ongoing attempt to ‘Islamise’ Egyptian laws. However, French and British law has been very influential in Egyptian history and this is reflected in the laws today. Hence there is little or no direct Sharia in Egypt today apart from the personal status law in marriage and divorce and inheritance.

4.2.2.2.1) The Constitution of Egypt

The Constitution (1980) provides for freedom of belief and the practice of religion,³² although in practice, the Government places some restrictions on this right. According to the Constitution (1980) Sharia is the primary source of legislation.³³ However, the Government does not consider the practice of Christianity or Judaism to conflict with Sharia, for the most part members of the non-Muslim minority worship without harassment and may maintain links with coreligionists in other countries. Members of religions that are not recognized by the Government, such as the Baha’i Faith, may experience personal and collective hardship.³⁴

Egypt’s Supreme Constitutional Court explained the freedom of the right to religion in 1996 when it stated that

...Freedom of religion is inseparable from freedom to practice religious rituals, which has led the Constitution to link these two freedoms in a single phrase, occurring in its forty-sixth article, which stipulates that the freedom of religion and the freedom to practice religious rituals shall be preserved. This signifies that they complement one another as two indivisible halves of a whole, the second half of which manifest the outward signs of the first half, being a transfer of religion from mere belief and presence within the soul to a practical expression of its content, thus putting it into living practice so that it no longer merely lies unspoken within the believer’s heart...

This freedom principally and plainly means that no one may be compelled to believe in a religion which he denies; to declare the religion to which he adheres; to withdraw from the one he has chosen; or to favour a particular religion in prejudice to another, either by way of contempt, defamation or renunciation. In other words, all religions are to be mutually tolerated and respected.³⁵

The above mentioned case also stated that the freedom of the right to religion in Egypt was “unfettered”³⁶ and Egyptian scholars of both religions are unanimous on the point that the Constitution has no discriminatory clauses as to the freedom of the right to religion.³⁷

³² See above note 17, article 46 which states that “The State shall guarantee the freedom of belief and the practice of religion rites.”

³³ See above, note 17.

³⁴ See above, note 3.

³⁵ Ruling of the Supreme Constitutional Court, appeal 8, judicial year 17, 18 May 1996 (Egyptian case law is unreported) as quoted in El-Morr, AM “Judicial Sources for Supporting the Protection of Human Rights” in Cotran E & Sherif AO (eds) (1997) *The Role of the Judiciary in the Protection of Human Rights* 5, 17-18.

³⁶ See note above.

³⁷ Interviews with Gamaal al Banna on 13/10/04, Moheb Zaki of the Ibn Khaldun Center on 11/10/04 in Cairo, Deputy Chief Justice of the Supreme Constitutional Court of Egypt Adel Omar Sherif on 26/10/04 and Salim El-Awa see chapter 3, note 29.

4.2.2.2.2) Statutory Law and Government Policy

a) Recognition of a Religion

For a religious denomination to be officially recognized, a request must be submitted to the Religious Affairs Department at the Ministry of Interior, which assesses whether the proposed religion would pose a threat, upset national unity or social peace. The department also consults the leading religious figures in the country, particularly the Pope of the Coptic Orthodox Church and the Sheikh of Al-Azhar. The registration is then referred to the President, who issues a decree recognizing the new religion.³⁸ If a religious group chooses to bypass the official registration process, participants could be subject to detention and could also face prosecution and punishment under article 98(F) of the Egyptian Penal Code, which forbids the "ridiculing of a heavenly religion." Persons of beliefs other than Sunni Islam are usually charged under article 98(F) with 'contempt of religion' which has a maximum sentence of 5 years imprisonment. The accused are brought before the State Emergency Courts under the Emergency laws which have no right of appeal.³⁹

b) Religious Education

The Constitution requires religious instruction to be "the principal subject in the courses of general education".⁴⁰ Public and private schools provide religious instruction according to the faith of the student. The Government continues to encourage interfaith dialogue. The religious establishment of Al-Azhar and the Ministry of *Awqaf* (Islamic Religious Endowments) engage in interfaith discussions, both domestically and abroad. Government literacy programs promoted reading materials that encourage mutual tolerance.

c) Copts in Government

Government employment policy discriminates against non-Muslims and as a result there are few Copts in the intelligence services and none in Presidential circles. This policy is, however, a practice but not documented. There are a constant number of 2 to 3 Coptic ministers in cabinet and generally no Copts in powerful positions in the civil service.⁴¹

The Government recently formed the National Human Rights Commission, which is entrusted with protecting, supporting, developing, upholding, and improving the status of human rights, including religious freedom. The Government appointed Boutros Boutros Ghali, a Copt, as its president and

³⁸ Law 15 of 1927

³⁹ Report of the Egyptian Initiative for Personal Rights (2004) *Freedom of Belief and the Arrests of Shi'a Muslims in Egypt* (Cairo) 65.

⁴⁰ See above, note 17, article 19.

⁴¹ See above note 37, interview of Moheb Zaki.

named prominent Copts to 5 of the council's 25 seats.⁴² Currently the Egyptian cabinet has Copts heading the Ministry of Finance as well as the Ministry of the Environment, out of the 15 judges on the bench of the Supreme Constitutional Court of Egypt, 2 judges are Christian.⁴³

There has been a debate since the early 70s, as to whether a non-Muslim could be head of state and whether non-Muslims could be fully equal with Muslims in an Islamic system.⁴⁴ This question has been settled by the Egyptian Constitution, which, though providing Islam as the state religion in article 3, mandates full equality for Muslims and non-Muslims in article 40. Article 74 has no religious requirement for serving in the office of president.⁴⁵

e) Property of Religious Institutions

The property of all Muslim religious institutions belongs to the state while the property of Coptic religious institutions remains with the Coptic Church.⁴⁶ All mosques must be licensed, and the Government attempts to control them for the stated purpose of combating extremists. In April 2004, the Minister of *Awqaf* announced that of the more than 82,000 mosques in the country and further building of mosques has been refused countrywide unless there is good reason. The Government controls administratively 62,000 regular mosques and 16,000 mosques located in private buildings.⁴⁷

In March 2004, the country's Supreme Constitutional Court dismissed a case brought against the Coptic Orthodox Church. The judges ruled that the Egyptian Constitution required that Christian and Muslim endowments be treated under an equal standard and that Christian endowments, like Muslim endowments, could not be subject matter of a suit. Christian advocates hoped the judgment would set a precedent for "equal treatment" between Islamic and Christian facilities with implications for other legal cases they are pursuing.⁴⁸

f) Marriage

Under Islamic law men are allowed to marry all believing women but women are traditionally are not allowed to marry men of other religions than Islam.⁴⁹ Marriage between Muslim women and

⁴² See above, note 3.

⁴³ Interview of the Deputy Chief Justice Adel Omar Sherif of the Supreme Constitutional Court of Egypt on 26/10/04, Cairo, Egypt.

⁴⁴ Kepel, G (1984) *Le Prophete et Pharaon: Les Mouvements Islamistes dans l'Egypte Contemporaine* 119-21.

⁴⁵ See above, note 17, article 74.

⁴⁶ Interview of El-Awa chapter 3, note 29.

⁴⁷ See above, note 3.

⁴⁸ See above, note 3.

⁴⁹ Qur'an 5:5

men of other religions are not allowed under the provision of Sharia law and although this is not vigorously pursued by the judiciary relatives of families have been known to harm family members who marry across the religious divide.⁵⁰

g) Press

There has been in the past the use of the media to denounce Copts and this continues to date. Particular religious leaders use the Friday sermon to make anti-Copt statements and this has spilt over to the newspapers and the television.⁵¹ One such example is an edicts issued by Al-Azhar Committee of Edicts in 1996 concerning the legality of marrying a Christian man to a Muslim woman

This is forbidden since Islam is superior to all other religions. And children should follow the **better**⁵² religion of either parent, according to the jurisprudential rule⁵³

In July 2004, a controversial Egyptian film entitled *B'heb al Sima* (I Love Movies) finally opened in Cairo. That film attempted to mix sex, politics, and religion portraying a Coptic family in Egypt, with the result that its completion had been delayed for years due to a combination of budget and censorship problems. It stereotypes Copts and throws them in a bad light showing them as disdainful of Egypt.⁵⁴ However upon its release there were demonstrations by Copts to no avail the movie was not banned.

h) Proselytizing and Conversion

While there is no legislation on proselytizing, it is encouraged for Muslims. It is prohibited to preach any religion in public in Egypt. Conversion from Islam in Egypt is not criminalised but there are civil penalties including loss of the rights to contract with and inherit from Muslims. When a person converts from one religion to another Sharia becomes applicable and the law of the religion from which the person converted ceases to be valid.⁵⁵ However this is not an issue that affects Copts as they do not involve themselves in proselytizing and conversions of persons of other faiths to Coptic Christianity.

⁵⁰ See above note 41.

⁵¹ Zaki, M (1994) *Civil Society and Democratization in Egypt, 1981-1994* Cairo: Konrad-Adenauer-Stiftung 200. See above, note 41.

⁵² Emphasis mine.

⁵³ Khalil, Magdi "Uday Saddam Hussein in Egypt! Who is Responsible for Abducting Coptic Girls?" <http://www.me-transparent.com/texts/magdikhilil_oday.htm> (accessed 20/8/04).

⁵⁴ Freund, Charles Paul 14/10/04 Sex, Politics, Religion, and Egypt *Want to know how complicated the Middleeast can be? Go to the movies* <<http://reason.com/links/links101404.shtml>> (accessed 27/10/04).

⁵⁵ See chapter 3, note 30.

4.2.2.3 Social Discrimination

Research methodology in Egypt included interviews of various scholars including Gamal Al-Banna, Moheb Zaki, Salim El-Awa and the Deputy Chief Justice of the Supreme Constitutional Court Justice Adel Omar Sherif as well as speaking to the public both Copt and Muslims as to tensions. The resultant impression is that the situation of Coptic discrimination has improved over the years but the conversations with Copts demonstrated that they still felt discriminated against.

A small survey of the human rights activists in Egypt was conducted through a questionnaire and although this is not a scientific survey and one must be very cautious as to the conclusions that could be drawn. The result of sending out 100 questionnaires elicited approximately 20 anonymous responses out of which 4 people refused to answer the questionnaire and the remainder refused to be quoted but stated that there was no discrimination against Copts in Egypt.

4.2.3) Conclusion

Egypt has good legislative protections and case law on the freedom of the right to religion which is a reflection of sharia principles applied to the protection of religious minorities. However, there remains a general culture of discrimination in government policy against non-Muslims as part of an overall culture and political power struggle which the people reflect in their sentiments. Al Azhar University is a particularly powerful force shaping the society and its recent drive to encourage cooperation and exchange of ideas is a positive step in the further application of Sharia in Egypt today.⁵⁶ Thus there remains a need for Egypt to continue to take these positive steps of application of Sharia principles protecting religious minorities in its legislation and policies.

⁵⁶ Lecture by Grand Sheikh Tantawi of Al Azhar University in Cairo 13/10/04. <<http://www.alazhar.org/english/about/da3wa-religious.htm>> (accessed 10/10/04).

4.3) Kenya

4.3.1) The Facts

Kenya has a population of approximately 32 million. Protestants are the largest religious group, representing approximately 38 percent of the population. Approximately 28 percent of the population is Roman Catholic. Seven percent of the population practices Islam, 1 percent practices Hinduism, and the remainder follows various traditional indigenous religions or offshoots of Christian religions. There are very few atheists. The muslim population in Kenya varies from between 15⁵⁷ to 33⁵⁸ percent of the population the former lower figure being government estimates while the latter higher being local Muslim organisations.

4.3.1.1) Historical Background

Muslims are found countrywide. However, the largest groups are in the north and north east where there are Kenyan Somalis and at the coast where there are the Swahili peoples. There is also a group of Kenyan Asian Muslims spread countrywide. Kenyan Muslims have experienced judicial intervention only in one area of law, Islamic personal law⁵⁹ in the Kadhi's Court. The Kadhi's Court existed on the East African coast long before colonization. In 1895 while a 10 mile coastal strip was under the Sultan of Zanzibar, the Sultan agreed to give the strip over to the British under the condition that the British administration respects the Kadhi's court and allow the Muslim minority to bring legal issues of personal law to it. The Sultan, however, was to retain sovereignty. In 1961 when Kenya was seeking independence, the issue of the strip came up again and an agreement in the form of exchange of letters took place in October 1963 whereby the Sultan of Zanzibar relinquished his claim of sovereignty over the coast to Kenya in return for the a guaranteed existence of the Kadhi's courts to decide all matters between Muslims in matters of personal law.⁶⁰

Kenya became a *de facto* one party state and this was legislated in the Constitution of the Republic of Kenya(1980) until 1991 when this amendment was repealed. The Islamic Party of Kenya ("IPK") attempted to register as a political party with the Registrar of Societies in 1992. The Registrar denied their petition by stating that the Constitution does not allow registration of parties' based on

⁵⁷ International Religious Freedom Report 2004 Kenya [http://www.state.gov/g/drl/rls/irf/2004/35363pf .htm](http://www.state.gov/g/drl/rls/irf/2004/35363pf.htm) (accessed 25/9/04).

⁵⁸ Statistics of the Muslim Consultative Council in paper (2003) *Reforming the Constitution: Muslim Position* presented to the Constitutional Review Commission of Kenya.

⁵⁹ The only Islamic law applicable in Kenya as in Egypt consists of the law of marriage, divorce and succession issues as in the case of Egypt today. Kadhi's Court Act and the Mohammedan Marriage, Divorce and Succession Act.

⁶⁰ Wandati, AM *Sharia and the Kadhi's Court* paper presented at the University of Nairobi on 24/3/2003.

religion or ethnicity.⁶¹ Registration was not denied because of extremist views but merely because the party was based on religious principles. Muslims thus argue that they have been marginalized by the Kenyan government since independence, in education, politics and their regions have generally lagged behind in development of infrastructure. In this context, the participation in government and the denial of registration for the IPK is seen as a sign of discrimination.⁶² To help ease tension, President Daniel arap Moi formed a Muslim movement in Mombasa, the United Muslims of Africa in 1992, but because the group was viewed as an extension of the existing government, its formation has just added to the conflict.⁶³ The IPK's leader Sheikh Salim Balala was eventually arrested for threatening KANU leaders and this party remains banned to date⁶⁴ and Muslims continue to demand its registration.⁶⁵

4.3.1.2) Present Day Kenya

Kenyan Muslim religious issues are a national issue in Kenya today due to the Constitutional Review process that is ongoing. Between 1997 and 2001 Kenya went through a succession of four legislative processes to amend and, or overhaul the present Constitution of the Republic of Kenya(1991) (“the Kenyan Constitution”). The Constitution of Kenya Review Act 2001 gave the Constitution of Kenya Review Commission (“the Commission”) a period of twenty-four months to complete its task. The commencement date of the legislation was October 2000. The Commission was therefore required to have completed its work by September 2002.⁶⁶

The mandate of the Commission included a questionnaire⁶⁷ for the public to answer as to whether there should be a Kadhis’ Court. Thus began a series of debates and discussions countrywide with Muslims wanting a stronger Kadhi’s Court with the Christians asking the provisions to be removed

⁶¹ Thoya, F “Muslim Bid to Register IPK” in *Coast Express, Mombasa, Kenya* (9/5/03) <<http://www.nationmedia.com/oastexpress/09052003/News/news09051.htm>> (accessed 15/10/04).

⁶² The Muslims crushed a mutiny against President Moi in 1982 and expected some political repayment for their loyalty to the President. The fact that this payoff did not materialize added fuel to the fire. The Muslims also claim that Kenya's laws are incompatible with Islam and that they are under-represented in the legislature.

⁶³ The argument that the Kenyan government is just trying to separate religious organizations from politics fails in the face of President Moi's formation of the UMA. In fact, there is no tradition of church/state separation in Kenya. The traditional African culture taught that the peace within the community depended upon the observance of certain customs, and therefore the legal system was inseparable from the religious code. See Mulago, V “Traditional Religion and Christianity” in Olupona JK (ed) (1991) *African Traditional Religions In Contemporary Society* 127.

The British system didn't introduce strict separation between church and state either. During colonialism, the British government maintained a special relationship with the Christian missionaries, allowing them to be involved in governmental decisions because of their responsibility for the establishment of schools and medical clinics. See Mugambi, JNK (1989) *African Heritage And Contemporary Christianity* 10.

⁶⁴ <http://www.ind.homeoffice.gov.uk/.../country_information/bulletins/kenya_extended_bulletin/annex_b_political.html> (accessed 18/10/2004)

⁶⁵ Thoya, F “Row Over Islamic Party” in *Coast Express, Mombasa*, 23/5/2003, <<http://www.nationmedia.com/coastexpress/23052003/News/news23053.htm>> (accessed 19/10/04).

⁶⁶ <<http://www.kenyaconstitution.org/docs/01d001.htm>>, (accessed 19/10/04).

⁶⁷ Ghai YP Constitution Questions 15/09/2001 The Constitution Of Kenya Review Commission Issues And Questions For Public Hearings <<http://www.kenyaconstitution.org/docs/05d001.htm>> (accessed 19/10/04).

from the draft constitution completely. The result was a draft constitution that stated in article 10 that state and religion shall be separate and all shall be equal. Article 48 of the draft constitution further states that every person has the right to freedom of conscience, religion, thought, belief and opinion and sets out extensively that this shall include freedom of religious expression, protect the rights of religious communities to provide religious instruction in places of education, proscribes discrimination in employment based on religious belief, and prohibits any person from compelling another person to engage in any practice that is contrary to that person's religious beliefs. Articles 199 to 204 hold the provisions guiding Kadhi's Courts.⁶⁸

These articles, 199 to 204 regarding the Kadhis' courts have highlighted latent religious animosities between the country's Muslims and Christians. In 2003, an interfaith group launched a separate initiative to draft a constitution. This effort, called the Ufungamano Initiative, originally included both Christians and Muslims. However, when the Muslims realized that the Christians opposed including Kadhis' courts in the new constitution, they withdrew.⁶⁹

Some Christian clerics argue that Muslims will be given preferential treatment if Kadhis' courts are incorporated into the new constitution. The National Christian Council of Kenya (NCKK) states that it is not opposed to Kadhis' courts as such. They agree that Parliament should have the right to establish these courts or any other subordinate court. However, they argue that including Kadhis' courts in the constitution would grant formal recognition to Islam, which contradicts the provisions of Article 9 in the draft constitution proscribing the establishment of any religion. In May 2004, a group of 34 Protestant churches, allied under the name of the Federation of Churches in Kenya, threatened to take legal action to expunge Article 66, which establishes Kadhis' courts, from the draft constitution. The Catholic Church believes that Parliament should adopt the provisions of the draft constitution that are not in dispute and subject contentious issues to a popular referendum.⁷⁰

All the above processes have been taking place in the background of the two terrorist attacks in Kenya and the bombings of the World Trade Centre in New York. The former was first in 1998, with the twin bombings of the American Embassies in Kenya and Tanzania⁷¹ and the second recently at the end of 2002 in Mombasa, Kenya when a hotel was shot at by a rocket and burnt to the ground.⁷² Muslims were blamed, many Muslim charitable institutions were closed down and

⁶⁸ < <http://www.kenyaconstitution.org/dloads/WORKING%20DOCUMENT%20III.doc>> (accessed 19/10/04)

⁶⁹ Majtenyi, C "Efforts to Break Up Multi-Faith Constitutional Reform Fail" < <http://dSPACE.dial.pipex.com/suttonlink/358ke.html>> (accessed 30/8/04).

⁷⁰ See above, note 57.

⁷¹ Waris, A "The Legal Implications of Terrorism in East Africa" 2003 University of Nairobi Law Journal 147.

⁷² "Kenya Terror Strikes Target Israelis" < <http://news.bbc.co.uk/1/hi/world/africa/2522207.stm>> (accessed 19/10/04).

joint investigations by the FBI and Kenyan police resulted in a growth of fear of Muslims within the Kenyan community. This has in turn spiralled into the drive by the United States to encourage domestic antiterrorism legislation in Kenya and around the world.

Other debates that have arisen in Kenya include the debate around the Equality Bill (1999). Upon its proposal in 1999, the Equality Bill caused political and religious controversy. While civil and human rights groups, women organisations, donors and opposition politicians favoured it, ex-President Moi, some Christians and the majority of the Muslim society reject the proposed bill. The Muslim community argued that it would affect the Islamic law on inheritance which currently follows the Sharia position of twice the portion for the man as for the woman. The Bill made provisions for equal treatment of all citizens, irrespective of their gender, and ended all forms of discrimination as a response to the Beijing and New York gender conferences. This legislation was not passed by parliament although amendments were made by the Attorney General's office to exclude Muslim women in light of the Islamic law on inheritance. Today, this Bill is back in parliament.⁷³

4.3.2) The Law

4.3.2.1) International Law

Kenya is a signatory to the ICESCR,⁷⁴ the ICCPR⁷⁵ and the ACHPR.⁷⁶

4.3.2.2) Domestic Law

The areas of discrimination in the two states are different. As opposed to Egypt, the current issues concerning the Muslims of Kenya have always been maintaining control only over the Islamic personal law that has been granted since the early 19th century. Thus there has been no noticeable discrimination in areas like the recognition of religion, education, press building permits, press and proselytizing and conversions.

4.3.2.2.1) The Constitution of Kenya

The present 1963 Constitution, the Mohammedan Marriage, Divorce and Succession Act and the Kadhis' Courts Act of 1967 establish a venue to have personal law cases adjudicated based on Islamic law. Article 66 of the Constitution provides for the establishment of Kadhis' courts

⁷³ "Equality Bill to go Back to Parliament" *The Nation, Nairobi 21/9/04* < <http://allafrica.com/stories/200409210073.html> > (accessed 21/9/04)

⁷⁴ Ratified 3/1/76 < <http://www.ohchr.org/english/bodies/docs/RatificationStatus.pdf> > (accessed 19/10/04).

⁷⁵ Ratified 23/3/76 < <http://www.unhchr.ch/tbs/doc.nsf/0/80256404004ff315c125638b005e626f?OpenDocument> > (accessed 19/10/04).

⁷⁶ Ratified 23/1/92 < http://www.right-to-education.org/content/rights_and_remedies/kenya.html > (accessed 19/10/04).

applicable where "all the parties profess the Muslim religion" in suits relating to "questions of Muslim law relating to personal status, marriage, divorce or inheritance." Articles 65 and 67 make it clear that Kadhis' courts are "subordinate" courts, meaning that the High Court has jurisdiction to supervise any civil or criminal proceedings before a subordinate court. It also indicates that if a constitutional or legal interpretation question arises in a Kadhis' court proceeding, any party involved in the proceedings may refer the question to the High Court.⁷⁷

4.3.2.2.2) Statutory Law

1 The Suppression of Terrorism Bill

In April 2003, the Government published the Suppression of Terrorism Bill. Many observers, including the NCKK, found the Bill objectionable on human rights grounds, arguing that it contains provisions that violate the Constitution. Muslim leaders argue that the Bill specifically targets members of their community. In June 2004, the Council of Imams and Preachers of Kenya, referring to the arrest of some 30 Muslims on terrorism charges, accused the Government of targeting Muslims and applying the Bill even before it is enacted.⁷⁸ Since then the Council of Imams and Preachers have consistently called for rejection of the now amended version of the bill. The Suppression of Terrorism Bill has not yet been voted on in Parliament, and the debate was still ongoing.

2 The Registration of New Religious Organisations

The Government requires new religious organizations to register with the Registrar of Societies, which reports to the Office of the Attorney General. The Government allows traditional indigenous religious organizations to register, although many choose not to do so. Once registered, religious organizations may apply for tax-free status for example exemption from paying duty on imported goods. Applications for tax exemptions are not automatic but are granted on a case-by-case basis. Some religious institutions accused the former Government of revoking their exempt status on value added tax and custom duties.⁷⁹

3 Citizenship

Muslim leaders complain that non-Muslims receive better treatment when requesting citizenship documents. According to these leaders, authorities more rigorously scrutinize the identification cards of persons with Muslim surnames and require them to present additional documentation of

⁷⁷ Jackson S (1974) *Laws of Kenya* Kenya: Oxford Press 12

⁷⁸ "Kenya's Terror Bill Rejected" BBC News 15/6/03 < <http://news.bbc.co.uk/2/hi/africa/3069211.stm> > (accessed 19/10/04).

⁷⁹ See above, note 50.

their citizenship, such as birth certificates of parents and, sometimes, grandparents. The Government has singled out the overwhelmingly Muslim Kenyan Somalis as the only group whose members are issued and required to carry an additional form of identification to prove that they are citizens. They must produce upon demand their national identification card and a second identification card verifying screening. Both cards also are required to apply for a passport. The Government says that this heightened scrutiny is an attempt to deter illegal cross border immigration, rather than to discriminate against the religious affiliation of Kenyan Somalis.⁸⁰

3 Abuses of Religious Freedom

Although the Constitution provides for freedom of assembly, in the past, the Government has used sections of the Public Order Act of Kenya and Kenya's Penal Code to restrict or disrupt public meetings that religious groups organized or participated in, primarily for political reasons.

Prominent Muslims in the country continue to accuse the Government of arbitrarily harassing Muslims in the name of the war on terrorism. In May 2004, a Somali-Kenyan Member of Parliament ("MP") wrote a letter to a leading newspaper citing several cases of what he alleged were arbitrary arrests and deportation of Muslims. The M.P. also said that the Government is deliberately attempting to keep Muslims out of the country on the instructions of certain foreign embassies who are "enemies of Muslims" and who have no "regard for the lives of other human beings except those of their own (citizens)." ⁸¹

4 Social Discrimination

People in Kenya have been growing in their fear of Muslims. Police have very often acted outside their jurisdiction and arrested people without charge, detaining them for many days without charge.⁸² Hamisi Juma, a director of Muslim for Human Rights (MUHURI), a non-governmental organisation stated recently

We have to understand what the constitution is all about. It is about protecting the rights of the minority.⁸³

4.3.3 Conclusion

The Kenyan Muslim population allowed itself to be moved from a state with a muslim majority to a state with a majority non-muslim population. Since then their constitutional protection of the freedom of the right to religion has been guaranteed. However the constitutional right to protection

⁸⁰ See above, note 50.

⁸¹ See above, note 50.

⁸² Rowan, David 21 November 2001 "Arbitrary Arrests of Muslims in Kenya" < http://www.wsws.org/articles/2001/nov_2001/keny-n21.shtml> (accessed 26/10/04).

⁸³ "As Kenya revises constitution, Muslims demand continuation of religious courts" < http://www.hrwf.net/html/kenya_2003.html> (accessed 20/10/04).

of personal law matters under the constitutionally created Kadhi's Court is undermined by the fact that appeals from it are vested in the High Court which is not bound to apply the Sharia principles. In addition, as in Egypt, there exists a culture of discrimination in Kenya, both in government policies generally and by the people. Legislation has been formally discriminatory and although in certain instances Muslims have been successful in obtaining changes to bills they felt went against their constitutionally protected rights, there continues to be a growth in discriminatory legislation. Thus Kenya should consider the adoption of Sharia principles as set out in chapter 3 for the better protection of religious minorities.

CHAPTER 5

RECOMMENDATIONS AND CONCLUSION

5.1) CONCLUSION

International human rights law and Sharia share very similar principles on the protection of religious minorities. Despite constitutional protections for religious minorities, Egypt and Kenya maintain discriminatory provisions in legislation and in the policy programmes of government. Additionally, religious minorities in the two countries continue to experience de facto discrimination in their daily lives.

The confluence of the Islamic and international human rights trends will lead to interpretations of Sharia dramatically divergent from those in the past. If this development continues, we may see the development of political and legal systems that possess aspects of Sharia which are compatible with the principles of international human rights law both in countries with Muslim majorities and Muslim minorities like Egypt and Kenya.

Neither Kenya nor Egypt meet human rights standards in the protection of the freedom of the right to religion of minorities under international law. The protections accorded are inadequate and thus the recommendations below will set out improvements that should be considered.

5.2 RECOMMENDATIONS

Egypt and Kenya recognise that freedom of religion and the rights of religious minorities are covered under a myriad of international, regional, and constitutional laws. However the problem that affects both countries is that of interpretation, implementation, enforcement of the law and the articulation of government policy. Thus the recommendations set out below address these issues in both countries.

1. Removal of the emphasis on religion and its role in government institutions.
2. Allocating a proportionate and just percentage of government appointed positions to guarantee appropriate participation of religious minorities.
3. Removing religious identification from every government issued document, form, or application.
4. Enforcing the Constitution in order to guarantee the freedom and protection of religious beliefs of all, free of coercion.

5. Reforming school curriculum and the media introducing an educational curriculum teaching tolerance, acceptance of the other, respect for human rights, and religious freedom.
6. Registration of institutions should not be subject to any obstacles as long as religious communities abide by the constitution of the country and do not engage in any illegal activities.
7. Creation of a political climate that allows open and honest discussion amongst all groups. As in many other countries, large discrepancies between the government programme and the political and social reality can be detected. Whether this difference is caused by the lack of political will on the side of the authorities to address the status of minorities, or whether it is the outcome of a slow transition towards better minority and religious rights, remains a point of contention.
8. Minorities need to be represented in the administration of both states. While on the ministerial level a number of minority representatives have been included in both countries the bureaucracy still lacks adequate minority representation.
9. Human rights groups should raise awareness of the problems pertaining to minorities and religious communities in the media (national and international). Human rights NGO's must also act as pressure groups for their own respective governments and ensure that the issues remain on the political agenda. As religious and national minorities tend to be marginalised in most societies, activists must aid in preventing the marginalisation of such groups.
10. Both states should consider Sharia principles in legislative and policy formulation in areas affecting the protection of religious minorities.

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Thlimmenos v. Greece case (34369/97) [2000] ECHR 161 (6 April 2000)

X and Church of Scientology v Sweden (1979) 16 DR 68.

X v UK (Commission) Application number 18187/91 (10 February 1993).

IV. WEBSITES

<http://religiousfreedom.lib.virginia.edu/>

<http://www.cia.gov/cia/publications/factbook>

<http://www.hrinfo.net/en>

<http://www.iarf.net/>

<http://www.ohrc.on.ca/english/publications/creed-religion-policy.shtml>

http://www.state.gov/www/global/human_rights/irf

<http://www.unesco.org/most>

<http://www.unhchr.ch/huridocda>

<http://www.uscirf.gov>

V. INTERVIEWS

Adel Omar Sherif, Deputy Chief Justice of the Supreme Constitutional Court of Egypt in Cairo on 26/10/04

Gamaal al Banna, Muslim Scholar in Cairo on 13/10/04

Salim El-Awa, Secretary General of the International Association of Muslim Scholars in Cairo on 28/10/04.

Moheb Zaki of the Ibn Khaldun Center on 11/10/04 in Cairo,

VI. OTHER SOURCES

Egyptian Initiative for Personal Rights (2004) Report on the Freedom of Belief and the Arrests of Shi'a Muslims in Egypt (Cairo).

Egyptian Organization for Human Rights Volume 3 Jan-Dec 1995 Volume 4 Jan to Dec 1996

Yagcioglu, Dimostenis "Psychological Explanations of Conflicts between Ethnocultural Minorities and Majorities - An Overview –" < <http://www.geocities.com/Athens/8945/sycho.html> >

Appendix A

The following is a list of all major declarations and conventions pertinent to these rights.

1. Universal Declaration of Human Rights (1948)
2. Convention Relating to the Status of Refugees (1951)
3. UNESCO Convention Against Discrimination in Education (1960)
4. International Convention on the Elimination of All Forms of Racial Discrimination (1965)
5. International Covenant on Civil and Political Rights (1966)
6. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)
7. Declaration on the Human Rights of Individuals who are not Nationals of the Country in Which They Live (1985)
8. Convention on the Rights of the Child (1989)
9. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990)
10. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

European Declarations and Conventions Relevant to Religious Rights. Within the frameworks of the Council of Europe and the Conference for Security and Cooperation in Europe (CSCE), the freedom of religion or belief and the rights of persons belonging to religious minorities have been addressed in several multilateral treaties and conventions. The most important are:

1. European Convention on Human Rights (1950) and Protocol Nr. 11 (1954)
2. Final Act of the Conference on Security and Cooperation in Europe (1975)
3. Concluding Document of the Madrid Meeting of the CSCE (1983)
4. Concluding Document of the Vienna Meeting of the CSCE (1989)
5. Charter of Paris for a New Europe (1990)
6. Document of the Copenhagen Meeting of the CSCE (1990)
7. CSCE Helsinki Summit Decisions (1992)
8. Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights (1993)
9. Framework Convention for the Protection of National Minorities (1994)

Inter-American Declarations and Conventions Relevant to Religious Rights. Religious rights are recognized in various declarations or conventions of the Organization of American States (O.A.S.) such as:

1. American Declaration of the Rights and Duties of Man (1948)
2. American Convention of Human Rights (1969)
3. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)

African Declarations and Conventions Relevant to Religious Rights. Religious rights are recognized in various regional declarations or conventions in Africa such as:

1. African Charter on Human and Peoples' Rights (1981)
2. African Charter on the Rights and Welfare of the Child

Middle Eastern/Islamic Declarations and Conventions Relevant to Religious Rights. Religious rights are recognized in various regional declarations or conventions in the Middle East such as:

1. Cairo Declaration
2. Arab Charter on Human Rights
3. Universal Islamic Declaration of Human Rights

RELEVANT TREATIES FOR RELIGIOUS MINORITIES

1. Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights was adopted and proclaimed by the United Nations General Assembly on 10 December 1948.

Preamble

(...) Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, (...)

Article 2.1

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

2. Convention Relating to the Status of Refugees (1951)

The Convention relating to the Status of Refugees was adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950. It entered into force on 22 April 1954.

Article 1 [Definition of the term "refugee"]

A. For the purposes of the present Convention, the term "refugee" shall apply to any person who:

(1) Has been considered a refugee under the Arrangements of 12 May 1926 and 30 June 1928 or under the Conventions of 28 October 1933 and 10 February 1938, the Protocol of 14 September 1939 or the Constitution of the International Refugee Organization; Decisions of non-eligibility taken by the International Refugee Organization during the period of its activities shall not prevent the status of refugee being accorded to persons who fulfil the conditions of paragraph 2 of this section;

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.

Article 3 [Non-discrimination]

The Contracting States shall apply the provisions of this Convention to refugees without discrimination as to race, religion or country of origin.

Article 4 [Religion]

The Contracting States shall accord to refugees within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children.

Article 33 [Prohibition of expulsion or return ("refoulement")]

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

3. UNESCO Convention Against Discrimination in Education (1960)

The UNESCO Convention against Discrimination in Education was adopted on 14 December 1960 and entered into force on 22 May 1962.

Article 1

1. For the purposes of this Convention, the term "discrimination" includes any distinction, exclusion, limitation or preference which, being based on race, colour, sex, language, religion, political or other opinion, national or social origin, economic condition or birth, has the purpose or effect of nullifying or impairing equality or treatment in education [...].

Article 2

When permitted in a State, the following situations shall not be deemed to constitute discrimination, within the meaning of Article 1 of this Convention. [...]

(b) The establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil's parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level.

Article 5

1. The States Parties to this Convention agree that:

(a) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace;

(b) It is essential to respect the liberty of parents and, where applicable, of legal guardians, firstly to choose for their children institutions other than those maintained by the public authorities but

conforming to such minimum educational standards as may be laid down or approved by the competent authorities and, secondly, to ensure in a manner consistent with the procedures followed in the State for the application of its legislation, the religious and moral education of the children in conformity with their own convictions; and no person or group of persons should be compelled to receive religious instruction inconsistent with his or their conviction;

4. International Convention on the Elimination of All Forms of Racial Discrimination (1965)

The International Convention on the Elimination of All Forms of Racial Discrimination was adopted and opened for signature and ratification by the United Nations General Assembly in resolution 2106 (XX) of 21 December 1965. It entered into force on 4 January 1969.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the rights of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: (...)

(d.vii) The right to freedom of thought, conscience and religion.

5. International Covenant on Civil and Political Rights (1966)

The International Covenant on Civil and Political Rights was adopted and opened for signature, ratification and accession by the United Nations General Assembly in resolution 2200A (XXI) of 16 December 1966. It entered into force on 23 March 1976.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

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

6. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981)

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief was proclaimed by General Assembly resolution 36/55 of 25 November 1981. It is the result of three decades of discussion on religious rights, primarily within the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, and has been considered a major international standard-setting instrument pertaining to the freedom of religion or belief.

Proclaimed by General Assembly resolution 36/55 of 25 November 1981

The General Assembly,

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and

encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief,

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

Noting with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:

Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Article 2

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.
2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

Article 3

Discrimination between human being on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

Article 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.

2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.

3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle. 5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

Article 6

In accordance with article I of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

(a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;

(b) To establish and maintain appropriate charitable or humanitarian institutions;

(c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;

(d) To write, issue and disseminate relevant publications in these areas;

- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Article 7

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

Article 8

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights.

7. Declaration on the Human Rights of Individuals who are not Nationals of the Country in Which They Live (1985)

The Declaration on the Human Rights of Individuals who are not Nationals of the Country in Which They Live was adopted by the United Nations General Assembly Resolution A/RES/40/144 on 13 December 1985.

Article 5

1. Aliens shall enjoy, in accordance with domestic law and subject to the relevant international obligations of the State in which they are present, in particular the following rights:

- (e) The right to freedom of thought, opinion, conscience and religion; the right to manifest their religion or beliefs, subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others;

Article 7

An alien lawfully in the territory of a State may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons why he or she should not be expelled and to have the case reviewed by, and be represented for the purpose before, the competent authority or a person or persons specially designated by the competent authority. Individual or collective expulsion of such aliens on grounds of race, colour, religion, culture, descent or national or ethnic origin is prohibited.

8. Convention on the Rights of the Child (1989)

The Convention on the Rights of the Child was adopted by the United Nations General Assembly in Resolution 44/25 on 20 November 1989 and entered into force on 2 September 1990. It incorporates Article 27 of the Covenant for Civil and Political Rights.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.
2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.
3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 29

1. States Parties agree that the education of the child shall be directed to:
 - (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin; (...)

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origins exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language.

9. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990)

The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families was adopted by the United Nations General Assembly in Resolution 45/158 on 18 December 1990. The Convention was not yet in force on 1 May 1999.

Article 1

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

Article 7

States parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion,

national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

Article 12

1. Migrant workers and members of their families shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching.
2. Migrant workers and members of their families shall not be subject to coercion that would impair their freedom to have or to adopt a religion or belief of their choice.
3. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
4. States Parties to the present Convention undertake to have respect for the liberty of parents, at least one of whom is a migrant worker, and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 13

2. Migrant workers and members of their families shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of their choice.
3. The exercise of the right provided for in paragraph 2 of the present article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (d) For the purpose of preventing any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

10. Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities was adopted by the United Nations General Assembly in resolution 47/135 of 18 December 1992.

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 4

2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.

EUROPEAN DECLARATIONS AND CONVENTIONS RELEVANT TO RELIGIOUS RIGHTS.

Within the frameworks of the Council of Europe and the Conference for Security and Cooperation in Europe (CSCE), the freedom of religion or belief and the rights of persons belonging to religious minorities have been addressed in several multilateral treaties and conventions. The most important are:

1. European Convention on Human Rights (1950) and Protocol Nr. 11 (1954)

a) Convention For Protection of Human Rights and Fundamental Freedoms

The European Convention for Protection of Human Rights and Fundamental Freedoms was adopted by the Council of Europe on 4 November 1950 and entered into force on 3 September 1953.

Article 9 – Freedom of thought, conscience and religion

1 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2 Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

Article 14 – Prohibition of discrimination

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

b) Protocol to the Convention For Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No.11

Entry into force: 18. May 1954.

Article 2 – Right to education

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

2. Final Act of the Conference on Security and Cooperation in Europe (1975)

The Final Act of the Conference on Security and Co-operation in Europe was signed in Helsinki on 1 August 1975.

1(a) Declaration on Principles Guiding Relations between Participating States

VII. Respect for human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief

1. The participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.
3. Within this framework the participating States will recognize and respect the freedom of the individual to profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.

Co-operation in Humanitarian and Other Fields

1. Human Contacts

(d) Travel for Personal or Professional Reasons

The participating States intend to facilitate wider travel by their citizens for personal or professional reasons and to this end they intend in particular:

- gradually to simplify and to administer flexibly the procedures for exit and entry;
- to ease regulations concerning movement of citizens from the other participating States in their territory, with due regard to security requirements.

They will endeavour gradually to lower, where necessary, the fees for visas and official travel documents.

They intend to consider, as necessary, means - including, in so far as appropriate, the conclusion of multilateral or bilateral consular conventions or other relevant agreements or understandings - for the improvement of arrangements to provide consular services, including legal and consular assistance.

They confirm that religious faiths, institutions and organizations, practising within the constitutional framework of the participating States, and their representatives can, in the field of their activities, have contacts and meetings among themselves and exchange information.

3. Concluding Document of the Madrid Meeting of the CSCE (1983)

The Concluding Document of the Madrid Meeting of the CSCE was adopted in Madrid on 9 September 1983.

Co-operation in Humanitarian and Other Fields Human Contacts

10. They [i.e. the participating states] will further implement the relevant provisions of the Final Act, so that religious faiths, institutions, organizations and their representatives can, in the field of their activity, develop contacts and meetings among themselves and exchange information.

4. Concluding Document of the Vienna Meeting of the CSCE (1989)

The Concluding Document of the Vienna Meeting of the CSCE was adopted 19 January 1989.

Questions relating to Security in Europe - Principles

(13) In this context [i.e. the respect of human rights] they [i.e. the participating States] will

(13.7) - ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

(16) In order to ensure the freedom of the individual to profess and practise religion or belief, the participating States will, inter alia,

(16.1) - take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers;

(16.2) - foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers;

(16.3) - grant upon their request to communities of believers, practising or prepared to practise their faith within the constitutional framework of their States, recognition of the status provided for them in their respective countries;

(16.4) - respect the right of these religious communities to

- establish and maintain freely accessible places of worship or assembly,

- organize themselves according to their own hierarchical and institutional structure,

- select, appoint and replace their personnel in accordance with their respective requirements and standards as well as with any freely accepted arrangement between them and their State,

- solicit and receive voluntary financial and other contributions;

(16.5) - engage in consultations with religious faiths, institutions and organizations in order to achieve a better understanding of the requirements of religious freedom;

(16.6) - respect the right of everyone to give and receive religious education in the language of his choice, whether individually or in association with others;

(16.7) - in this context respect, inter alia, the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions;

(16.8) - allow the training of religious personnel in appropriate institutions;

(16.9) - respect the right of individual believers and communities of believers to acquire, possess, and use sacred books, religious publications in the language of their choice and other articles and materials related to the practice of religion or belief,

(16.10) - allow religious faiths, institutions and organizations to produce, import and disseminate religious publications and materials;

(16.11) - favourably consider the interest of religious communities to participate in public dialogue, including through the mass media.

(17) The participating States recognize that the exercise of the above-mentioned rights relating to the freedom of religion or belief may be subject only to such limitations as are provided by law and consistent with their obligations under international law and with their international commitments. They will ensure in their laws and regulations and in their application the full and effective exercise of the freedom of thought, conscience, religion or belief.

Co-operation in Humanitarian and Other Fields - Human Contacts

(32) They [i.e. the participating states] will allow believers, religious faiths and their representatives, in groups or on an individual basis, to establish and maintain direct personal contacts and communication with each other, in their own and other countries, inter alia through travel, pilgrimages and participation in assemblies and other religious events. In this context and commensurate with such contacts and events, those concerned will be allowed to acquire, receive and carry with them religious publications and objects related to the practice of their religion or belief.

5. Charter of Paris for a New Europe (1990)

The Charter of Paris for a New Europe was adopted by the Organization for Security and Co-operation in Europe at a Summit Meeting of Heads of State or Government of participating States in Paris on 21 November 1990.

Human Rights, Democracy and Rule of Law

We affirm that, without discrimination, every individual has the right to freedom of thought, conscience and religion or belief, freedom of expression, freedom of association and peaceful assembly, freedom of movement;

We affirm that the ethnic, cultural, linguistic and religious identity of national minorities will be protected and that persons belonging to national minorities have the right freely to express, preserve and develop identity without any discrimination and in full equality before the law.

Human Dimension

... Determined to foster the rich contribution of national minorities to the life of our societies, we undertake further to improve their situation. We reaffirm our deep conviction that friendly relations

among our peoples, as well as peace, justice, stability and democracy, require that the ethnic, cultural, linguistic and religious identity of national minorities be protected and conditions for the promotion of that identity be created. We declare that questions related to national minorities can only be satisfactorily resolved in a democratic political framework. We further acknowledge that the rights of persons belonging to national minorities must be fully respected as part of universal human rights.

We express our determination to combat all forms of racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds.

Non-governmental Organizations

We recall the major role that non-governmental organizations, religious and other groups and individuals have played in the achievement of the objectives of the CSCE and will further facilitate their activities for the implementation of the CSCE commitments by the participating States. These organizations, groups and individuals must be involved in an appropriate way in the activities and new structures of the CSCE in order to fulfil their important tasks.

6. Document of the Copenhagen Meeting of the CSCE (1990)

The Document of the Copenhagen Meeting of the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe was adopted 29 June 1990. The Document emphasizes the respect of national minority rights as inherent to the promotion of democracy.

Article 31

Persons belonging to national minorities have the rights to exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.

The participating States will adopt, where necessary, special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.

Article 32

To belong to a national minority is a matter of a person's individual choice and no disadvantage may arise from the exercise of such choice.

Persons belonging to national minorities have the right freely to express, preserve and develop their ethnic, cultural, linguistic or religious identity and to maintain and develop their culture in all its aspects, free of any attempts at assimilation against their will. In particular, they have the right (...) (32.2) to establish and maintain their own educational, cultural and religious institutions, organizations or associations, which can seek voluntary financial and other contributions as well as public assistance, in conformity with national legislation; (32.3) to profess and practise their religion, including the acquisition, possession and use of religious materials, and to conduct religious educational activities in their mother tongue; (32.4) to establish and maintain unimpeded contacts among themselves within their country as well as contacts across frontiers with citizens of other States with whom they share a common ethnic or national origin, cultural heritage or religious beliefs; (...)

Persons belonging to national minorities can exercise and enjoy their rights individually as well as in community with other members of their group. No disadvantage may arise for a person belonging to a national minority on account of the exercise of non-exercise of any such rights.

Article 33

The participating States will protect the ethnic, cultural, linguistic and religious identity of national minorities on their territory and create conditions for the promotion of that identity. They will take the necessary measures to that effect after due consultations, including contacts with organizations or associations of such minorities, in accordance with the decision-making procedures of each State.

Any such measures will be in conformity with the principles of equality and non-discrimination with respect to the other citizens of the participating State concerned.

Article 35

The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including in the affairs relating to the protection and promotion of the identity of such minorities.

The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.

7. CSCE Helsinki Summit Decisions (1992)

The Helsinki Summit Decisions were approved by Heads of State or Government of the Organization for Security and Co-operation in Europe on 10 July 1992.

12. (...) There is still much work to be done in building democratic and pluralistic societies, where diversity is fully protected and respected in practice. Consequently, we reject racial, ethnic and religious discrimination in any form. Freedom and tolerance must be taught and practised.

II CSCE HIGH COMMISSIONER ON NATIONAL MINORITIES

26. Parties directly concerned in tensions who can provide specific reports to the High Commissioner and with whom the High Commissioner will seek to communicate in person during a visit to a participating State are the following:

26b. representatives of associations, nongovernmental organizations, religious and other groups of national minorities directly concerned and in the area of tension, which are authorized by the persons belonging to those national minorities to represent them.

VI THE HUMAN DIMENSION

The participating states...

25. Will continue through unilateral, bilateral and multilateral efforts to explore further avenues for more effective implementation of their relevant CSCE commitments, including those related to the protection and the creation of conditions for the promotion of the ethnic, cultural, linguistic and religious identity of national minorities;

33. Will consider taking appropriate measures within their constitutional framework and in conformity with their international obligations to assure to everyone on their territory protection against discrimination on racial, ethnic and religious grounds, as well as to protect all individuals, including foreigners, against acts of violence, including on any of these grounds. Moreover, they will make full use of their domestic legal processes, including enforcement of existing laws in this regard;

IX THE CSCE AND REGIONAL AND TRANSFRONTIER COOPERATION

5. Transfrontier co-operation should be as comprehensive as possible, promoting increased contacts at all levels, including contacts among persons sharing a common origin, cultural heritage and religious belief.

8. Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights (1993)

The Vienna Declaration and Programme of Action was adopted at the World Conference on Human Rights 25 June 1993.

Paragraph 19.

Considering the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such promotion and protection to the political and social stability of the States in which such persons live,

The World Conference on Human Rights reaffirms the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

The persons belonging to minorities have the right to enjoy their own culture, to profess and practice their own religion and to use their own language in private and in public, freely and without interference or any form of discrimination.

9. Framework Convention for the Protection of National Minorities (1994)

The Framework Convention for the Protection of National Minorities was adopted by Committee of Ministers of the Council of Europe on 10 November 1994. On 1 February 1995, it was opened for signature by the member States and up until the date of entry into force by any other State so invited by the Committee of Ministers. It entered into force on 1 February 1998. As of 28 October 1998, the Framework Convention was ratified by 23 member states.

Article 5

1. The Parties undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage.

Article 6

1. The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media.

2. The Parties undertake to take appropriate measures to protect persons who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity.

Article 7

The Parties shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression, and freedom of thought, conscience and religion.

Article 8

The Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations.

Article 12

1. The Parties shall, where appropriate, take measures in the fields of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority.

Article 17

1. The Parties undertake not to interfere with the right of persons belonging to national minorities to establish and maintain free and peaceful contacts across frontiers with persons lawfully staying in other States, in particular those with whom they share an ethnic, cultural, linguistic or religious identity, or a common cultural heritage.

Inter-American Declarations and Conventions Relevant to Religious Rights.

Religious rights are recognized in various declarations or conventions of the Organization of American States (O.A.S.) such as:

1. American Declaration of the Rights and Duties of Man (1948)

The American Declaration of the Rights and Duties of Man was adopted by the Ninth International Conference of American States of the Organization of American States in Bogotá, Columbia, on 2 May 1948.

CHAPTER ONE - Rights

Article III. Right to religious freedom and worship

Every person has the right freely to profess a religious faith, and to manifest and practice it both in public and in private.

Article XXII. Right of association

Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labour union or other nature.

2. American Convention of Human Rights (1969)

The American Convention on Human Rights was adopted by member states of the Organization of American States in San José, Costa Rica, on 22 November 1969. It entered into force on 18 July 1978.

Article 1. Obligation to Respect Rights

1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 12. Freedom of Conscience and Religion

1. Everyone has the right to freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private.

2. No one shall be subject to restrictions that might impair his freedom to maintain or to change his religion or beliefs.

3. Freedom to manifest one's religion and beliefs may be subject only to the limitations prescribed by law that are necessary to protect public safety, order, health, or morals, or the rights or freedoms of others.

4. Parents or guardians, as the case may be, have the right to provide for the religious and moral education of their children or wards that is in accord with their own convictions.

Article 13. Freedom of Thought and Expression

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offences punishable by law.

Article 16. Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labour, social, cultural, sports, or other purposes.

Article 22. Freedom of Movement and Residence

8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, religion, social status, or political opinions.

Article 27. Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, colour, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988)

The Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights was signed by member states of the Organization of American States in San José, Costa Rica, on 17 November 1988.

Article 3 Obligation of non-discrimination

The State Parties to this Protocol undertake to guarantee the exercise of the rights set forth herein without discrimination of any kind for reasons related to race, colour, sex, language, religion,

political or other opinions, national or social origin, economic status, birth or any other social condition.

Article 13 Right to Education

2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.

African Regional Instruments

1. The African Charter on Human and Peoples' Rights

The African Charter on Human and Peoples' Rights was adopted African States members of the Organization of African Unity meeting in Banjul, Gambia, on 27 June 1981. It entered into force 21 October 1986.

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Article 12(5)

The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

2. African Charter on the Rights and Welfare of the Child

This entered into force on November 29, 1999.

Article 1: Obligation of States Parties: Sub article 3

Any custom, tradition, cultural or religious practice that is inconsistent with the rights, duties and obligations contained in the present Charter shall to the extent of such inconsistency be discouraged.

Article 3: Non-Discrimination

Every child shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in this Charter irrespective of the child's or his/her parents' or legal guardians' race, ethnic group, colour, sex, language, religion, political or other opinion, national and social origin, fortune, birth or other status.

Article 9: Freedom of Thought, Conscience and Religion

1. Every child shall have the right to freedom of thought conscience and religion.
2. Parents, and where applicable, legal guardians shall have a duty to provide guidance and direction in the exercise of these rights having regard to the evolving capacities, and best interests of the child.
3. States Parties shall respect the duty of parents and where applicable, legal guardians to provide guidance and direction in the enjoyment of these rights subject to the national laws and policies.

Article 11: Education at sub articles 2 and 4

2. The education of the child shall be directed to:
(d) the preparation of the child for responsible life in a free society, in the spirit of understanding tolerance, dialogue, mutual respect and friendship among all peoples ethnic, tribal and religious groups;
4. States Parties to the present Charter shall respect the rights and duties of parents, and where applicable, of legal guardians to choose for their children's schools, other than those established by public authorities, which conform to such minimum standards may be approved by the State, to ensure the religious and moral education of the child in a manner with the evolving capacities of the child.

Article 25: Separation from Parents at sub article 3

When considering alternative family care of the child and the best interests of the child, due regard shall be paid to the desirability of continuity in a child's up-bringing and to the child's ethnic, religious or linguistic background.

Article 26: Protection Against Apartheid and Discrimination at sub article 2

States Parties to the present Charter shall individually and collectively undertake to accord the highest priority to the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination as well as in States subject to military destabilization.

Middle Eastern Instruments

1. Cairo Declaration

ARTICLE 1

(a) All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.

(b) All human beings are Allah's subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds.

ARTICLE 9

(a) The seeking of knowledge is an obligation and provision of education is the duty of the society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee its diversity in the interest of the society so as to enable man to be acquainted with the religion of Islam and uncover the secrets of the Universe for the benefit of mankind.

(b) Every human being has a right to receive both religious and worldly education from the various institutions of teaching, education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner that would develop human personality, strengthen man's faith in Allah and promote man's respect to and defence of both rights and obligations.

ARTICLE 10:

Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.

ARTICLE 18:

(a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property.

(b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.

(c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

2. Arab Charter on Human Rights

Preamble

Pursuant to the eternal principles of brotherhood and equality among all human beings which were firmly established by the Islamic Sharia and the other divinely-revealed religions,

Article 2

Each State Party to the present Charter undertakes to ensure to all individuals within its territory and subject to its Jurisdiction the right to enjoy all the rights and freedoms recognized herein, without any distinction on grounds of race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status and without any discrimination between men and women.

Article 27

Adherents of every religion have the right to practise their religious observances and to manifest their views through expression, practice or teaching, without prejudice to the rights of others. No restrictions shall be imposed on the exercise of freedom of belief, thought and opinion except as provided by law.

Article 35

Citizens have a right to live in an intellectual and cultural environment in which Arab nationalism is a source of pride, in which human rights are sanctified and in which racial, religious and other forms of discrimination are rejected and international cooperation and the cause of world peace are supported.

Article 37

Minorities shall not be deprived of their right to enjoy their culture or to follow the teachings of their religions.

3. Universal Islamic Declaration of Human Rights

Preamble

g) in our obligation to establish an Islamic order:

i) wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language;

III Right to Equality and Prohibition against Impermissible Discrimination

a) All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.

b) All persons shall be entitled to equal wage for equal work.

c) No person shall be denied the opportunity to work or be discriminated against in any manner or exposed to greater physical risk by reason of religious belief, colour, race, origin, sex or language.

IX Right to Asylum

a) Every persecuted or oppressed person has the right to seek refuge and asylum. This right is guaranteed to every human being irrespective of race, religion, colour and sex.

X Rights of Minorities

a) The Qur'anic principle "There is no compulsion in religion" shall govern the religious rights of non-Muslim minorities.

b) In a Muslim country religious minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic Law, or by their own laws.

XIII Right to Freedom of Religion

Every person has the right to freedom of conscience and worship in accordance with his religious beliefs.

XIX Right to Found a Family and Related Matters

a) Every person is entitled to marry, to found a family and to bring up children in conformity with his religion, traditions and culture. Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.

Appendix B

The Covenant of Medina

In the name of God, the Compassionate, the Merciful. This is a covenant given by Muhammad to the believers and the Muslims of Quraysh, Yathrib, and those who followed them, joined them, and fought with them. They constitute one Ummah to the exclusion of all other men. As was their custom, the Muhajirun from Quraysh are bound together and shall ransom their prisoners in kindness and justice as believers do. Following their own custom, Banu 'Awf are bound together as they have been before. Every clan of them shall ransom its prisoners with the kindness and justice common among believers. [The text here repeats the same prescription concerning every clan of the Ansar and every house including Banu al Harith, Banu Sa'idah, Banu Jusham, Banu al Najjar, Banu 'Amr ibn 'Awf, and Banu al Nabit]. The believers shall leave none of their members in destitution without giving him in kindness what he needs by way of ransom or blood wit. No believer shall take as an ally a freedman of another Muslim without the permission of his previous master. All pious believers shall rise as one man against whosoever rebels or seeks to commit injustice, aggression, sin, or spread mutual enmity between the believers, even though he may be one of their sons. No believer shall slay a believer; neither shall he assist an unbeliever against a believer. Just as God's bond is one and indivisible, all believers shall stand behind the commitment of the least of them. All believers are bonded one to another to the exclusion of other men. Any Jew who follows us is entitled to our assistance and the same rights as any one of us, without injustice or partisanship. This Pax Islamica is one and indivisible. No believer shall enter into a separate peace without all the believers whenever there is fighting in the cause of God, but will do so only on the basis of equality and justice to all others. In every military expedition we undertake our members shall be accompanied by others committed to the same objective. All believers shall avenge the blood of one another whenever any one of them falls fighting in the cause of God. The pious believers follow the best and most upright guidance. No unbeliever shall be allowed to place under his protection against the interest of a believer, any wealth or person belonging to Quraysh. Whoever is convicted of killing a believer deliberately but without righteous cause, shall be liable to the relatives of the killed. Until the latter are satisfied, the killer shall be subject to retaliation by each and every believer. The killer shall have no rights whatever until this right of the believers is satisfied. Whoever has entered into this covenant and believed in God and in the last day shall never protect or give shelter to a convict or criminal; whoever does so shall be cursed by God and upon him shall the divine wrath fall on the Day of Judgment. Neither repentance nor ransom shall be acceptable from him. No object of contention among you may not be referred to God and to Muhammad-may God's peace and blessing be upon him-for judgment. As the Jews fight on the side

of the believers, they shall spend of their wealth on equal par with the believers. The Jews have their religion and the Muslims theirs. Both enjoy the security of their own populace and clients except the unjust and the criminal among them. The unjust or the criminal destroys only himself and his family. The Jews of Banu Njjar, Banu al Harith, Banu Sa'iddah, Banu Jusham, Banu al Aws, Banu Tha'labah, Jafnah, and Banu al Shutaybah-to all the same rights and privileges apply as to the Jews of Banu Aws. The clients of the tribe of Tha'labah enjoy the same rights and duties as the members of the tribe themselves. Likewise, the clients of the Jews as the Jews themselves. None of the foregoing shall go out to war except with the permission of Muhammad-may God's peace and blessing be upon him-though none may be prevented from taking revenge for a wound inflicted upon him. Whoever murders anyone will have murdered himself and the members of his family, unless it be the case of a man suffering a wrong, for God will accept his action. The Jews shall bear their public expenses and so will the Muslims. Each shall assist the other against any violator of this covenant. Their relationship shall be one of mutual advice and consultation, and mutual assistance and charity rather than harm and aggression. However, no man is liable to a crime committed by his ally. Assistance is due to the party suffering an injustice, not to the one perpetrating it. Since the Jews fight on the side of the believers they shall spend their wealth on a par with them. The town of Yathrib shall constitute a sanctuary for the parties of this covenant. Their neighbours shall be treated as themselves as long as they perpetrate no crime and commit no harm. No woman may be taken under protection without the consent of her family. Whatever difference or dispute between the parties to this covenant remains unsolved shall be referred to God and to Muhammad, the prophet of God-may God's peace and blessing be upon him. God is the guarantor of the piety and goodness that is embodied in this covenant. Neither the Quraysh nor their allies shall be given any protection. The people of this covenant shall come to the assistance of one another against whoever attacks Yathrib. If they are called to cease hostilities and to enter into a peace, they shall be bound to do so in the interest of peace. If, on the other hand, they call upon the Muslims to cease hostilities and to enter into a peace, they shall be bound to do so in the interest of peace. If, on the other hand, they call upon the Muslims to cease hostilities and to enter into a peace, the Muslims shall be bound to do so and maintain the peace except when the war is against their religion. To every smaller group belongs the share which is their due as members of the larger group which is party to this covenant. The Jews of al Aws, as well as their clients, are entitled to the same rights as this covenant has granted to its parties together with the goodness and charity of the latter. Charity and goodness are clearly distinguishable from crime and injury, and there is no responsibility except for one's own deeds. God is the guarantor of the truth and good will of this covenant. This covenant shall constitute no protection for the unjust or criminal. Whoever goes out to fight as well as

whoever stays at home shall be safe and secure in this city unless he has perpetrated an injustice or committed a crime. God grants His protection to whoever acts in piety, charity, and goodness.