

Islamic state practices in the framework of Islamic and international human rights instruments

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1.1 Introduction

The main purpose of this article is to provide an analytical perspective of essentially four current Islamic human rights instruments adopted under the protection of two different, parallel 'Arab' and 'Islamic' organisations, namely, the League of Arab States (LAS)⁵² and the Organisation of Islamic Cooperation (OIC)⁵³, and nine relevant, often corresponding, major international human rights instruments adopted under the exclusive sponsorship of one global organisation, namely, the United Nations (UN)⁵⁴.

The four Islamic instruments in chronological order are: the instrument of the LAS, the Arab Charter on Human Rights (variously abbreviated as ACHR, LAS-ACHR or Arab Charter) of 2004 (and its 1994 predecessor), and the three OIC instruments, the Cairo Declaration on Human Rights in Islam (variously abbreviated as CDHRI, OIC-CDHRI or Cairo Declaration) of 1990; the Covenant on the Rights of a Child in Islam (CRCI or OIC-CRCI) of 2004; and the Charter of the Organisation of the Islamic Conference (OIC Charter) of 2008.⁵⁵

The nine UN instruments, the Optional Protocols to six of them and their acronyms, in chronological order of adoption are: the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) of 1965; the International Covenant on Civil and Political Rights

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⁵² The LAS was formerly known as the Arab League of Nations. Unless otherwise indicated, all information pertaining to the LAS and its instruments has been obtained from its official website available in both English

<http://www.lasportal.org/en/humanrights/Pages/default.aspx> and Arabic

<http://www.lasportal.org/ar/Pages/default.aspx>. See also Al-Bab, 'The League of Arab States'

<http://www.al-bab.com/arab/docs/league.htm> all accessed 25 March 2016.

⁵³ The OIC was formerly known as the Organisation of Islamic Conference. While the OIC's name changed on 28 June 2011, the acronym 'OIC' remains unchanged. Unless otherwise indicated, all information pertaining to the OIC and its instruments (except for the 1972 OIC Charter) has been obtained from its official website

<http://www.oic-oci.org/> and the following links to it: <http://www.oic-oci.org/oicv3/home/?lan=en>

; <http://www.oic-oci.org/index.asp> and <http://www.oic-iphrc.org/en/legal/> all accessed 25 March 2016.

⁵⁴ Unless otherwise indicated, all information pertaining to the UN and its instruments have been obtained from its official website <http://www.un.org>. For the UN Treaty Collection see

<http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en> both accessed 25 March 2016.

⁵⁵ Given the diverse membership of the OIC, all three OIC Islamic instruments are officially available in Arabic, English and French. The one LAS instrument, although officially available only in Arabic, has also been translated into English. While there may be variations in the translations which may impact on the interpretation of certain provisions, only the English versions of instruments are examined in this article. For the sake of convenience, in order to distinguish between the one LAS and the three OIC instruments, they may be referred to as 'Arab' and 'Islamic' instruments, respectively. Alternatively, the instrument may be prefixed with the words 'LAS' or 'OIC' to give them a double-barrelled acronym. The four instruments may also generally or collectively be referred to as 'Islamic' instruments.

(ICCPR) of 1966, the First Optional Protocol to the ICCPR of 1966 (ICCPR- OP I), the Second Optional Protocol to the ICCPR of 1989 (ICCPR-OP II) (Aiming at the Abolition of the Death Penalty); the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, the Optional Protocol to the ICESCR of 2008 (ICESCR OP); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) of 1979, the Optional Protocol to the CEDAW of 1999 (CEDAW OP); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 1984, the Optional Protocol to the CAT of 2002 (CAT OP); the Convention on the Rights of the Child (CRC) of 1989, the First Optional Protocol to the CRC of 2000 (CRC-AC OP I) (on the Involvement of Children in Armed Conflict), the Second Optional Protocol to the CRC of 2000 (CRC-SC OP II) (on the Sale of Children, Child Prostitution and Child Pornography), the Third Optional Protocol to the CRC of 2011 (CRC-CP OP III) (on a Communications Procedure); the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) of 1990; the Convention on the Rights of Persons with Disabilities (CRPD) of 2006, the Optional Protocol to the CRPD of 2006 (CPRD-OP); and the International Convention for the Protection of All Persons from Enforced Disappearance (CED) of 2006. There are no Protocols to the CMW, the CED, and the CERD.

While this brief appears to be fairly straightforward, it proved to be a challenging task for several reasons. The Western world generally understands the UN instruments to have ‘international-universal’ or global import while in the Muslim world the Islamic instruments are deemed to have ‘regional-international’, though not universal, import. To avoid confusion, for the purposes of this article, the UN and Islamic instruments will respectively be referred to as ‘international’ and ‘regional’ instruments. While they also have other functions, this article only focuses on the role of all three organisations as human rights ‘systems’, ‘regimes’ or ‘frameworks’, as they have also variously been referred to.

The two Islamic organisations are not mutually exclusive and are inextricably linked through a common membership that is, to the extent that this is possible, essentially constituted on the basis of a common Islamic ‘ideology’ and even a shared Islamic ‘culture’. While the LAS is comprised of only Muslim majority Member States, they are not all Arab states, which means that it is not a purely ‘Arab’ organisation. All LAS members are also members of the OIC. Membership of the OIC in terms of new admission criteria appears to be limited to Muslim majority countries.⁵⁶ Although the OIC is indeed mostly constituted of such countries, its current membership includes non-Muslim countries with Muslim minority populations, for example, Gabon with its estimated 1% Muslim population. Membership also extends over four continents, namely, Africa, Asia (including the Middle East region or Arab states in Asia), Europe and South America. What therefore gives Islamic instruments a definite international edge is the fact that the membership of both the LAS and OIC is not restricted to one region and extends beyond the geographical boundaries of what is traditionally perceived to constitute the ‘Muslim world’. The diversity of their current members and members with, or awaiting, observer status, lends further support to their international import. However, their diverse membership, the fact that even though some

⁵⁶ While it appears from Article 3 (2) of the 2008 OIC Charter, that new memberships will be based upon states ‘...having Muslim majority’ populations, Article 3 (3) gives the assurance that ‘[n]othing in the present Charter shall undermine the present Member States’ rights or privileges relating to membership or any other issues.’

members, for example, Turkey and Tunisia (more liberal), may have Muslim majority populations, *Shari'a* [Islamic law] hardly features in their domestic legislation, and the distinctive ways that Islam is practised in certain countries, for example, Saudi Arabia and Iran (more conservative), also raise questions about the 'truly' Islamic nature of these founding organisations and the extent to which their instruments can be deemed to be 'purely' Islamic. In so far as it may clarify and provide the necessary historical context of current instruments, a brief reference will also be made to prior versions of current instruments in all three systems, especially if such versions were subsequently affirmed in the later documents. However, given its non-binding status and the fact that it is not a current document, brief reference is made to what constituted the first such formal Islamic law based document or instrument, namely, the Universal Islamic Declaration of Human Rights (UIDHR) of 1981⁵⁷ mainly to highlight the following points:

although its religious features have influenced other instruments, such as the OIC-CDHRI, the UIDHR is not incorporated into the positive (statutory or codified) law of Arab and Islamic countries; it is not attributed to either the LAS or the OIC; while it reiterates many of the rights contained in the first landmark human rights UN instrument (the Universal Declaration of Human Rights (UDHR) of 1948), the UIDHR does not refer to any of the then existing international instruments nor does it give any indication that it intended to replace the UDHR. However, especially given the fact that the then existing LAS members of the UN played an instrumental role in its formulation and/or adoption and that it continues to be relevant to the instruments of all three bodies, the UDHR will be elaborated upon. Since all the main organisations under consideration have dual charter based and treaty-based systems, 'current' instruments in this chapter not only refer to more recently crafted instruments but also to working documents, like charters, that may have either declamatory (guiding) or binding effect. An analytical perspective, therefore, in order to be both meaningful and effective, requires a preceding examination of the ways in which the respective charter and treaty-based systems of especially the three (the UN, LAS and OIC) main parallel organisations operate and their instruments and memberships overlap, duplicate, reinforce or even contradict each other.

To further complicate matters, (whether it's a complication or acknowledgement by the OIC and the UN) the LAS Member States not only subscribe to OIC instruments, but members of both these organisations' Member States also subscribe to UN instruments and to additional regional instruments. Brief reference will for this reason also be made to other regional organisations, with a focus on only one such system, namely, the African Union (AU)⁵⁸, its founding Charter, and one of its treaties (the African Charter on the Rights and Welfare of the Child (ACRWC)⁵⁹) mainly for comparative purposes. Overlapping memberships of these different organisations and being State Parties to their instruments mean that states' obligations in respect of each of these instruments, which are often similar in nature, may differ. In the case of Islamic instruments, states may also have to conform to national legislation, for example, constitutions which are usually based on principles of *Shari'a* [Islamic law].

⁵⁷ See the text of the IUDHR (adopted on 19 September 1981) at <<http://www.albab.com/arab/docs/international/hr1981.htm>> accessed 3 April 2016. For a detailed discussion see Ann E Mayer, *Islam and Human Rights: Tradition and Politics* (5th edn, Westview Press 2013).

⁵⁸ Unless otherwise indicated, all information pertaining to the AU and its instruments has been obtained from its official website <<http://www.au.int/>> accessed 25 March 2016.

⁵⁹ See the 'ACRWC Charter-Full text' <<http://www.acerwc.org/acerwc-full-text/>> accessed 25 March 2016.

The focus of this article is not, however, on the domestic or national laws of State Parties nor, for that matter, given the split in the human rights debate and that it has run the gamut of Muslim and non-Muslim scholars alike, on the nature and context of Islamic human rights. The focus, instead, is to the extent to which human rights instruments, at regional and international levels, contain principles that are of a moral nature; norms that are able to be put into practice; rights that are sustainable; and mechanisms that make these provisions of instruments enforceable. Furthermore, the focus includes the extent to which the instruments can be seen, on the one hand, as means of enhancing and protecting human rights, and limiting them, on the other hand, for Muslims and even non-Muslims because of a prioritisation afforded to Islamic law, based on divine law, over human law. Member States may sign and/or ratify UN instruments and may do so with reservations. This gives rise to conflict with human rights which is especially evident in the following areas: freedom of religion and the right to change religion (apostasy from Islam); gender equality within marriage; socio-economic rights; the right to self-determination; and the impact of colonisation on the human rights of people in 'non-self-governing territories' as compared to those enjoyed by citizens of sovereign states. Given that the issues arising from these areas are neither 'new' nor 'fully settled', they all remain current matters of concern and include the concern about measures of implementation or enforcement of human rights in case of violations. Often Islamic instruments themselves oblige State Parties to also comply with their obligations under international law and other UN treaties that they may have ratified. However, in the case of violations, and unlike the case with, for example, the International Criminal Court (ICC) which was established in July 2002 as an independent international organisation that does not form part of the UN, a comparable international court, although proposed by the OIC in 1981⁶⁰ already, has yet to be established in the Muslim world.

This article, without elaborating on it, proceeds from the premise, that notwithstanding the apologetic and modernist debates over the compatibility or not of Islamic human rights with the tensions, differences and contradictions that exist in respect of the conceptual understanding of human rights (especially pronounced in areas pertaining to women, children and other vulnerable groups) in the Islamic world, and the differences in ideological perspectives from within Islam itself, that Islam and its later development, Islamic law, is not hermetically apart from or 'sealed off' from the notion of human rights. Furthermore, that a normative human rights framework exists in Islam that lends itself to be compatible with modern and Western notions and conceptions thereof and, therefore, also with the normative human rights framework established by the UN.⁶¹

The premise that human rights exist in Islam also explains why it was possible for Muslim states to become members of and to play a role in the UN's formulation of some Western instruments at the international level, one of which also makes direct and formal reference to principles of Islamic

⁶⁰ The closest that the OIC has come to having a judicial organ, was its decision in 1981 to create an International Islamic Court of Justice in Kuwait. See Article 14 of the 2008 OIC Charter. See footnote 86 for the (similar) LAS position

⁶¹ See in general Najma Moosa, 'Muslim Personal Laws Affecting Children' Diversity, Practice and Implications for a New Children's Code for South Africa' (1998) 115 *South African Law Journal* 479, 508-524; Najma Moosa, 'Human Rights in Islam' (1998) 14 *South African Journal on Human Rights* 508; Mashood A. Baderin, *International Human Rights and Islamic Law* (Oxford University Press 2005); Mashood A. Baderin, 'Islam and the Realization of Human Rights in the Muslim World: A Reflection on Two Essential Approaches and Two Divergent Perspectives' (2007) 4 *Muslim World Journal of Human Rights* 1 and Mashood A Baderin, 'Human Rights and Islamic Law: The Myth of Discord' (2005) 2 *European Human Rights Law Review* 165.

law, to subscribe to many, if not all, of these instruments, and to formulate comparable instruments at the regional level, some of which also formally acknowledge UN instruments.

Another difficulty, though not insurmountable, in researching this article was the paucity of accurate information pertaining to instruments in official documents, combined with a plethora of contradictory information, on the subject. Authors of many leading books on the topic, with some exceptions, in editions as recent as 2012, consider the LAS and the OIC to be less developed and established than other regional systems. They therefore cursorily acknowledge the LAS and the OIC as ‘alternative’, ‘fledgeling’ or ‘sub-regional’ ‘arrangements’ rather than full regional systems and deem their instruments as essentially ‘dormant’ and therefore offering little protection of human rights. The LAS came into existence at around the same time as the UN, and although the OIC sometime thereafter, both were already in existence before the UN made its first call encouraging the establishment of such organisations at the regional level. Given this fact and the role of Member States of the LAS in founding the UN and in both the LAS and OIC in the formulation of its instruments, this article will determine whether such treatment is still warranted and the extent to which such information is still accurate. Given the benefit that this ‘Recent Developments’ section of JISPIL may, therefore, hold for future research in this area and to allow for a better comparative understanding of Islamic and international instruments, the first few sections of the article are of a general clarifying, and necessarily contextual, nature. To this end the article covers and objectively engages with different literature and academic views on the topic, moving from a restatement of past and current views to critical analyses and new propositions on the relevant issues, and is accordingly divided into ten sections as follows. Following this Introduction, Sections 2.1-2.4 introduces the founding organisations of the UN, Islamic (the LAS and the OIC) and AU instruments, highlights historical linkages between the four systems, compares their founding charters and treaty systems and examines the (overlapping) memberships. Section 2.5 examines the demographics of the OIC membership. Sections 3.1-3.5 situates international and Islamic instruments in legal and religious terminological, cultural and political (2010-2012 ‘Arab Spring’) contexts. In order to determine their status in LAS and OIC states, Section 4.1, which also sets the context for the detailed discussion in Sections 6.2-6.4, lists in a Table and briefly analyses, in conjunction with the statistical information provided in the two attached Tables, the extent to which OIC and LAS members, as UN members, subscribe to (sign, ratify, accede) the nine major UN instruments listed above and some of their Protocols and limit (through reservations and declarations) the application of four such core international instruments. Sections 5.1-5.5 analyses the legal status of the four current Islamic instruments and the extent to which the Member States subscribe to and limit them. A similar comparison is also made in Sections 4.1 and 5.1 with one regional instrument of the AU. With an emphasis on their more controversial provisions, Sections 6.2-6.4 compares the provisions of three Islamic instruments with those contained in the UN instruments and with the one instrument of the AU. This is followed in Section 7.1 with some concluding observations.

2.1 The UN charter and treaty-based system

Around the mid-twentieth century, the UN officially came into existence on 24 October 1945 upon the ratification of the UN Charter. The Charter was signed on 26 June 1945 in San Francisco by representatives of 50 countries. Poland signed it later, on 15 October 1945, thus increasing the total number of founding members to 51. Seven, then already

independently existing, Muslim-majority countries, namely, Egypt, Iran, Iraq, Lebanon, Saudi Arabia, Syria and Turkey, were among these 51 founding members and thus constituted 14% of the original UN membership.

The UN Charter contains several Articles which specifically refer to human rights. These rights were categorically brought within the public domain of international law when the Charter was signed by the Member States who, by doing so, also agreed to take measures to protect human rights.

The seven Muslim-majority countries, joined by two more, namely, Afghanistan and Pakistan, also contributed to the creation of the UN's first, though non-binding, instrument, the UDHR of 1948. The UDHR was in turn followed by nine treaties. The UN Charter and these treaties together constitute the core of the UN system of human rights. This duality (charter and treaty) in the UN system, however, has meant that contradictory and/or conflicting situations may arise as a result. The headquarters of the UN is based in New York City and the UN currently has 193 members. Thus, while all UN Member States, by virtue of their membership alone, are deemed to fall within the ambit of the UN Charter, not all are duty bound to observe the treaties or conventions of the UN unless they voluntarily choose to do so by subscribing to them by ratification or accession, and then, too, with the blessing of the UN itself, they may limit such subscription by adding reservations or declarations. The duality of the UN system has therefore made it easier for all its Arab and the Muslim Member States to join the UN and to subscribe to its treaties and conventions, albeit often with reservations and interpretive declarations in so far as their provisions may conflict with principles of Islamic law (*Shar'ia*).

As listed in the Introduction, since the adoption of the UDHR in 1948, some nine major human rights treaties have also been adopted under UN sponsorship. While these were certainly not the only such instruments adopted, they differ from the others in that treaty monitoring bodies have been established to supervise them. The UN instruments follow an essentially anthropocentric⁶² approach to human rights in terms of which rights are either very generally stated as principles or as guaranteed rights. Some of these instruments are supplementary (e.g. those dealing with women and children) and others are specific (e.g. those dealing with torture) and the particular impact of this distinction may differ.

2.2 The LAS and OIC charter and treaty-based systems

The LAS and OIC are not 'fledgling' organisations, at least not in terms of age. They are both long-standing organisations that already existed prior to the first (1977) UN call for the creation of regional organisations. Not only were members of the LAS among the founding members of the UN, it was also established in 1945 in the same year as the UN *and even a few months before it*. The establishment of the OIC, however, only followed several years later in 1969. However, while they are the two major systems that exist at the regional level to regulate Islamic human rights instruments, it is true that in comparison to the four existing regional systems discussed in Section 2.4 below, the LAS

⁶² Mashood A Baderin, *International Human Rights* (n 10) 51.

and the OIC are not nearly as well established as three of these four systems.

In 2016, the LAS celebrated its 71st anniversary. It was established on 22 March 1945 in Cairo, Egypt, as the first regional organisation of its kind. The LAS was founded in terms of the Charter of the Arab League (also known as the Pact of the League of Arab States) of 1945⁶³(as the constitutive document of the LAS). Unlike the more encompassing position of the two dedicated Human Rights LAS Arab Charters of 1994 and 2004 (effective from 2008 and in the process of being revised (2015)) which are detailed in Section 8.2, the founding 1945 Pact or Charter does not appear to make any direct reference to the content or principles of human rights though the objectives set out in Article 26⁶⁴clearly emphasise several matters pertaining to human rights, including economic, financial, communications, cultural, nationality, social and health matters. What must also not be forgotten is that at that stage (1945) not only was the UDHR (1948) not as yet adopted, but many Arab Islamic countries were still colonised, which explains why only seven independent states then constituted the LAS.⁶⁵The headquarters of the LAS is based in Cairo, Egypt, and the LAS are currently comprised of 22 Member States.⁶⁶Its four Observer States are: Eritrea (80% Muslim population); Brazil (0.6%); Venezuela (0.5%) and India (14%).

The year 2016 marked the 47th anniversary of the OIC. While that there may have been other underlying and political factors⁶⁷at play that probably also motivated its establishment as a second 'Middle East' regional body, the OIC was established on 25 September 1969 in Rabat, Morocco. The Charter establishing the OIC, namely, the Charter of the Organisation of The Islamic Conference (1972 OIC Charter), was, however, only adopted almost two and half years later in February 1972 and entered into force on 28 February 1973.⁶⁸

The 1972 OIC Charter, much like the founding Charter or Pact of the LAS, but unlike the OIC's 2008 Charter which it has replaced, also did not directly deal with human rights, although its Preamble (given its interpretative role in putting provisions into context) did reaffirm a commitment to both the UN Charter (1945) and fundamental human rights.⁶⁹ Its headquarters is based in Jeddah, Saudi Arabia, and it currently has 57 members.⁷⁰

⁶³ Although available on the LAS website, a translation ('Pact of the League of Arab States, March 22, 1945') is available at http://avalon.law.yale.edu/20th_century/arableag.asp accessed 25 March 2016.

⁶⁴ See also Christof Heyns *Human Rights Law in Africa*, vol 1 (international Human Rights Law in Africa, Martinus Nijhoff Publisher 2004) 732.

⁶⁵ In terms of Article 1 of the 1945 Charter they were Syria, TransJordan (now Jordan), Iraq, Saudi Arabia, Lebanon, Egypt and Yemen.

⁶⁶ The 22 LAS states (all also members of the OIC), and their dates of joining are as follows: Algeria (Aug 1962), Bahrain (Sept 1971), Comoros (Nov 1993), Djibouti (Sept 1977), Egypt (Mar 1945), Iraq (Mar 1945), Jordan (Mar 1945), Kuwait (July 1961), Lebanon (Mar 1945), Libya (Mar 1953), Mauritania (Nov 1973), Morocco (Oct 1958), Oman (Sept 1971), Palestine (Sept 1976), Qatar (Sept 1971), Saudi Arabia (Mar 1945), Somalia (Feb 1974), Sudan (Jan 1956), *Syria (Mar 1945), Tunisia (Oct 1958), United Arab Emirates (UAE) (Nov 1971), and Yemen (May 1945). See Christof Heyns (n 13)732. *Syria's active membership of the LAS was temporarily suspended on 12 November 2011 due to the uprisings in Syria.

⁶⁷ See in general Azin Tadjini 'The Organisation of Islamic Cooperation and Regional Challenges to International Law and Security' (2012) 4 *Amsterdam Law Forum* 37-48 <http://ojs.ubvu.vu.nl/alf/article/view/265/451> accessed 2 April 2016.

⁶⁸ It '...was registered as an international treaty with the UN on 1 February 1974 in conformity with Article 102 of the UN Charter, making [it] evocable before the organs of the UN'. Baderin, *International Human Rights* (n 10) 226. As indicated, the 1972 Charter is not available on the OIC website. For an abridged version see Christof Heyns (n 13) 764-765.

⁶⁹ See Christof Heyns (n 13) 763 and see Section 5.5 for a discussion of the 2008 OIC Charter.

⁷⁰ The 57 OIC Member States (common LAS membership in bold), including their dates of joining, are as follows: Afghanistan (1969), Albania (1992), Algeria (1969), Azerbaijan (1992), Bahrain (1972), Bangladesh (1974), Benin (1983), Brunei-

In contrast to the more anthropocentric approach of major UN instruments, Arab and Islamic instruments reaffirm a more theocentric⁷¹ approach to human rights under Islamic law. In comparison with the nine major UN instruments, six of which also have additional Optional Protocols, the four, one LAS and three OIC, Islamic instruments, all appear to have no Protocols. One of the three OIC documents, the Cairo Declaration, is considered to be one, if not the, 'main' such instrument in the field. It is, however, merely of a declamatory (guiding) or non-binding nature.

2.3 The AU charter and treaty-based systems

The AU was originally founded as the Organisation of African Unity (OAU) in 1963. On 9 July 2002, the OAU was transformed into, rather than replaced by, the AU. The idea of establishing the AU, it appears, was first proposed in 1999 by former Libyan leader Muammar Gaddafi who also later chaired the AU for a year from 2 February 2009 to 31 January 2010. On 26 June 1981, Member States of the then OAU unanimously adopted the African Charter on Human and Peoples' Rights (African Charter) which is also known as the Banjul Charter. The African Charter became effective on 21 October 1986 and is a binding treaty that covers several categories of rights and duties. There are 26⁷² OIC Member States that are members of the AU and have adopted the African Charter. There is, therefore, a focus on the AU as an example of a regional organisation for two main reasons. As will be detailed in Sections 2.4 and 4.1, a large number of LAS and OIC members are also members of the AU and subscribe to the ACRWC of 1990. Given comparable children's instruments, namely, the OIC-CRCI and the UN-CRC, children's rights, usually deemed to be the least controversial topic in terms of *Shari'a* [Islamic law], is, therefore, an ideal area to use for comparative purposes in Sections 6.2-6.4. This is so since it allows us to ascertain, by examining areas of conformity and/or conflict between these instruments and even between the Islamic instruments themselves, whether children's rights are as innocuous as they are made out to be or whether ultimately it only means that many OIC countries contend with a hotchpotch of instruments and a blurring of children's rights that makes them both quite inconceivable to imagine and literally impossible to implement effectively. The AU currently has 54 members, all from one continent, and is based in Addis Ababa, Ethiopia.

2.4 Overlapping memberships of the UN, the LAS, the OIC, the AU and other regional inter-governmental organisations

Darussalam (1984), Burkina-Faso (1974), Cameroon (1974), Chad (1969), Comoros (1976), Cote d'Ivoire (2001), Djibouti (1978), Egypt (1969), Gabon (1974), Guinea (1969), Guinea-Bissau (1974), Guyana (1998), Indonesia (1969), Iran (1969), Iraq (1975), Jordan (1969), Kazakhstan (1995), Kuwait (1969), Kyrgyzstan (1992), Lebanon (1969), Libya (1969), Malaysia (1969), Maldives (1976), Mali (1969), Mauritania (1969), Morocco (1969), Mozambique (1994), Niger (1969), Nigeria (1986), Oman (1972), Pakistan (1969), Palestine (1969), Qatar (1972), Saudi Arabia (1969), Senegal (1969), Sierra Leone (1972), Somalia (1969), Sudan (1969), Suriname (1996), Syria (1972)*, Tajikistan (1992), The Gambia (1974), Togo (1997), Tunisia (1969), Turkey (1969), Turkmenistan (1992), Uganda (1974), United Arab Emirates (1972), Uzbekistan (1996), and Yemen (1969).
*As was the case with the LAS, Syria's active membership of the OIC was suspended on 15 August 2012.

⁷¹ Mashood A Baderin, *International Human Rights* (n 10) 51.

⁷² The 26 OIC (nine with common LAS membership in bold) Member States and their dates of ratification of the AU Charter are as follows: 1, Algeria (01/03/1987); 2, Benin (20/01/1986); 3, Burkina-Faso (06/07/1984); 4, Cameroon (20/06/1989); 5, Chad (09/10/1986); 6, Comoros (01/06/1986); 7, Cote D'ivoire (06/01/1992); 8, Djibouti (11/11/1991); 9, Egypt (20/03/1984); 10, Gabon (20/02/1986); 11, Guinea (16/02/1982); 12, Guinea-Bissau (04/12/1985); 13, Libya (19/07/1986); 14, Mali (21/12/1981); 15, Mauritania (14/06/1986); 16, Mozambique (22/02/1989); 17, Niger (15/07/1986); 18, Nigeria (22/06/1983); 19, Senegal (13/08/1982); 20, Sierra Leone (21/09/1983); 21, Somalia (31/07/1985); 22, Sudan (18/02/1986); 23, The Gambia (08/06/1983); 24, Togo (05/11/1982); 25, Tunisia (16/03/1983) and 26, Uganda (10/05/1986).

Membership of the LAS and OIC not only overlaps but all 22 members (100%) of the LAS are also members of the OIC (57 members) constituting 39% of its membership. All OIC Member States and therefore all LAS members, bar one common member (Palestine), are also full members of the UN⁷³(193 members) and constitute 30% of its membership. This signals a steady growth from 14% in 1945 and 17% in 1948. LAS members constitute 11% of the UN membership. While Israel became a UN member on 11 May 1949, Palestine until very recently remained the OIC's only member that was an observer 'entity' to the UN. On 29, November 2012 the UN voted overwhelmingly in favour of a resolution to upgrade its status to that of a non-member observer state. While it is therefore still not a full member state, its formal recognition as an observer state, and therefore as a 'state', means that Palestine will now be able to enjoy certain privileges which it did not have before, most notably access to UN agencies. This, for example, also explains why, as evident from Table 1 and Section 4.1, it has since this date acceded to seven of the nine UN instruments under discussion in this article. It is clear from its membership status in both organisations that even though it has yet to gain real or formal independence, the LAS and the OIC already regard Palestine as an independent state.

Membership of the LAS and OIC is also not restricted to the Arab region or Muslim countries. There are three other regional human rights organisations in the world that are well established. These are the systems in Europe (Council of Europe (CoE))⁷⁴(not to be confused with the European Union or EU), the Americas (or Inter-American) (Organisation of American States (OAS))⁷⁵, and Africa (African Union (AU)). There is also one less established and more recent sub-regional body, namely, the Association of Southeast Asian Nations (ASEAN)⁷⁶. Although more than half of the world's population are estimated to live in Asia, apart from the ASEAN, to date there exists no composite and unified regional human rights system in Asia.

As indicated, nearly half of the members of the OIC, that is 27 of 57 (47%), are African states of which 26 are also members of the AU (48% of 54 members). Morocco, although an African state and member of the OIC, is not a member of the AU. In the OIC, several African countries are French-speaking but in many English is the dominant language. Of

⁷³ The 56 OIC (common LAS in bold) Member States of the UN and their date of joining the UN are as follows: 1, Afghanistan (19 Nov 1946); 2, Albania (14 Dec 1955); 3, Algeria (8 Oct 1962); 4, Azerbaijan (2 March 1992); 5, Bahrain (21 Sept 1971); 6, Bangladesh (17 Sept 1974); 7, Benin (20 Sept 1960); 8, Brunei-Darussalam (21 Sept 1984); 9, Burkina-Faso (20 Sept 1960); 10, Cameroon (20 Sept 1960); 11, Chad (20 Sept 1960); 12, Comoros (12 Nov 1975); 13, Cote D'Ivoire (20 Sept 1960); 14, Djibouti (20 Sept 1977); 15, Egypt (24 Oct 1945); 16, Gabon (20 Sept 1960); 17, Guinea (12 Dec 1958); 18, Guinea-Bissau (17 Sept 1974); 19, Guyana (20 Sept 1966); 20, Indonesia (28 Sept 1950); 21, Iran (24 Oct 1945); 22, Iraq (21 Dec 1945); 23, Jordan (14 Dec 1955); 24, Kazakhstan (2 March 1992); 25, Kuwait (14 May 1964); 26, Kyrgyz (Kyrgyzstan (2 March 1992); 27, Lebanon (24 Oct 1945); 28, Libya (14 Dec 1955); 29, Malaysia (17 Sept 1957); 30, Maldives (21 Sept 1965); 31, Mali (28 Sept 1960); 32, Mauritania (27 Oct 1961); 33, Morocco (12 Nov 1956); 34, Mozambique (16 Sept 1975); 35, Niger (20 Sept 1960); 36, Nigeria (7 Oct 1960); 37, Oman (7 Oct 1971); 38, Pakistan (30 Sept 1947); 39, Qatar (21 Sept 1977); 40, Saudi Arabia (24 Oct 1945); 41, Senegal (28 Sept 1945); 42, Sierra Leone (27 Sept 1961); 43, Somalia (20 Sept 1960); 44, Sudan (12 Nov 1956); 45, Suriname (4 Dec 1975); 46, Syria (24 Oct 1945); 47, Tajikistan (2 March 1992); 48, The Gambia (21 Sept 1965); 49 Togo (20 Sept 1960); 50 Tunisia (12 Nov 1956); 51, Turkey (24 Oct 1945); 52, Turkmenistan (2 March 1992); 53, Uganda (25 Oct 1962); 54, United Arab Em. (9 Dec 1971); 55, Uzbekistan (2 March 1992) and 56, Yemen (30 Sept 1947).

⁷⁴ The CoE was founded in 1949 and has 47 members. See 'The Council of Europe in Brief: Our Member States' <http://www.coe.int/en/web/about-us/our-member-states> accessed 2 April 2016.

⁷⁵ The OAS was founded in 1948 and has 35 members. See 'Organisation of Americas States' http://www.oas.org/en/member_states/default.asp accessed 2 April 2016.

⁷⁶ This Association, a collection of 10 states, was more formally constituted in 2007 with the adoption of the ASEAN Charter. See 'ASEAN Charter' < <http://www.asean.org/asean/about-asean/>> accessed 2 April 2016.

these African countries, 9 AU states (or 10 African states if Morocco is included) have a membership of both the LAS and OIC. For OIC members in South Asia (Bangladesh and Pakistan) Indian languages are dominant. Members also include former Soviet states, such as Azerbaijan, Turkmenistan, and Kazakhstan. Three of the members of the OIC, namely, Turkey, Azerbaijan, and Albania, are also members of the CoE. Turkey was, in fact, a founder member of the CoE. Kazakhstan, a European country, is also a member of the OIC although it is not a member of the CoE. Three South-east Asian members of the OIC, namely, Indonesia, Malaysia, and Brunei, are also members of the regional association the ASEAN (10 members). OIC members Suriname and Guyana are also members of the OAS. The Muslim world or 'region' therefore overlaps with the Asian, European, African and South American regions.

While members of all four of these organisations (the CoE, OAS, AU and ASEAN) also belong to the UN, members of the OIC also belong to all four of these organisations. In fact, the OIC has the same number of members (57) as the CoE (which is the largest in terms of the Member States of the three (including the Americas and AU) more established systems). As indicated, in comparison with their membership of the CoE and the ASEAN, a larger number of OIC members belong to the AU. The further influence of the OIC in both the Muslim world and the UN, as a potential force to be reckoned with, should therefore not be underestimated.

2.5 Demographics of the OIC membership

New demographic projections by the Pew Research Centre estimate that although Christians currently constitute the world's largest religious group and Muslims were estimated to account for only 1.6 billion of the world's population of 6.9 billion in 2010, by 2050 (when it is expected to rise to 9.3 billion), '[t]he number of Muslims will nearly equal the number of Christians around the world...'⁷⁷. This is expected to result in '...near parity between Muslims (2.8 billion, or 30% of the population) and Christians (2.9 billion, or 31%), possibly for the first time in history.'⁷⁸ According to a 2012, Special Report of the United States Commission on International Religious Freedom (USCIRF), Muslims living in the 56 majority Muslim and the other OIC Member States are estimated to represent 1.3 of the 1.6 billion.⁷⁹ According to this USCIRF Report, 47 countries in the world have significant Muslim populations (inclusive of 46 OIC Member States) while 10 OIC Member States do not have Muslim majority populations.⁸⁰ However, according to

⁷⁷ See Pew Research Centre, April 2, 2015, 'The Future of World Religions: Population Growth Projections, 2010-2050', page 5 <<http://www.pewforum.org/2015/04/02/religion-projections-2010-2050/>> accessed 2 April 2016.

⁷⁸ *ibid*, page 7.

⁷⁹ See the 2012 USCIRF Report titled 'The Religion-State Relationship & the Right to Freedom of Religion or Belief: A Comparative Textual Analysis of the Constitutions of Majority Muslim Countries and Other OIC Members', page 5 <[http://www.uscifr.gov/sites/default/files/resources/USCIRF%20Constitution%20Study%202012%20\(full%20Text\(2\)\).pdf](http://www.uscifr.gov/sites/default/files/resources/USCIRF%20Constitution%20Study%202012%20(full%20Text(2)).pdf)> accessed 25 March 2016.

⁸⁰ According to pages 28-29 of the 2012 USCIRF Report (n 28) the 47 Muslim majority countries are Afghanistan, Albania, Algeria, Azerbaijan, Bahrain, Bangladesh, Brunei, Burkina Faso, Chad, Comoros, Djibouti, Egypt, Gambia, Guinea, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Kosovo, Kuwait, Kyrgyzstan, Lebanon, Libya, Malaysia, Maldives, Mali, Mauritania, Morocco, Niger, Nigeria, Oman, Pakistan, Qatar, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Syria, Tajikistan, Tunisia, Turkey, Turkmenistan, United Arab Emirates (UAE), Uzbekistan, and Yemen. The 10 other OIC members which do not have Muslim majority populations are Benin, Cameroon, Gabon, Guinea-Bissau, Guyana, Ivory Coast (or Cote D'Ivoire), Mozambique, Suriname, Togo, and Uganda. Significantly, Palestine, although an OIC Member State with observer (entity) status at the UN, has been excluded from this list, while Kosovo, a non-OIC member, has been included.

another publication (also a Report) on the estimated Muslim world population, and which therefore includes all OIC countries and the percentage of Muslims in each one, only six OIC states (Benin, Gabon, Guyana, Mozambique, Suriname, and Uganda) have a Muslim minority population and only one (Burkina-Faso) has a 50% Muslim population. The rest (50) of the OIC countries have a Muslim majority population.⁸¹A large number of Muslims also live in non-Muslim or secular countries which are not part of the OIC. While memberships may have been withdrawn or suspended, several countries (all with Muslim minority populations) are currently still seeking observer status at the OIC while others are awaiting full membership. If these applications are approved, the OIC's status and influence will most likely also increase.

Of the current five OIC Observer States, four, namely, Bosnia & Herzegovina (40% Muslim population); Russia (18%); Thailand (14%) and Turkish Cypriot State (or 'Turkish Republic of Northern Cyprus' which is not recognised by the UN as a legal 'state') (33%), all have Muslim minority populations; and, significantly, one state (Central African Republic) which has a Muslim majority population (55%), (although awaiting such status) is not a full OIC member. While India has in the past, with the support of Saudi Arabia, applied for observer status, its application was rejected to apparently appease Pakistan on the basis of the 'ongoing conflict' between the two states which not too long ago was also one unified country. Given Russia's observer status, this is a pity because India apparently has the third largest Muslim populations in the world. India is, however, a LAS Observer State. The fact that countries continue to seek observer status should be encouraged since it is a positive indication that the OIC has the potential to increase its existing range of influence to include these states.

According to the USCIRF Report, of the 46 Muslim-majority countries mentioned, only 23 have constitutionally declared Islam to be the religion of the state while some 22 declare Islamic principles or law (*Shari'a*) to be a source of law or for legislation.⁸²It should therefore not be surprising that the domestic or national law of these countries is invariably also based on Islamic law. This also becomes evident from the provisions of some of the Arab and Islamic instruments discussed in Sections 5.2-5.5 and 6.2-6.4. It is therefore also more correct to deem the OIC and the LAS as representing ideologically constituted rather than geographically constituted regions.

3.1 Human rights instruments in legal contexts

Given the confusion that may arise especially in evaluating the legal status of Arab and Islamic instruments, the following explanation of the language of human rights are both useful and provides some clarity. The legal status of UN instruments varies and can technically be divided into 'soft' (non-binding) and 'hard' (binding) law, although, given the increasing importance of 'soft law' as a source of international human rights law, not strictly or rigidly so. On the one hand, 'declarations', 'principles', 'resolutions',

⁸¹ See 'This Report Includes All the Countries of the World and Shows How Many Muslims are in Each One' <<http://www.islamicweb.com/begin/population.htm>> accessed 25 March 2016. Although outdated, the estimated percentage Muslim populations of all OIC states in Tables 2 have been gleaned from this Report.

⁸² USCIRF Report (n 28); Mashood A Baderin 'Islam and Human Rights in the Constitution of African States: Agenda for Good Governance' in Hatem Elliesie (ed) *Islam and Human Rights* (Peter Lang GmbH 2010) 123-153.

‘guidelines’, ‘standard rules’ and ‘recommendations’ or ‘recommendatory instruments’ are deemed to have no binding legal (contractual) effect, although they may have moral force – a typical example being the UDHR. On the other hand, international ‘treaties’, variously or interchangeably referred to as ‘covenants’, ‘protocols’, ‘conventions’ or ‘charters’, are equally legally binding on those states that ratify or accede to them. Protocols are additional legal instruments adopted to amend, supplement or complement and add aspects to existing treaties.

The fact that both UN and Arab and Islamic instruments make reference to ‘declarations’, ‘conventions’ and other instruments highlights that they all also take cognisance of non-binding instruments or ‘soft-law’, the value of which should, therefore, not be disregarded.

Merely signing an instrument without ratification is deemed to be indicative of the serious intention of a signatory to uphold the rights contained therein. However, if a state which has signed such an instrument also ratifies it, then it does not get any benefits, but is legally bound to uphold the fundamental human rights provisions and freedoms contained in the instrument for men, women and children, independently of the economic, social, political, cultural or religious contexts in which they live. Its performance in this regard will also be subject to international scrutiny. While accession to an instrument means that there has been no preceding act of signature, and it legally binds a state to the instrument’s terms and has the same legal effect as ratification, “‘succession of States” means the replacement of one State by another in the responsibility for the international relations of territory’.⁸³

Human rights are general, though not rigidly, classified into three categories. The first category, known as civil and political rights and referred to as first generation (blue) rights, includes rights to freedom of religion and life. The second category, known as socio-economic and cultural rights and referred to as second generation (red) rights, includes rights to social security and education. Third generation (green) rights include the right to a clean environment. Some rights are referred to as meta-rights. Meta-rights are defined as ‘...rights that protect rights. The most famous of these is the [USA] Miranda warning, which notifies suspects of their Fifth Amendment rights to silence and an attorney.’⁸⁴ Therefore, if those rights are taken away, then one is not able to access other rights. Some human rights, like the right to life, are also non-derogable, that is, absolute and therefore, cannot be reduced or restricted. However, and as is evident from Tables 1 and 2, respectively, many Arab and Islamic states that have both signed and/or ratified (acceded to) UN treaties pay lip service to these documents by simultaneously doing so with major reservations and interpretive declarations. However, not all of these are necessarily religion-based or related to religion, that is, because of Islamic law (*Shari’a*).

What exactly are ‘reservations’ and ‘declarations’; what is their legal status; and why have states added them? In terms of a general international law instrument which applies to

⁸³ See Article 2 (1) (b) of the Vienna Convention on Succession of States in respect of Treaties (1978) http://legal.un.org/ilc/texts/instruments/english/conventions/3_2_1978.pdf accessed 25 March 2016.

⁸⁴ See Charlotte Garden, ‘Meta Rights’ (2014) vol.83 *Fordham Law Review* 855, 855.

treaties between states, the UN Vienna Convention on the Law of Treaties (VCLT or Vienna Convention) of 1969, “reservation” means a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State’.⁸⁵ The UN defines declarations as follows: ‘Sometimes states make “declarations” as to their understanding of some matter or as to the interpretation of a particular provision. Unlike reservations, declarations merely clarify the state’s position and *do not purport to exclude or modify the legal effect of a treaty*. Usually, declarations are made at the time of the deposit of the corresponding instrument or at the time of signature’.⁸⁶ Thus while worthy of consideration, declarations do not have any legal effect.

Reservations concerning some of the provisions of a treaty can be made upon signature and confirmed upon ratification, or can be made upon ratification but not thereafter. In doing so, the state either limits or withholds its consent to be bound by the relevant provisions. While the UN, through this convention, itself, therefore, makes allowance for such reservations and while it seemingly does so for good reason, it has resulted in both positive and negative consequences. Some reservations may even have a ‘ruinous’ effect. Although Article 2 of the Vienna Convention does not make any reference to the withdrawal of reservations, Article 2 specifically makes provision for the withdrawal of reservations and of objections to reservations. It has, therefore, become a principle of international human rights law that states can, at any given time when deemed necessary and/or upon objection by other states, withdraw a particular reservation. A reservation may be revoked (excluded/withdrawn) or modified. It appears from the above that in the case of reservations and declarations it is ultimately their ‘effect’, rather than their ‘title’, that ought to matter. Given too that there are instances where it is difficult to discern from a particular treaty whether an objection may have amounted to a ‘reservation’ or a ‘declaration’, Table 2, rather than separately specifying actual numbers of reservations or declarations, merely gives the reader an indication of the number of UN-OIC and LAS states that may have added reservations or declarations (or both) at the time that the treaty affects it and regardless of whether or not these states may have subsequently (partially or fully) withdrawn them (as many in fact did).

3.2 Human rights instruments in cultural contexts

As far as the impact of culture is concerned, ‘Islam has for over fourteen hundred years united many and varied Islamic societies in very different geographical and cultural settings...Muslims in various countries are all culturally distinct from each other as Arab, Asian, African and European Muslims, and their respective cultures have influenced their practice and understanding of Islam’.⁸⁷ The OIC may be described as a regional international organisation which is composed mainly, though not exclusively, of predominantly Islamic nations since its membership spans four continents and includes

⁸⁵ See Article 2 (1) (d). The VCLT entered into force in 1980. <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> accessed 25 March 2016.

⁸⁶ My emphasis in italics. See ‘Glossary of terms relating to Treaty actions’ https://treaties.un.org/pages/Overview.aspx?path=overview/glossary/page1_en.xml#declarations accessed 25 March 2016.

⁸⁷ Najma Moosa, *Unveiling the Mind. The Legal Position of Women in Islam: A South African Context* (2nd edn, Juta 2011) 125.

not only Arab states but also Asian, African, European and South American states. Although not a religious organisation, it describes itself as ‘...the second largest inter-governmental organisation after the United Nations... [and] the collective voice of the Muslim world’.⁸⁸

While it is true that an ‘Islamic culture...transcends geographical boundaries and creates a strong heritage between the modern Muslim States’⁸⁹, it is equally true that cultures may vary within a particular Member State itself and even between the Member States themselves. So, for example, there might be little cultural uniformity between its African members and Arab members. Arabic, albeit the language of Islam (and of many of the instruments), is not necessarily the language of all Member States of the LAS or even the OIC. Islam is, however, the common and historical denominator in both organisations although ideological perspectives in this regard are diverse and range across the spectrum from conservative to modernist. This explains why some OIC members have entered reservations to UN treaties and other not, as is evident from Table 2. However, not only does the UN itself accommodate such ideological non-uniformity by allowing states to enter such reservations, but in doing so it also acknowledges that while all human rights may be universal, they are not necessarily conceptually understood in the same way in the Muslim and Western worlds and therefore cannot be expected to be treated uniformly. Different ideological perspectives also highlight such non-uniformity even within the same religion and also explain, to some extent, why some OIC states are party to certain international human rights treaties and not to others, as is evident from Table 1.

On the positive side, reservations allow many Muslim countries not only to deal effectively with and overcome the dilemma of the practical implementation of some of the international human rights norms at the domestic (national) level, but also to deal with similar conflicts that they may encounter when subscribing to instruments of other and more well-established regional systems of which they are also members.

On the negative side, by entering reservations to UN treaties countries have exempted themselves from upholding their human rights provisions. Also, declarations are often tantamount to ‘cloaked’ or cleverly ‘disguised’ reservations. As will be indicated in Section 4.1, the effectiveness of many, and the more so in the case of non-core than the core, international instruments is also further hindered by weak implementation processes and the lack of enforcement mechanisms. Although this is also echoed at the regional level, it is more the exception than the norm as will be indicated in Sections 5.2-5.5 and 6.2-6.4 when dealing with Arab and Islamic instruments. However, there is the positive effect that the entering of reservations does not detract from the fact that Arab and Islamic countries, by the mere fact of subscribing to and endorsing the instruments, have acknowledged the authority of the UN instruments whilst at the same time, through their reservations and the operation of Islamic law at the domestic (national) level, also deeming Islamic prescriptions as binding. It is also a fact that the public lives of many Muslims, who live in the Western world and, therefore, beyond the realm of the Arab-

⁸⁸ See ‘History’ <http://www.oic-oci.org/oicv3/page/?p_id=52&p_ref=26&lan=en> accessed 25 March 2016.

⁸⁹ Mashood A Baderin, *International Human Rights* (n 10) 225.

Islamic world, are governed by secular, civil law which incorporates these global instruments.

A very positive aspect of reservations is that they are deemed to provide ‘...an avenue through which international human rights law acknowledges that states may have legitimate justifications for insulating parts of the *culture* practised in that country from the homogenising effect of supra-national normativity’.⁹⁰

While the establishment of regional human rights regimes has been both welcomed and encouraged by the UN itself, Baderin quite aptly highlights that regional arrangements of this nature ought not to deviate ‘...from the universal aspiration of international human rights pursued by the UN...[and that] they narrow down the diverse *cultural differences and difficulties* that may confront the universal enforcement of international human rights in practice’.⁹¹ However, these difficulties and differences continue to prevail and are furthermore exacerbated by the fact that in Muslim countries they are also religion rather than merely culture based.

Regional Arab and Islamic instruments also make allowance for reservations to be added or withdrawn by the Member States. As will be indicated in Section 5.1, while this may seem surprising given that these instruments essentially conform to principles of Islamic law, it is nonetheless a consideration that conforms to UN principles. Cognisant of a dilemma that may arise because of potential conflict, the way to resolve it is clearly evident from both the Arab and Islamic instruments. For example, Article 53 (1)⁹² of the LAS-ACHR (2004) allows for qualified reservations to *any* Article during ratification or accession, while Article 25 (1)⁹³ of the OIC-CRCI (2004) also gives the Member States the right to make unqualified reservations only to *some* sections of this Covenant.

It will also be shown that Arab and Islamic states add what is generally referred to as ‘claw- back’ clauses or provisions to their regional instruments that entitle them to limit some of the rights guaranteed thereunder to avoid potential conflict with the domestic law which it may exceed.

⁹⁰ My emphasis added in italics. Frans Viljoen, *International Human Rights Law in Africa* (2nd edn, Oxford University Press 2012) 26. See in general 22-26.

⁹¹ My emphasis added in italics. Mashood A Baderin, *International Human Rights* (n 10) 225.

⁹² ‘Any State party, when signing this Charter, depositing the instruments of ratification or acceding hereto, may *make a reservation to any article of the Charter, provided that such reservation does not conflict with the aims and fundamental purposes of the Charter*’ (my emphasis added in italics).

⁹³ ‘Member States shall have the right to *make reservations on some sections of this Covenant or to withdraw their reservations* after notifying the Secretary General’ (my emphasis added in italics).

3.2.1 Human rights instruments in religious contexts

LAS and the OIC Member States have clearly added reservations and declarations to UN instruments for reasons that have less to do with culture and more to do with religion or Islam generally and Islamic law specifically. The primary motivation for their reservations is the fact that some of the provisions of these instruments may conflict with provisions of their domestic or national laws, which include constitutions, and which are all invariably based on principles of Islamic law (*Shari'a*). Notwithstanding the time lag between the two, there are also fundamental differences between some of the provisions contained in the 20th century UN treaties and the principles of Islamic law which form the basis of the domestic laws of most Muslim countries. Islamic law, although a later (eighth century) and man-made construct, in its turn ultimately also has its basis in and is derived from the two earlier (seventh century) divine and immutable primary sources of Islam, namely, the *Qur'an* [holy book of Islam] and *Sunna* [received customs based on the *Qur'an* which are associated with the Prophet Muhammad and embodied in texts compiled as books called *Ahadith*], which make it difficult to deviate from them or for Muslims to even consider having to choose human rights over Islam. The fact that these sources were supplemented, by human endeavour, with two further secondary 'sources', namely, *ijma* [consensus of opinion of either legal scholars or the community] and *qiyas* [analogical deductions, through *ijtihad* [independent reasoning] and *ijma*], has made little difference to the status quo. Islamic law rules were developed by four male jurists, namely, *Imams* [leaders] Abu Hanifa, Malik, Shafi'i and Hanbal who founded the four *Sunni*⁹⁴ [traditionalist] *madhhabs* [versions or schools] of law, *Hanafi*, *Maliki*, *Shafi'i* and *Hanbali* named after them and whose opinions did not always concur. Their different jurisprudential opinions on various matters, for example, the right to life, have resulted in the diverse ideological perspectives on abortion adopted by Muslim scholars which today continue to range across the spectrum from conservative to progressive.⁹⁵

3.2.2 Human rights instruments in constitutional contexts

In Western legal terms, a constitution is not only a set of laws by which a country is governed but is normally also its highest and most important law. All other laws must, therefore, follow the guidelines set out in the constitution and its bill of fundamental rights, which contains human rights to, for example, life, religious freedom, dignity and

⁹⁴ This chapter focuses on the *Sunni* as opposed to the *Shi'ite* [heterodox] schools since *Sunni* traditionalists represent the majority of the Muslim population who usually align themselves with one or other of these schools. See Najma Moosa, *Unveiling the Mind*. (n 36) xxxix.

⁹⁵ Najma Moosa, *Unveiling the Mind* (n 36) 8-10, 30, 56, 62-64, 84-85. See Section 6.4 for a discussion on the right to life.

equality between the sexes, which are equally provided for and therefore inviolable. There is international and regional protection in the form of human rights instruments to see that states uphold these human rights, and which form an additional layer of protection for citizens and are usually enforceable against both the state (vertical operation) and individuals (horizontal operation).⁹⁶A very different picture emerges in Muslim majority countries which either have constitutionally declared Islam to be the religion of the state or Islamic principles or law (*Shari'a*) as a source of law or for legislation. As indicated with regard to reservations, these countries' regional instruments will, therefore, largely have to conform to principles of Islamic law. However, some Muslim countries have opted for Western constitutional models because of uncertainty as to what constitutes Islamic constitutional law, while others, like Saudi Arabia (seat of the OIC), have no formal written constitutions precisely because of the Western origin of modern constitutions. This uncertainty as to what exactly is meant by 'constitutional law' in Islam has had dire consequences for both Muslim (especially women) and non-Muslim citizens alike. Although modern Islamic governments generally claim to entrench equality in their constitutions, they rarely uphold these ideals in practice. This applies equally to 'reforms' to Muslim personal or family law (MPL) which privileges men over women in the areas of marriage, divorce, inheritance, polygyny, custody and guardianship, resulting in the inequality of the sexes. Polygyny may be both a cultural and religious practice, but as indicated, some of these discriminatory provisions may even be directly attributed to the divine and immutable primary sources of Islam itself and, therefore, continue to date to remain a challenge. Women, therefore, are generally perceived in Muslim countries to have equality with men in respect of public rights and duties, but not in the private sphere of the family, which is mainly or exclusively regulated by MPL. However, and while there are exceptions, a pattern that becomes clearly evident from a close examination of most of the constitutions and other pertinent legislation in some Muslim countries shows that even such professed equality in the public sphere is not always unqualified and that the conflict between MPL and constitutions remains unresolved. A guarantee of equality between the sexes is usually limited by the addition of a qualification that the state will ensure women's equality with men only in so far as it does not conflict with the Islamic law in this regard. The same pattern of conflict is, therefore, also evident in UN human rights instruments which these countries have therefore ratified with reservations in so far as the provisions in these instruments for equality might conflict with domestic or national laws, including the area of MPL, though not limited to them.⁹⁷It will become evident from the detailed discussion of these instruments in Sections 5.2-5.5 and 6.2-6.4, that qualifications are not only limited to rights like equality and vulnerable groups like women and children but also extend to include other human rights, such as freedom of religion and the right to self-determination. While still struggling to deal with discriminatory themes against women (women's rights as equal rights) and non-Muslims (apostasy and inter-faith or inter-religious marriages) prevailing in terms of Islamic law, it should not be surprising that as far as, for example, sexual freedom is concerned, in terms of even the most moderate Islamic ideological perspectives, the term 'gender' is not deemed to include any approval of, for example, homosexual or lesbian sexual

⁹⁶ *ibid.*, 7-8.

⁹⁷ Najma Moosa 'Muslim Personal Laws Affecting Children' (n 10) 479, 508- 511.

orientations. In comparison with women's rights, children's rights are relatively easy to deal with and prove to be the least controversial.⁹⁸

3.2.3 Human rights instruments in political ('ARAB SPRING') contexts

Subscribing to Western constitutional models has not meant that with nationalism the rights to, for example, monogamous marriages or even free and fair elections are automatically guaranteed. Bearing especial testimony to this are the exceptional circumstances that the Islamic world has been experiencing, and which were precipitated by the 'Arab Spring' popular uprisings in the Muslim World.

As a direct result of these political uprisings, several new constitutions are either in the process of being drafted or finalized in several Muslim majority OIC (LAS) countries, for example, Egypt, Somalia, Libya, Sudan, Tunisia (finalized in 2014), and Turkey. In Somalia, for example, it seems that the existing trend of conflict between *Shari'a* and human rights is set to continue. Although it can be inferred from Article 1 (2) of the Provisional Constitution adopted by Somalia on 1 August 2012 that the Constitution is the supreme law, Article 2 (1) explicitly declares Islam to be the state religion and Article 2 (3) requires that all laws comply with the general principles of *Shari'a*. From this, it can be inferred that Somalia is a Muslim country and that it is *Shari'a*, rather than the Constitution, that is the supreme law.⁹⁹As will be detailed in Section 4.1 when dealing with UN instruments, it is not surprising then, as is also evident from Table 1, that Somalia is one of those states that have yet to ratify major instruments like the CEDAW and has only recently (1 October 2015) ratified the CRC.

The fact that the UN was established in the first instance to sound the death knell for any preconceived notions that then existing states may have had with regard to their unilateral ownership of the full right to decide on the treatment of their citizens, appears to have fallen on deaf ears in LAS and OIC Member States as evidenced by these uprisings.

Islamic law principles may have been declared in Islamic instruments but are not necessarily followed. While they have often been violated in the past, the LAS and OIC were slow to point this out. However, while the writing was already on the wall for some time prior to its occurrence, the Arab Spring was a controversial topic that the OIC as a regional body of these Member States was duty-bound to address.¹⁰⁰While it started quite innocently in

Tunisia towards the end of 2010, the turbulent situation had an impact that catapulted across every state in the region since it provided people, denied basic human rights like free and fair elections, with the catalyst needed to either topple several governments,

⁹⁸ See in general Najma Moosa, 'An Overview of Post-Divorce Support for Muslim Children in the Context of South African Law, Islamic Law and the Proposed 2010 Muslim Marriages Bill' in Sylvia Kierkegaard, (ed), *Law, Governance and World Order* (International Association of IT Lawyers [IAITL] (2012) 283-296.

⁹⁹ For an English translation of Somalia's Provisional Constitution see <http://www1.umn.edu/humanrts/research/Somalia-Constitution2012.pdf> accessed 25 March 2016.

¹⁰⁰ For an example of one of a series of lectures/speeches on the topic of the Arab Spring given by Ekmeleddin Ihsanoglu, then Secretary General of the OIC, see 'What the Region would be better termed "the Fall Season of Despots" Rather than the "Arab Spring"' on 13 December 2011 <http://www.oicoci.org/oicv3/topic/?t_id=6125&ref=2561&lan=en> accessed 25 March 2016.¹⁰¹ The adherence of LAS and OIC states to the UN treaties and Protocols is set out in Table 1 and reservations in Table 2.

including Egypt and Libya, or cause others to reform. It also led to protests in several other countries, such as, Yemen, Jordan, Morocco and Bahrain, extending even to Saudi Arabia, albeit in the latter case it was, in comparison, for much less significant reasons - women protesting the government's laws which ban them from driving. To date, the conflict in Syria remains unresolved and, as indicated, the Syrian government's violent suppression of the revolt has resulted in the suspension of its OIC and LAS memberships.

The new political arrangements flowing from the Arab Spring provide LAS and OIC states with a golden opportunity to positively influence especially Muslim-majority countries to interrogate afresh both national implementation and enforcement of human rights instruments and their relationships with international human rights norms guaranteed through these instruments to which they already subscribe. This should be done in order to correct and/or review past deviations from both these and regional instruments (both their own and also others, such as those of the AU) which threaten to derail the UN's human rights global objective of attaining a core international consensus on human rights and its enforcement across the religious and cultural divides of the Arab and Muslim worlds. Given Islam's normative compatibility with human rights, doing so would not entail a deviation from Islam but will demonstrate that Islam, if not Islamic law (*Shari'a*), is able to meet the 21st-century demands which inspired the Arab Spring in the first place.

4.1 An overview of the current status of some core UN treaties and protocols and the AU-ACRWC, including the reservations made by LAS and OIC member states

While the comparative analyses in Sections 6.2-6.4 will focus on their more controversial provisions, the nine UN instruments are briefly referred to in this section for two reasons. First, and as is evident from Table 1, to highlight the current status (signature, ratification, accession (indicated by 'a') or succession (indicated by 'd')) of all nine in LAS and OIC Member States. In doing so, and mainly due to space constraints, a brief reference will be made to five of the (only) six UN instruments with Optional Protocols. The Protocol to the CRPD is therefore excluded. Secondly, and as is evident from Table 2, to highlight the extent of reservations and declarations by LAS and OIC states which are ratifying, acceding or succeeding parties in respect of four core or seminal UN instruments, namely, the ICCPR, the ICESCR, the CEDAW, and the CRC (minus their Protocols). As also evident from Table 2, the focus is placed on the estimated number of states rather than the actual number of reservations and declarations for the following reasons: although all statistics were obtained from the treaties themselves, the information pertaining to some states had to be indirectly gleaned through footnotes and objections listed in treaties; some states have entered multiple reservations and declarations; cognisant of the fact that their legal effect is different, sometimes a declaration or interpretative declaration appeared to amount to a reservation which made it difficult to distinguish between the two; and states may have subsequently (partially or fully) removed them. Due mainly to the fact that the provisions of these instruments may conflict with the domestic law, which is invariably based on Islamic law (*Shari'a*), OIC states have entered far-reaching reservations in respect of these instruments, especially at ratification. More LAS than OIC states have done so. As will be demonstrated in Section 6.2-6.4, the main reason for highlighting this 'ratification-with-reservation' record is to

draw attention to the fact that, even though these instruments may become binding upon ratification, by implication such reservations also effectively render many of the protections that these instruments may offer, meaningless. Brief reference is also made to the current status and ratification-reservation record of the regional AU-ACRWC, to which OIC members may also subscribe with binding effect. As is also evident from Table 2, all six OIC countries with a Muslim minority population (emphasised in italics) have ratified the four core UN instruments and have not entered any reservations. Only one (Guyana) of the six OIC countries has lodged a declaration (ICCPR).

As indicated in the Introduction, statistical information, as at 30 March 2016 (the UN website was updated on 31 March), pertaining to the status (signature, ratification or accession) and the content of the UN instruments and Protocols was obtained from official UN websites¹⁰¹. The lists of reservation and declaration records of the four core instruments (minus any reference to their Protocols) were also obtained from the same websites. Due to space constraints, website addresses are not repeated. A discussion of the instruments listed in the Table below, the dates that they were adopted by the UN General Assembly (UNGA), opened for signature, ratified, acceded to, and entered into force are briefly indicated in related footnotes. As is evident from Tables 1 and 2, Palestine, notwithstanding its recent observer non-member status at the UN, is included in calculations pertaining to the UN treaties because of its subsequent accession to seven of the nine UN instruments discussed. Thus for calculation purposes only, the OIC has 57, the LAS 22 and the UN 194 members.

Table with Comparative Analyses

S.NO	INTERNATIONAL SIGNATORIES TREATY	RATIFICATION ACCEDING PARTIES	RESERVATIONS AND DECLARATIONS BY RATIFYING OR ACCEDING
1.	THE CERD (1965) ¹⁰²	UN 88 (45%); OIC 21 (37%); and 55	UN 177 (91%); OIC
2.	THE ICCPR (1966) ¹⁰³	UN 74 (38%); OIC 15 (26%); and 50	UN 168 (87%); OIC 67 (40%);
and	LAS 9		

¹⁰¹ The adherence of LAS and OIC states to the UN treaties and Protocols is set out in Table 1 and reservations in Table 2

¹⁰² Adopted on 21 December 1965. Opened for signature etc. on 7 March 1966. Entered into force on 4 January 1969. There is no Protocol to the CERD.

¹⁰³ Adopted on 16 December 1966. Opened for signature etc. on 19 December 1966. Entered into force on 23 March 1976. The declaration made by Egypt, for example, is typical of a declaration that can be construed to be tantamount to a reservation. Viljoen, writing of Egypt (although in its capacity as an AU member), highlights that 'Egypt made a declaration intent on infusing the interpretation of the ICCPR with the Shar'iah: It accepted ICCPR, but "taking into consideration the provisions of the Islamic Shari'ah and the fact that it does not conflict with the text'. Frans Viljoen (n 39) 98.

3.	THE ICCPR OP I (1966) ¹⁰⁴	UN 35 (18%); OIC 5 (9%); UN 115 (59%); OIC 30	
4.	THE ICCPR OP II (1989) ¹⁰⁵	UN 37 (19%); OIC 2 (4%); UN 81 (42%); OIC 11 (19%);	
5.	THE ICESCR (1966) ¹⁰⁶	UN 71 (37%); OIC 14 (25%); and LAS 7 (32%)	UN 164 (85%); OIC 49 (86%); and LAS 17 (77%) UN 50 (30%); OIC 14 (29%); and LAS 8
6.	THE ICESCR OP (2008) ¹⁰⁷	UN 45 (23%); OIC 10 (18%); and LAS 0 (0%)	UN 21 (11%); OIC 2 (6%); and LAS 0 (0%)
7.	THE CEDAW (1979) ¹⁰⁸	UN 99 (51%); OIC 19 (33%); and LAS 4 (18%)	UN 189 (97%); OIC 54 (95%); and LAS 20 (91%) UN 79 (42%); OIC 25 (46%); and LAS
8.	THE CEDAW OP (1999) ¹⁰⁹	UN 80 (41%); OIC 13 (23%); and	UN 106 (55%); OIC 21
9.	THE CAT (1984) ¹¹⁰	UN 83 (43%); OIC 19 (33%); and LAS 5 (23%)	UN 159 (82%); OIC 49 (86%); and LAS 19 (86%)
10.	THE CAT OP (2002) ¹¹¹	UN 75 (39%); OIC 16 (28%); and LAS 1 (5%)	UN 80 (41%); OIC 19 (33%); and LAS 4 (18%)

¹⁰⁴ Adopted on 16 December 1966. Opened for signature etc. on 19 December 1966. Entered into force on 23 March 1976.

¹⁰⁵ Adopted and opened for signature etc. on 15 December 1989. Entered into force on 11 July 1991.

¹⁰⁶ Adopted on 16 December 1966. Opened for signature etc. on 19 December 1966. Entered into force on 3 January 1976.

¹⁰⁷ Adopted on 10 December 2008. Opened for signature on 24 September 2009. Entered into force on 5 May 2013

¹⁰⁸ Adopted in December 1979. Opened for signature on 18 December 1979. Entered into force on 3 September 1981. In comparison with the four treaties that preceded it, the CEDAW entered into force in record time – less than two years after its adoption (in 1979). In the case of all three organisations (the UN, LAS and OIC), the CEDAW has the second highest number (after the CRC) of ratifications for a UN document. However, whatever commitment of states this may have implied, or satisfaction that it may have engendered for many women, it was short-lived because the CEDAW (followed by the CRC) has also received the highest number of religion-based reservations and declarations by Muslim states. OIC countries have entered reservations and declarations on the basis of Islamic law. These pertain mainly to the areas of MPL and ‘...rights of women to inherit, their choice of residence, the status of children, and women’s rights during marriage and at its dissolution...Mauritania’s very broad reservation states that it approves of CEDAW “in each and every one of its parts which are not contrary to Islamic Sharia and are in accordance with our Constitution.”’, While both the USA and Saudi Arabia became UN members on the same date (24 October 1945), the USA, with its purported most advanced record of promoting human rights, signed the Women’s Convention in July 1980, but has yet to ratify it, while Saudi Arabia, which has no Constitution and a purported record of worse human rights violations, has both signed and ratified the CEDAW, albeit with reservations. Frans Viljoen (n 39) 121-122.

¹⁰⁹ Adopted on 6 October 1999. Opened for signature etc. on 10 December 1999. Entered into force on 22 December 2000.

¹¹⁰ Adopted and opened for signature on 10 December 1984. Entered into force on 26 June 1987.

¹¹¹ Adopted on 18 December 2002. Opened for signature etc. on 19 December 2002. Entered into force on 22 June 2006.

11.	THE CRC (1989) ¹¹²	UN 140 (71%); OIC 42 (74%); and LAS 15 (68%)	UN 196 (100%); OIC 57 (100%); and LAS 22 (100%)	UN 74 (38%); OIC 25 (44%); and LAS 15 (68%)
12.	THE CRC-AC OP I (2000) ¹¹³	UN 130 (67%); OIC 28 (49%); and LAS 7 (32%)	UN 162 (84%); OIC 45 (78%); and LAS 17 (77%)	
13.	THE CRC-SC OP II (2000) ¹¹⁴	UN 121 (62%); OIC 25 (44%); and LAS 5 (23%)	UN 172 (89%); OIC 54 (95%); and LAS 20 (91%)	
14.	THE CRC-CP OP III (2011) ¹¹⁵	UN 50 (26%); OIC 9 (16%); and LAS 1 (5%)	UN 26 (13%); OIC 2 (6%); and LAS 0 (0%)	
15.	THE CMW (1990) ¹¹⁶	UN 38 (20%); OIC 16 (28%); and LAS 2 (9%)	UN 48 (25%); OIC 22 (39%); and LAS 6 (27%)	
16.	THE CRPD (2006) ¹¹⁷	UN 160 (82%); OIC 45 (78%); and LAS 15 (68%)	UN 162 (84%); OIC 46 (81%); and LAS 18 (82%)	
17.	THE CED (2006) ¹¹⁸	UN 95 (49%); OIC 23 (40%); and LAS 6 (27%)	UN 51 (26%); OIC 13 (23%); and LAS 4 (18%)	
18.	THE REGIONAL AU-ACRWC (1990) ¹¹⁹	OIC 22 (85%) and LAS 7 (78%) (78%)	OIC 24 (92%); and LAS 7 and LAS 3 (33%)	OIC 3 (12%);

As evident from Table 2, it is surprising that 20 of the 24 ratifying OIC states were Muslim majority countries especially given the non-Islamic basis of the ACRWC. It is not surprising, however, that the only 3 states that placed reservations were also all LAS states. It is clearly stated on the list of signatories on the Ratification Table (last updated on 24 June 2015) which is available on the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) website that some Member States have signed the Charter after ratification. However, what is not evident from this particular list is that

¹¹² Adopted on 20 November 1989. Opened for signature etc. on 26 January 1990. Entered into force on 2 September 1990. The Arabic, Chinese, English, French, Russian and Spanish texts (versions) of the CRC are apparently 'equally authentic'. There are three Optional Protocols to the CRC. In the case of both the UN and the OIC, the CRC has the highest number of ratifications for a UN instrument. However, after the CEDAW, the CRC has also received the second highest number of reservations by Muslim states. What will not, however, be evident from Table 2 is that some of these states later reverted to the status of non-reserving states. For example, Egypt, upon signature (5 February 1990) and confirmed upon ratification (6 July 1990), entered a reservation to the CRC in respect of Articles 20 and 21 (pertaining to adoption), but later (on the 31 July 2003) withdrew the reservation. This was also the case with several other states. For example, on 23 July 1997, Pakistan withdrew its general reservation, that '[p]rovisions of the Convention shall be interpreted in the light of the principles of Islamic laws and values', made upon signature (20 September 1990) and confirmed upon ratification (12 November 1990).

¹¹³ Adopted and opened for ratification, etc., on 25 May 2000. Entered into force on 12 February 2002.

¹¹⁴ Adopted and opened for signature, etc. on 25 May 2000. Entered into force on 18 January 2002.

¹¹⁵ Adopted and opened for signature, etc. on 19 December 2011. Entered into force on 14 April 2014.

¹¹⁶ Adopted on 18 December 1990. Entered into force on 1 July 2003.

¹¹⁷ Adopted on 13 December 2006. Opened for signature etc. on 30 March 2007. Entered into force on 3 May 2008.

¹¹⁸ Adopted on 20 December 2006. Opened for signature etc. on 6 February 2007. Entered into force on 23 December 2010.

¹¹⁹ Adopted on 11 July 1990 in Addis Ababa, Ethiopia. Entered into force on 29 November 1999.

according to information also gleaned from the ACERWC website '[a]s of January 2014, all member states of the AU have signed the Children's Charter...'¹²⁰The same information was given four years earlier on an AU website which stated that '[a]s of November 2010, all member states of the AU have signed the Children's Charter...'¹²¹Given too that the last recorded signature on both Tables was appended in 2010, this would, by implication, automatically include all its LAS and OIC members. I have, however, not reflected it as such in the appended Table 2 since the data on this (ACERWC) Ratification Table (24 June 2015) and the Ratification Table (last updated on 21/02/2013) available on the official AU website¹²² (on which the information in Table 2 is based) does not reflect these additional signatories. This is typical of the discrepancies in information encountered when trying to ascertain accurate information from the various (official) websites.

5.1 An overview of the current status of 'regional- international' LAS and OIC treaties, including the reservations made by LAS and OIC member states.

Bearing in mind both the paucity and even lack of official information, the status of all four Islamic documents will be detailed in Sections 5.2-5.5 below. The ACRWC, for example, clearly shows that OIC and LAS members as the AU Member States, do enter reservations to regional instruments to which they subscribe; however, I have not come across any source which indicates that LAS or OIC members, or any Member States for that matter, have entered any reservations to their own (Arab and Islamic) regional instruments. One can, however, surmise that by not becoming signatories to or ratifying parties of such instruments (for example, as appears to be the case with the OIC-CRCI), they thereby are also either indirectly expressing a dissatisfaction with their provisions or maybe even a 'vote' of no confidence in their practical viability or implementation.

In Section 3.2 it was highlighted that it is possible to enter reservations to Islamic instruments. However, what may be difficult to understand is why, even though there may be no real need for Member States to place any reservations on their own instruments since they were purportedly drafted to conform with Islamic law (*Shari'a*), none appear to have done so, and also why only some of these documents have subsequently been formally 'adopted' (ratified or entered into force) by their Member States? While this may have something to do with the fact that the scope of these instruments may have been tempered by claw-back clauses, this begs the following underlying, though related, questions which fall beyond the scope of this article and for which answers may also not readily be forthcoming or necessarily entirely honest: is Islamic law really the 'villain' that it is made out to be, or, given Islam's attribution as the religion of 'third world' countries, is it the 'victim'? Do non-enforcement or lack of appropriate enforcement mechanisms in Arab and Islamic countries have less to do with a lack of economic resources and more to do with politics and struggles for power?

5.2 The Cairo declaration (OIC-CDHRI) (1990)¹²³

¹²⁰ See 'ACRWC Charter-Full text' <<http://www.acerwc.org/acerwc-full-text/>> accessed 25 March 2016.

¹²¹ See 'The African Charter on the Rights and Welfare of the Child (ACRWC)' <<http://pages.au.int/acerwc/charter>> accessed 25 March 2016.

¹²² See 'List of countries which have signed, ratified/acceded to the African Charter on the Rights and Welfare of the Child' <http://www.au.int/en/sites/default/files/treaties/7773-sl-welfare_of_the_child_0.pdf> accessed 25 March 2016.

¹²³ See 'Cairo Declaration on Human Rights in Islam' <<http://www.oic->

The Cairo Declaration on Human Rights in Islam (Cairo Declaration) was adopted ('promulgated') almost 26 years ago by 45¹²⁴ Member States of the OIC in Cairo on 5 August 1990. It was submitted by the OIC to the UN '...as representing the view of the Muslim States on human rights in Islam'.¹²⁵ An argument is made in a recent (2015) publication that the fact that the CDHRI was subsequently published by the UN in a 1997 volume dealing with international instruments has not only lent '...it a certain authority' but that the practical effect of doing so could be '...viewed as a consecration of the document by the UN'.¹²⁶ Although deemed to be the most important (or major) human rights document under the OIC system, one source indicates that:

'...shortcomings render the Cairo Declaration ineffective as a mechanism for the promotion and protection of human rights. In fact, Muslim advocacy groups, Muslim scholars of human rights, and even [now former] OIC Secretary-General Ekmeleddin İhsanoğlu largely ignore the Declaration in their discussions of Islam and human rights...Writing in 2003, Mashood Baderin argued,

"the lack of an interpretative or enforcement organ has rendered the OIC Cairo Declaration on Human Rights in Islam a dormant document, which neither the Muslim states nor the OIC as a body formally refers to in the face of the sometimes obvious violations of basic and fundamental human rights in some Muslim states."...

This is the problem that the OIC seeks to address with the establishment of [an independent human rights body] the IPHRC'.¹²⁷

Until the OIC's establishment in 2011 of a permanent human rights commission (IPHRC), as provided for in the OIC Charter (detailed in Section 5.5), the OIC lacked an interpretative supervisory or enforcement organ for the rights that it guarantees, which left its instruments vulnerable to abuse by political authorities. The IPHRC can, therefore, be seen to be an important step in implementing the Cairo Declaration. However, on closer examination, the IPHRC Statute only makes a very brief and non-substantive reference to the Cairo Declaration, while the 2008 OIC Charter does not refer to it at all. 'Ignored' through possible 'claw-back' clauses, though not formally 'repudiated', this could signal a confirmation that the Cairo Declaration is now to be regarded as little more than the non-binding, guiding

iphrc.org/en/data/docs/legal_instruments/OIC%20Instruments/Cairo%20Declaration/Cairo%20Declaration%20on%20Human%20Rights%20in%20Islam%20-%20EV.pdf accessed 25 March 2016. For further background information see Ann E Mayer, 'Islam and Human Rights' (n 6) 31-32.

¹²⁴ Two recent (2011 and 2012) sources confirm that the Cairo Declaration has been adopted by 45 countries but fail to provide a list of the names of the countries or where this information was obtained from. See Christine Schirrmacher, 'Islamic Human Rights Declarations and Their Critics: Muslim and Non-Muslim Objections to the Universal Validity of the Sharia' (2011) 4 *International Journal for Religious Freedom* 37, 42 and Anver M Emon, Mark S Ellis and Benjamin Glahn, *Islamic Law and International Human Rights Law: Searching for Common Ground?* (Oxford University Press 2012) 113.

¹²⁵ See Mashood A Baderin, *International Human Rights* (n 10) 21, note 60.

¹²⁶ See Abdul AM Olayemi, Abdul MH Alabi and Ahmad H Buang, 'Islamic Human Rights Law: A Critical Evaluation of UIDHR & CDHRI in Context of UDHR' (2015) 1(3) *Journal of Islam, Law and Judiciary* 27-36 at 32.

¹²⁷ Turan Kayaoğlu 'A Rights Agenda for the Muslim World? The Organization of Islamic Cooperation's Evolving Human Rights Framework' (The Brookings Institution 2013) 10

<http://www.brookings.edu/~media/Research/Files/Papers/2013/1/08%20oic%20human%20rights%20kayaoglu/Turan%20Kayaoglu%20English.pdf> accessed 17 March 2016.

document of a declamatory nature that it ought to be.¹²⁸ Given that the IPHRC places much of its focus on the OIC Charter itself and the OIC as a whole both within its own Charter as well as the studies and articles it produces, it appears that the implementation powers attributed to it may be construed to both undue and unwarranted.¹²⁹

The CDHRI clearly, although given its ambiguous support for UN instruments, upholds religious as opposed to secular understandings of human rights notions when it categorically provides that all rights and freedoms stipulated in it are subject to Islamic law (Article 24) and that '[t]he Islamic *Shari'ah* is the only source of reference for the explanation or clarification of any of the articles of this Declaration' (Article 25).

5.3 The 2004 Arab charter (LAS-ACHR) (2004)¹³⁰ and its 1994 Predecessor (LAS-ACHR 1994)¹³¹

In 2004, a revised version of the 1994 ACHR was adopted by the LAS.¹³² The UN had, subsequent to its adoption of the UDHR in 1948, organised two World Conferences on Human Rights in Tehran in 1968 and in Vienna in June 1993, both of which can be deemed to have had a major and influential impact in creating awareness of human rights issues and in paving the way for initiating the development and realisation of human rights in the Muslim world. This notwithstanding, the human rights issues raised by some Arab states at the 1968 conference were politically focussed and centred mainly around the question of the 'Israeli occupation of Palestine'. A regional conference on human rights held in Beirut in 1968 soon after the Tehran conference, resulted in the establishment of the Permanent Arab Commission on Human Rights, deemed also to be a 'highly politicised' body, within the framework of the LAS (at this stage the OIC was not yet in existence). This body, unlike the trend followed by its international counterparts of appointing independent experts, is constituted of government officials and may only make recommendations and suggestions to the Council of the LAS which in turn is also viewed as a 'political body'. It is in this context that the Council adopted the Arab Charter on Human Rights on 15 September 1994 and it is through this document that a direct 'human rights dimension' was introduced.¹³³ This original version of the Charter never entered into force because it failed to attain the requisite seven ratifications. It was signed by only one of the 22 members to the LAS, namely Iraq, and none of the Member States had ratified it. The 1994 Charter was, albeit 10 years later, replaced by a revised, and yet

¹²⁸ See further Anthony T Chase, 'The Organization of Islamic Cooperation: a Case-Study of International Organizations' Impact on Human Rights', Matters of Concern Research Paper, the Danish Institute for Human Rights (2015) 13

http://www.humanrights.dk/files/media/dokumenter/udgivelser/research/matters_of_concern_series/matters_of_concern_chase_2015_final.pdf accessed 4 April 2016.

¹²⁹ See further: Ioana Cismas, 'Introductory Note to the Establishment of the OIC Independent Permanent Human Rights Commission' (2011) 50 (6) *International Legal Materials* 1148-1160.

¹³¹ For the 1994 Arab Charter see <http://www.al-bab.com/arab/docs/international/hr1994.htm> accessed 5 April 2016.

¹³² For the historical process and details that led to the adoption of the 1994 Draft Arab Charter and the 2004 revised Arab Charter see, for example, Mohammed Amin Al-Midani and Mathilde Cabanettes 'Arab Charter on Human Rights' (2006) 24 *Boston University International Law Journal* 147, 147-149; and Mervat Rishmawi, 'The Revised Arab Charter on Human Rights: A Step Forward?' (2005) 5 *Human Rights Law Review* 361, 361-366.

¹³³ See Frans Viljoen (n 39) 13-14, 31; Mohammed Amin Al-Midani and Mathilde Cabanettes (n 94) 147-148 and Christof Heyns (n 13) 732. For example, in terms of Article 2 of the 1994 ACHR '[e]ach state party to [it] undertakes to ensure that every individual located within its territory and subject to its jurisdiction, shall have the right to enjoy all the rights and freedoms recognised in [it]...without distinction on the basis of race, colour, sex, language, religion, political opinion, national or social origin, wealth, birth or other status, and without any discrimination between men and women' (emphasis added in italics to highlight its deletion from the equivalent Article 3 (1) of the 2004 ACHR). However, as indicated in Section 2.2, no direct mention was made in the founding document of the LAS, namely, the 1945 LAS Charter, to either the contents or principles of human rights.

again revised¹³⁴, version (comprising no less than 53 Articles and a Preamble). The new ‘modernised’ and revised version of the ACHR was adopted during the Arab Summit held in Tunis on 22 May 2004. The 2004 ACHR eventually did succeed in attaining the initial requisite number of seven ratifications and subsequently entered into force on 16 March 2008. Although it is a fairly ‘new’ instrument, it is in the process of being revised.¹³⁵ While as at October 2009 only 10 LAS states were party to it, to date (as at January 2015), it appears that 14 of the 22 (64%) are party to it.¹³⁶ However, like the 1994 version, the 2004 version, although it creates a promising monitoring mechanism (Arab Human Rights Committee detailed below), similar to the UN Human Rights Committees, also contains no effective enforcement mechanism, although the establishment of an Arab Court of Human Rights is currently in the pipeline.¹³⁷ The 2004 Arab Charter was deemed to represent both a major improvement over the 1994 version and to be comparable to regional arrangements of a similar nature. While it has been construed to be ‘...part of an effort to “modernise” the League of Arab States’¹³⁸, it does not appear from the analysis in Section 6.3 below that the standards contained in this regional treaty are, or were intended to be, on par with those contained in UN treaties.

Unlike the Preamble to the 1994 Charter which specifically made mention of ‘Islamic Shari’a’, Islamic law is not mentioned in the Preamble to the 2004 Arab Charter. The Preamble, given its (binding) interpretive value¹³⁹, does, however, invoke not only Islam but also ‘other divinely-revealed religions’ to emphasise, among other human rights, both the dignity and equality of all human beings as citizens. It acknowledges and emphasises the ‘sovereignty of the law and its contribution to the protection of universal and interrelated human rights’ and ‘reaffirm[s] the principles of the Charter of the [UN], the [UDHR] and the provisions of the [ICCPR] and the [ICESCR] [that is, the International Bill of Rights], and ha[s] regard to the Cairo Declaration...’. By also affirming the OIC-CDHRI which is closely connected to Islamic law, the Preamble indirectly incorporates the element of *Shari’a*.

Article 1 (4) of the 2004 Charter aims ‘[t]o entrench the principle that all human rights are universal, indivisible, interdependent and interrelated’. Although it is not explicitly

¹³⁴ For detail see Mervat Rishmawi, ‘The Arab Charter on Human Rights and the League of Arab States: An Update’ (2010) 10 *Human Rights Law Review* 169, 170.

¹³⁵ See Mervat Rishmawi, *The League of Arab States Human Rights Standards and Mechanisms Towards Further Civil Society Engagement: A Manual For Practitioners* (Open Society Foundations and Cairo Institute for Human Rights Studies 2015) 15 <<https://www.opensocietyfoundations.org/sites/default/files/league-arab-states-manual-20151125.pdf>> accessed 5 April 2016.

¹³⁶ The initial seven ratifying states were Algeria (June 2006), Bahrain (June 2006), Jordan (April 2013), Palestine (November 2007), Syria (February 2007), Libya (August 2006) and the United Arab Emirates (January 2008). As of October 2009 this number was increased to 10 with ratifications by Qatar (January 2009), Saudi Arabia (April 2009) and Yemen (November 2008) (Mervat Rishmawi (n 83) 172). As at January 2015 this number was further increased to 14 when Lebanon (May 2011), Iraq (April 2013), Sudan (May 2013) and Kuwait (September 2013) had also ratified the 2004 Arab Charter. See Mervat Rishmawi, *The League of Arab States* (n 84) 70.

¹³⁷ Amin Al-Midani and Mathilde Cabanettes (n 81) 149. According to Mervat Rishmawi, *The League of Arab States* (n 84) 4, 19, 53-55, although the establishment of the Arab Court of Human Rights was approved by the Arab League Summit in March 2014, adopted in September 2014 and opened for ratification in November 2014, no state had ratified the Statute of the Court. Thus, as at January 2015, it was as yet not operational. According to Mervat Rishmawi, *The League of Arab States* (n 84) 19 as of January 2015, a proposed regional Arab Court of Justice is also as yet not operational. See footnote 9 for the OIC position.

¹³⁸ Mervat Rishmawi (n 83) 170.

¹³⁹ In terms of Article 31 (2) (general rule of interpretation of treaties) of the Vienna Convention, the ‘context for the purpose of the interpretation of a treaty’ includes ‘its preamble and annexes’. See footnote 34.

stated, and while one can infer from this Article that the Charter ought to have an application without any discrimination on the basis of both sex and religion, this is not necessarily the case since some rights, including gender equality, are subject to restrictive interpretations of Islamic law (*Shari'a*). For example, Article 3 (3) makes provision for 'effective' but not *de facto* equality when it states that '[m]en and women are equal in respect of human dignity, rights, and obligations within the framework of the *positive discrimination established in favour of women* by the Islamic Shariah, other divine laws and by applicable laws and legal instruments' (my emphasis in italics). In fact, the impression is created by the phrase that I have italicised, that it is men rather than women that are being discriminated against by Islamic law!

While the 2004 Arab Charter is deemed to have great potential in advancing the protection of human rights in the Arab world if its provisions are abided by, both versions, the 2004 version less so than the 1994 version, were nonetheless subject to much criticism and comment for not complying with international standards and human rights law.¹⁴⁰ While the Charter has many positive provisions, it is deemed to fall short of international standards in two major respects. First, it has many 'claw-back' or 'override' clauses in terms of which the international nature of the Charter's protection is compromised by making it bow to the domestic law of its States Parties.¹⁴¹ The ACHR, by generally subjecting rights to the national laws of the Member States, invariably also subjects them to Islamic law which is a source of such domestic law or legislation. In practice, therefore, the limitation pertaining to national law is akin to it being subject to *Shari'a*. This is also evident in respect of specific rights in the Charter, for example, those pertaining to minorities (Article 25) and spouses (Article 33 (1)). Secondly, some socio-economic rights in the Charter are limited as applying only to 'citizens' and not to everyone under the jurisdiction of the state, for example, the rights to work (Article 34 (1)), free basic health care (Article 39 (1)), and education (Article 41 (2)). 'What is [therefore] clear is that the 2004 Charter reflects largely the degree of [non-] acceptance of international human rights law and standards by the certain Arab States, as demonstrated, for example, by their reservations to UN human rights treaties.'¹⁴² A year after the entry into force in 2008 of the 2004 Arab Charter, a treaty body, namely, the Arab Human Rights Committee (also known as the Committee of the Arab Charter on Human Rights or Charter Committee), composed of seven independent and impartial experts serving in their personal capacities, was established in March 2009 to supervise its implementation. Its main function is to examine state articles on human rights in these countries and to make recommendations (Articles 45 and 48). While certainly a step in the right direction, it has, however, been pointed out that the criteria that these experts must apply are not as stringent as those required by various UN human rights treaties.¹⁴³

¹⁴⁰ For a detailed discussion of this instrument see Mervat Rishmawi (n 83) 169-178. See also Frans Viljoen (n 39) 14.

¹⁴¹ See, for example, Article 43 which provides that '[n]othing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set force in the international and regional human rights instruments which the states parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities'. See also Frans Viljoen (n 39) 14.

¹⁴² Mervat Rishmawi (n 83) 172.

¹⁴³ See in this regard Mervat Rishmawi (n 83) 172 and 172, note 18. For reference to the Amnesty International Article 'Middle East and North Africa: The Arab Human Rights Committee: Elections of Members and Criteria of Membership' (10 June 2008) where this view is articulated and detailed see Middle East and North Africa: The Arab Human Rights Committee: Elections of Members and Criteria of Membership (Amnesty International Report, 10 June 2008)

According to Rishmawi¹⁴⁴ '[c]alls for the reform of the Arab League have been made repeatedly and heightened during the "Arab Spring" ... [As a result] [i]n March 2015, the League Summit reviewed a new proposal for amending the Charter... [However,] [t]his adoption of the new Charter has been postponed again, as has been the case for the last number of years until a general reform can be agreed on... Importantly, the draft finally integrates recognition of human rights protection as one of the Arab League's founding principles... [including] [r]espect for democratic principles and the values of justice and equality, protection of human rights, and the promotion of good governance and the rule of law.'

5.3.1 The OIC-CRCI (2004)¹⁴⁵

The 2004 CRCI, an instrument which is specifically focussed on the rights of the Muslim child, was adopted in Yemen, in June 2005. The binding nature of this Covenant is, therefore, undisputed. However, although the CRCI has been promulgated and only enters into force after the 20th ratification (Articles 22-23), I was unable to ascertain the number of ratifications or whether the Covenant's Standing Committee (implementation mechanism) referred to by Article 24 of the CRCI (to be detailed in Section 6.4) was in fact established. Given too that most current sources brush over the Covenant generally, or provide some brief analysis of it as one of the two main human rights-related legal instruments within the OIC, I surmise from the above that the CRCI is not as yet in force.

5.3.2 The OIC charter (2008)¹⁴⁶

The 2008 OIC Charter, dated 14 March 2008, was prepared in Dakar, Senegal. Articles 39 (1)-(3) of the 2008 OIC Charter deals with its ratification and its entry into force. In terms of Article 39 (3), the 1972 OIC Charter will officially be replaced by the 2008 Charter when it is adopted by a two-third majority [66% or 38 Member States] (Article 39 (1)) and, in terms of Article 39 (2), the instruments of ratification are deposited with the Secretary-General of the Organisation. It is assumed that since the official website of the OIC states that the 'present Charter' is the one adopted by the OIC in 2008 in Senegal, that the 1972 Charter (evocable before organs of the UN) has been formally replaced. While the Preamble to this Charter, much like its 1972 predecessor, also reaffirms a commitment to the UN Charter (1945), the specific reference to 'fundamental human rights', included in the 1972 version, is excluded from the 2008 Charter. Nonetheless, one of the objectives of the OIC in terms of the 2008 OIC Charter (Article 1(14)) is clearly '[t]o promote and protect human rights and fundamental freedoms including the rights of women, children, youth, elderly and people with special needs...'. Whilst Article 2 (7) of the OIC Charter provides that Member States '...uphold and promote, at the national and international levels, good governance, democracy, human rights and fundamental freedoms, and the

<<http://www.amnesty.org/en/documents/TOR65/001/2008/en/>> accessed 5 April 2016.

¹⁴⁴ Mervat Rishmawi, *The League of Arab States* (n 84) 14-16.

¹⁴⁵ See 'Resolution of the OIC Establishing the Covenant on the Rights of the Child in Islam, OIC/9-IGGE/HRI/2004/Rep.Fina'l' <http://www.oiciphrc.org/en/data/docs/legal_instruments/OIC%20Instruments/OIC%20Covenant%20on%20the%20Right%20of%20the%20Child/OIC%20Convention%20Rights%20of%20the%20Child%20In%20Islam%20-%20EV.pdf> accessed 25 March 2016.

¹⁴⁶ For an English version of the 2008 OIC Charter see <http://www.oic-oci.org/english/charter/OIC%20Charter-new-en.pdf> and http://www.oic-iphrc.org/en/data/docs/legal_instruments/OIC%20Instruments/OIC%20Charter-%20AEFV/OIC%20Charter-EV.pdf both accessed 25 March 2016.

rule of law', much like the position with the 1945 LAS Charter (or Pact) and the 1972 OIC Charter, Member States are at the same time also expected to refrain from interfering in each other's internal affairs (Preamble and Article 2 (4)-(6) of the 2008 OIC Charter). As provided for in terms of Articles 5 and 15¹⁴⁷ of the 2008 OIC Charter, in June 2011 the OIC Council of Foreign

Ministers (OIC Council) appointed its own human rights 'watchdog' body when it adopted the statutes establishing the first OIC Independent Permanent Human Rights Commission (IPHRC). Its members consist of 18 experts (regardless of their gender, location or the extent of their knowledge of Islam) in the area of human rights (currently six each from the African, Arab and Asian regions) and in terms of its mandate has consultative tasks only, for example, providing technical cooperation and raising awareness about human rights (see Articles 3, 6 and 7).

In conformity with Article 15 of the 2008 OIC Charter, the summary on the OIC's website of the IPHRC's 'Mission and Objectives' clearly indicates that one of the IPHRC's core activities include '[r]eviewing [the] OIC's own human rights instruments and recommending ways for their fine-tuning, as and where appropriate, including the option of recommending new mechanisms and covenants.'¹⁴⁸ Although, as already indicated, its role and extent of its powers in this regard may, therefore, be disputed, this would, for example, include the Cairo Declaration and the CRCI and promoting their compatibility with UN human rights instruments within a broad framework of Islamic values rather than *Shari'a* per se. Although it may become necessary, given that membership of the IPHRC does not deem *Shari'a* expertise a 'compulsory' requirement, interpretation of Islamic law cannot be seen to be a primary task of the Commission. As will be detailed in Section 6.4, the CRCI itself does not appear to overtly establish *Shar'ia* as a source of interpretation. While the first session of the OIC-IPHRC was held in Jakarta in February 2012, the IPHRC recently concluded its 8th Regular Session, which was held in Jeddah, Saudi Arabia, on 23 November 2015.

6.1 Substantive and more controversial provisions of UN and Islamic instruments in comparative perspective

Having dealt with the 2008 OIC Charter in the previous Section (5.5), Sections 6.2-6.4 will emphasise only the remaining three Islamic instruments, namely, the OIC-CDHRI, the LAS- ACHR and the OIC-CRCI, and how their more controversial and substantive provisions compare with provisions in several areas in UN instruments. It is, inevitable, that there is some overlap of information in the discussion of these instruments.

¹⁴⁷ Article 15 of the 2008 OIC Charter states that 'The [IPHRC] shall promote the civil, political, social and economic rights enshrined in the organisation's covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values.'

¹⁴⁸ Article 8 (Objectives) of the IPHRC Statute states that: 'The Commission shall seek to advance human rights and serve the interests of the Islamic Ummah in this domain, consolidate respect for the Islamic cultures and noble values and promote inter-civilizational dialogue, consistent with the principles and objectives of the OIC Charter' while Article 17 (Mandate) states that: 'The Commission may cooperate with Member States, at their request, in the elaboration of human rights instruments. It may also submit recommendations on refinement of OIC human rights declarations and covenants as well as suggest ratification of human rights covenants and instruments within the OIC framework and in harmony with Islamic values and agreed international standards.' See, among others, also Articles 3, 12-17 of the Statute of the IPHRC.

6.2 The CAIRO declaration (OIC-CDHRI) (1990)

The Cairo Declaration is not only closely connected to the principles of Islamic Law (*Shari'a*), but in fact affirms it as its only source. While Article 19 clearly states that '[a]ll individuals are equal before the law...' Article 24 stipulates that '[a]ll the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah'. Many of the human rights contained in the document are therefore also clearly limited by the provisions of Islamic law. Some examples include the right to life (Article 2 (a)), the regulation of punishment (Article 19 (d)) and the right to assume public office (Article 23 (b)). The right to participation in government is narrowly provided for. As far as people's participation in forming governments is concerned, Article 21 (3) of the UDHR differs from the Cairo Declaration and expressly gives wider powers to the (will of the) people as the basis of government authority expressed through periodic and genuine elections by universal and equal suffrage. Article 23 (b) does not mention periodic elections nor universal and equal suffrage. The provision is rather unclear as to how the participation in government or assumption of office is going to be achieved. The narrow wording of the provision may be related to the fact that a number of the Member States of the OIC who negotiated and are associated with the Cairo Declaration do not hold periodic democratic elections and are ruled by monarchies. This right is further discussed with regard to the ACHR. In all these main regional instruments it is Islamic law, which has its basis in the primary sources of Islam, and not the primary sources themselves, which is the main point of reference in the quest for human rights in the Muslim world. Religion, more so than any cultural constraints, therefore, remains the main reason why, except for a modicum of agreement, the achievement of a uniform global consensus on human rights is well-nigh impossible. The Islamic law influence of the UIDHR (1981) on the CDHRI is also evident in its Article 2 (in terms of which life is regarded as a 'God-given gift'), Article 7 (b) (dealing with the rights of the child 'in accordance with ethical values and principles of the Shari'ah') and Article 9 (defining the boundaries of knowledge in terms of 'the religion of Islam'). Concerning the right to life (elaborated in detail when dealing with the CRCI), while there may therefore still be some justification for an abortion, this is not the case for suicide which is prohibited.

Article 10, which proposes to deal with an Islamic understanding of freedom of ideas and religion, stipulates that 'Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man... to convert him to another religion or to atheism'; much like the ACHR, no mention is made of him being able to voluntarily change his religion. While providing for the right to freedom of expression, Article 22 (a) of the Cairo Declaration qualifies it by stating that it should be exercised '...in such manner as would not be contrary to...Shari'ah'. Further, Article 22 (b) has included the qualification that '[e]veryone shall have the right to advocate what is right, propagate what is good and warn against what is wrong and evil according to...Shari'ah'.

As far as the right to religious freedom is concerned, it has been contended that Muslims must uphold the right to freedom of belief since Islam itself began by inviting (and not coercing) people to embrace it on the merits of its rationality and truth, thereby giving

them a choice in the matter.¹⁴⁹Some of the *Qur'anic* injunctions in this regard clearly imply that God does not need people to believe in him but that it is people who are in need of God, and further that there be no compulsion in religion.¹⁵⁰However, on the basis of Islamic law interpretations, a Muslim is not allowed to change his faith as apostasy from Islam is deemed to be against a major religious tenet of the Islamic faith. While in Islamic instruments the rights to both change religion or to be without one are not human rights, this appears to also be the case in international instruments (Article 18 of the UDHR) and Muslim states (although, as indicated, there were differences of opinion among their representatives) have had a hand in developments to this effect.¹⁵¹It is also surprising that, taking into consideration the different types of relationships that exist between states and religious communities in the world today, the states participating in the formulation of the freedom of religion articles were able to reach a consensus or compromise to create a common formula.¹⁵²

The provisions of the Cairo Declaration also clearly differ from those of UN instruments (and even LAS instruments), and vice-versa, in the following areas: the extent of the rights of women in marriage; freedom of expression and religion; the practice of *riba* [charging interest]; people's participation in forming governments; self-determination (in the context of colonisation); protection of the environment in times of war; and the rights to assembly, and social security (which covers the basic necessities of life).

In terms of Article 5 (a) which deal with marriage, the Cairo Declaration provides women with limited freedom in this regard when compared to Article 16 (1) of the UDHR. Acknowledging the importance of marriage, Article 5 (a) states that '[m]en and women have the right to marriage, and no restriction stemming from race; colour or nationality shall prevent them from exercising this right'. In order to conform with classical Islamic law in this regard, no mention is made of the right to marry someone regardless of his or her religion. On the other hand, and in addition to these three grounds, Article 16 (1) of the UDHR, also specifically mentions 'religion' as a further prohibited ground of discrimination. This difference can also be traced back to the Islamic Law principle that only allows Muslim men to enter into polygynous marriages with up to four non-Muslim (mainly Christian or Jewish) women without requiring them to convert to Islam because they practise a monotheistic religion, while a Muslim woman may only marry a Muslim man, and one such man at a time.¹⁵³Article 7 of the Cairo Declaration affirms the rights of a child '...in accordance with...Shari'ah'. Given that a Muslim man may marry a non-Muslim woman, this does not necessarily, or even automatically, mean that a Muslim child cannot be brought up by non-Muslims. The same applies to Article 9 of the Cairo Declaration in terms of which education is aimed at 'strengthen[ing] [a child's] faith in God'; while this may be deemed to exclude a Christian upbringing, it does not exclude a

¹⁴⁹ Hashim Kamali 'Freedom of Religion in Islamic Law' (1992) 21 *Capital University Law Review* 63, 65.

¹⁵⁰ See Q.35:15; 2:256; 2:257; 10:99; 18:29. The *Qur'anic* references in this article refer to the translation by Yusuf Ali, *The Holy Qur'an: Text, Translation and Commentary* (Islamic Education Centre 1946). The first number in the citation refers to the number of the chapter (*surah*) and the second number indicates the verse (*ayat*).

¹⁵¹ Najma Moosa 'Muslim personal Law affecting Children' (n 10) 135.

¹⁵² Karl Partsch 'Freedom of Conscience and Expression, and Political Freedoms' in L Henkin (ed) *The International Bill of Rights. The Covenant on Civil and Political Rights* (Columbia University Press 1981) 210.

¹⁵³ See Najma Moosa, *Unveiling the Mind* (n 36) 33.

secular one. Furthermore, Article 6 (b) of the Cairo Declaration also expressly places the economic responsibility of maintaining the family on the husband. This follows from Article 6 (a) which categorically limits women's equality with men to the sphere of 'human dignity'. Article 1 of the UDHR provides that both sexes are equal in both 'dignity and rights'. Article 6, therefore, complies with the dictates of *Shari'a* which places the economic responsibility of maintaining the family (*nafaqa*) on men in terms of what is deemed to be a controversial *Qur'anic* injunction (Q.4:34)¹⁵⁴. Even though Article 6 (a) acknowledges a Muslim woman as a financially independent being who is permitted to own, earn, dispose of wealth, and regulate her proprietary affairs as she deems fit, this is of no consequence during the marriage. Where she has contributed to the marriage, it is considered to be a debt that she may reclaim from her husband on divorce. All that is expected as a *quid pro quo* from the wife to justify her religious entitlement to support is that she, in turn, be a dutiful and obedient wife and a good mother. Although Q.4:34 is premised on what today is deemed to be an outmoded and patriarchal Islamic ideal, especially in a Western constitutional context, the husband's responsibility is justified as a direct consequence flowing from the disparity in the division of inheritance between a man and women in favour of men in terms of the Islamic law of inheritance based on a *Qur'anic* injunction (Q.4:11). Therefore, there is no real 'positive discrimination in favour of women'.

While Article 16 (1) of the UDHR envisages complete equality in the spheres of marriage from its inception, it also clearly provides for such equality as an entitlement that continues both during the marriage and on its dissolution. The differentiation between the rights and responsibilities of men and women in marriage as provided for in the Cairo Declaration also conflicts with the provisions of the CEDAW. Article 3 of the CEDAW [dealing with human rights and fundamental freedoms] expressly provides that women are equal to men in all spheres of life and further that in terms of Article 16 of the CEDAW [dealing with personal and family rights] they have equal rights with men in 'all matters relating to marriage and family relations'. It should therefore not be surprising that Article 16 is one which has been reserved by most Islamic states. Apart from the above, there is also an observable difference with regard to the preliminaries of marriage. Article 16 (2) of the UDHR [dealing with the right to marry and family life] expressly provides that '[m]arriage shall be entered into only with the free and full consent of the intending spouses'. While the practice lacks a strong or strictly *Shari'a*-backed provision, in consonance with some juristic practices where marriages are arranged by parents or relatives, a similar provision has not been included in the Cairo Declaration.

As indicated, apart from the differences regarding women and marriage there are other areas where there is no agreement, for example, in respect of freedom of expression and religion.

Another feature of the inclusion and entrenchment of Islamic legal principles in the Cairo Declaration is the absolute prohibition of usury or practice of charging interest (*riba*). Article 14, whilst guaranteeing the right to earn a legitimate living without

¹⁵⁴ For further reference to this verse see Najma Moosa *Unveiling the Mind* (n 36) 26, 46, 106-107, note 99.

monopolization, deceit or causing harm to others or oneself, categorically prohibits usury. A provision of this nature is absent in UN documents.

Article 11 (a) of the Cairo Declaration deals with the right to self-determination. Whilst not provided for in the UDHR, this right is dealt with in the UN Charter (eg. Article 51) and the ICCPR (Article 1 (1)). However, Article 11 (b) goes further than any UN document when it deals extensively with the issue of colonization - a subject that is not dealt with in UN documents. It both strongly condemns and prohibits it, and further imposes a duty on all states to support the struggles of colonized peoples who seek an end to all forms of occupation.

Article 3(b) of the Cairo Declaration makes provision for the protection of the environment (green rights) in times of war, a concept which has not been considered in UN instruments. While UN instruments do protect the rights of prisoners of war and make provision for other rights and obligations, the Cairo Declaration, in conformity with Islamic legal principles, has gone further by dealing with the environmental issue in times of war. It strictly prohibits the cutting down of trees, and the destruction of crops or livestock, enemy civilian buildings and installations.

A crucial point of criticism as far as democratic values are concerned, is the fact that the right to assembly, a guaranteed fundamental right in UN documents, is conspicuously missing in the Cairo Declaration. Unlike Article 22 of the UDHR, it also does not provide for the right to social security.¹⁵⁵ Article 7 (c) of the Cairo Declaration does, however, place a duty on children to care for parents in its stead.

6.3 The 2004 ARAB Charter (LAS-ACHR) (2004)

If we examine some of the human rights provisions of the 2004 Arab Charter pertaining to the death penalty; torture; self-determination; political participation; and freedom of religion, we see that it also impacts on several UN international instruments. For example, while Article 5 of the UDHR may prohibit torture, flogging, even of a child, may not be seen to be akin to torture in terms of Islamic law. In terms of Islamic law, and presumably subject to the nature of the crime, capital punishment may also be deemed as normal physical punishment of an offender. However, provisions in UN instruments like the ICCPR may provide otherwise. Article 7 (1) of the 2004 Arab Charter, by permitting the death penalty to apply to children below 18 years of age, clearly contravenes Article 37 (a) of the CRC (ratified by all 22 LAS states) and Article 6 (5) of the ICCPR (ratified by 17). It appears, however, that not one Muslim state has entered a reservation to Article 37.¹⁵⁶ While Article 6 (1) of the ICCPR guarantees the right to life, it does not abolish the death penalty, although Article 6 (2) provides that it ‘...may be imposed only for the most serious crimes...’. Article 1 of the Second Protocol to the ICCPR (1989) does, however, prohibit executions. As indicated in Section 4.1 and Table 1, most LAS states have ratified or acceded to the UN Convention Against Torture (CAT) and in doing so, demonstrate the conflict between

¹⁵⁵ See, however, reference to Article 7 (c) of the OIC Cairo Declaration detailed in Section 6.4 for the child’s duty to parents in this regard.

¹⁵⁶ Kamran Hashemi, ‘Religious Legal Traditions, Muslim States and the Convention on the Rights of the Child: An Essay on the Relevant UN Documentation’ (2007) 29, *Human Rights Quarterly* 194, 205.

corresponding provisions in regional instruments and international obligations which inevitably follows as a consequence of such ratification. Mujuzi¹⁵⁷ highlights that although the rights to freedom from physical or mental torture, or cruel, inhuman and degrading treatment or punishment are protected under Article 8 of the Arab Charter and its Article 4 (2) also states that such rights are non-derogate or absolute in comparison to the CAT, the Arab Charter has certain weaknesses. For example, it does not define 'torture' or require States Parties to ensure that the punishment meted out to the perpetrators of torture reflects the gravity of, or is commensurate with, the nature of the offence. Furthermore, while it may prohibit the deportation or extradition of political refugees, it does not prohibit extradition or deportation to a country where a person might be subjected to torture.

Articles 30 (1) and 30 (2) of the 2004 Arab Charter allow limitations to be imposed on freedom of thought, conscience, and religion, and even on the manifestations of such freedoms if these are 'provided for by law' or 'prescribed by law'. This is in direct contrast to Article 18 (1) of the ICCPR which distinguishes between the right to freedom of thought, conscience and religion and the freedom to manifest one's religion or beliefs (Article 18 (3)). In terms of Article 18 (3), only the manifestation aspect may be subject *'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'* (my emphasis added in italics). While the right to change one's religion and belief has been expressly provided for in, for example, Article 18 of the UDHR, 1994 (Articles 26 and 27) and 2004 versions of the ACHR do not mention the right to change one's religion. Since it can be construed to be in conflict with the Islamic law of apostasy, it has been avoided.

On the one hand, and much like the 1994 ACHR (Articles 1 A and 1 B), the 2004 ACHR (Articles 2 (1)-(3)) has gone much further than Article 1 of the ICCPR, or any of the UN human rights instruments for that matter, in providing for the right to self-determination by expressly emphasizing and denouncing Zionism and foreign occupation as constituting impediments to human dignity and has called upon its Member States to take measures to fight them. On the other hand, where the 1994 ACHR also deviates from UN documents is on the question of the political participation of the people in determining the leadership. As is also the case with the 1990 OIC Cairo Declaration, the 1994 ACHR does not specifically state how people are to take part in deciding the political leadership of their countries. All that is stated is that the authority to rule is derived from the people (Article 19). This is in clear contrast to the UDHR provision dealing with participation in government (Article 21 (3)), and which expressly provides for periodic free and fair elections with equal and universal suffrage. Thus, although the notion of periodic elections is not provided for in the 1994 ACHR, this position has been 'remedied' in the 2004 ACHR (Article 24).

The LAS apparently already has in place a document, 'The Charter on the Rights of the Arab Child', which was adopted in Tunisia in 1983 (and ratified by seven LAS states), and which appears to pertain specifically to the Arab child. However, given inconsistencies

¹⁵⁷ See Jamil D Mujuzi 'The Protection of the Right to Freedom from Torture in the Arab League States and Under the Arab Charter on Human Rights' (2010) 2 *City University of Hong Kong Law Review* 256-257.

with the CRC, the Arab Permanent Committee on Human Rights (also known as the Arab Commission on Human Rights which is different from the Arab Human Rights (or Charter) Committee)) considered updating this Treaty in 2009. It appears that this idea has since been abandoned.¹⁵⁸ Given the existence of such a document, the CRCI, adopted by the OIC to which all LAS states also belong to the Member States, this seems to be a duplication, if not superfluous, exercise, especially also given the fact that the consensus needed to give effect to the OIC document has as not yet been reached.

6.4 The OIC-CRCI (2004)

There are provisions protecting the rights of the child contained in, for example, the international UN Bill of Rights (the UDHR, the ICCPR, and the ICESCR), and already alluded to in the discussion of the preceding two Islamic instruments. The OIC Member States' reservations particularly to the 1989 CRC, the UN treaty specifically designed for the protection of the rights of children, are mainly due to fundamental differences between its provisions and both domestic and Islamic law. The CRC is also available in Arabic on the UN website and many of the CRCI provisions are modelled on it. As will become evident from the discussion below, this does not detract from the fact that while the provisions of the CRC also reflect sensitivity to the contextual and religious and cultural considerations of its OIC Member States (which include all LAS members), the CRC itself also has its fair share of flaws. For example, at the time of the drafting of the CRC, it was not possible to access a wider, divergent world view through modern means like the internet, and corporal punishment was probably also the norm. It is also a fact that, while they may have been indirectly heard through representation by NGOs etc, children themselves did not have a direct voice in the drafting process of the instrument that to date continues to dictate what is deemed to be in their 'best interest'.

The CRC with its 54 Articles preceded the CRCI, which only has 26 Articles, and it can be assumed that the CRC blueprint must have influenced the drafters of the CRCI given both their areas of similarity and, in some instances, even verbatim use of words or phrases. On the other hand, and as will become evident from the discussion which follows, the influence and contribution of OIC Member States to the CRC is evident from the explicit reference therein (Article 20) to the Islamic law alternative to adoption, the concept of '*kafalah*' [essentially a commitment to a special type of guardianship or fostering arrangement]. The CRC is, however, the only UN instrument which makes direct reference to Islamic law.¹⁵⁹

The CRCI on the other hand, although it makes no direct reference to Islamic law as a source of interpretation, of its provisions (detailed below) require compatibility with national law and therefore indirectly with *Shari'a*. Given that both documents cover a wide area of rights, it will be impossible to provide a detailed comparison between them. In terms of Islamic law, a Muslim child has both individual and collective responsibilities. The CRCI focuses on both the rights and the duties of the child and those of the larger

¹⁵⁸ See Mervat Rishmawi (n 83) 177 and its note 30 and Mervat Rishmawi, *The League of Arab States* (n 84) 27, 83-84, 99.

community and/or the Member State towards the child's welfare, and is definitely more restrictive both in scope and application, when compared to the more human rights centred approach of the CRC whose provisions focus more on the child as an individual. This does not detract from the fact that Islam takes the rights of children very seriously. Cognisant of the fact that it is children of both sexes who are the future leaders who are expected to carry forth the banner of Islam, Islamic law generally makes generous provision for the Muslim child from long before birth to puberty and even beyond. Given, too, that the 2004 CRCI may not have much in common with its UN counterpart and may be more restrictive than it in order to conform to *Shari'a*, it is difficult to understand why the CRCI may as yet not be in force. On the other hand, most of its African Member States have ratified (and very few with reservations) the ACRWC, another diverse children's charter. Egypt and Sudan, for example, do not consider themselves bound by Article 21 (2) of the ACRWC which prohibits child marriage and which specifies the minimum age of marriage to be 18 years. Egypt's reservation to Article 24 of the ACRWC which recognises adoption is under review and a similar reservation to the CRC has already been removed. Mauritania does not consider itself bound by Article 9 of the ACWRC which guarantees every child the right to freedom of thought, conscience, and religion.

However, given that the ACRWC itself in fact only entered into force at the end of November 1999, almost a decade after its adoption in 1990, there is still hope and time for the CRCI, if this is not as yet the case, to enter into force. The argument that was made in respect of OIC members adopting the ACRWC can also be made for those OIC members who also subscribe to European conventions concerning children. In terms of Article 3(1) dealing with the 'principles' of the CRCI, to achieve the objectives (Article 2) of this instrument, it is 'incumbent' on States Parties to '[r]espect the provisions of the Islamic Shari'a, and observe the domestic legislation of Member States'. Some of the rights are also either framed in an Islamic context (for example, in terms of Article 12 (1)) or made subject to domestic (national) laws (for example, Article 14 (2)). In the event that the CRCI comes into operation, provision has also been made for the establishment of an implementation mechanism, namely, the Islamic Committee on the Rights of the Child, whose sole mandate is to monitor at two-yearly intervals any progress that may have been made in the implementation of the CRCI (Article 24 (1)). Given that this body will therefore only be set up once the CRCI has entered into force, and notwithstanding the criticisms levelled at it as already detailed, presumably, the IPHRC will probably fulfil the role of monitoring the implementation of the CRCI until such a standing committee is formally established.

A unique feature of Islamic law that significantly distinguishes it from international conventions in this regard are children's responsibilities to parents? It is not only the duty of parents to maintain and take care of their minor or even adult needy children, but children, who have the necessary means to do so, have a corresponding and/or reciprocal duty in that they too are responsible for the maintenance – or, in modern parlance, the private 'social security' - of their needy parents who lack the basic necessities of life to cope with problems that accompany illness

¹⁵⁹ See also Kamran Hashemi (n 105) 196.

and old age.¹⁶⁰ There does not appear to be a dedicated current UN or Islamic treaty or mechanism protecting the human rights of aged or older persons, and there is also no such provision in both the CRCI and the comparable UN-CRC which preceded it. However, both Article 7 (c) of the 1990 Cairo Declaration and Article 19 (f) of the 1981 UIDHR make provision for the duty to care for elderly parents. There are, however, many similarities between the rights contained in the CRCI and the CRC. This explains why all OIC states, with Somalia (2015) and non-UN member Palestine (2014) doing so recently, have either ratified or acceded to the CRC. That there are also many notable differences is highlighted by the several reservations and declarations to it by the Member States. Some of these differences are the following. The formulation of the principle of the best interest of the child in Article 3 of the CRC, is deemed ‘a’, and not ‘the’ ‘primary consideration’ (as is the case with Article 4 of the ACRWC). This is understandable given the fact that there is no uniform norm that can stereotypically or even universally be applied to children from different walks of life. While a similar or dedicated provision is not contained in the CRCI, the latter contains several provisions, most notably Articles 8 (2)-(3) dealing with family cohesion and therefore very much ‘pro-parent’, which make specific reference to the best interest concept. Article 1 of the CRC defines a ‘child’ as ‘...every human being below the age of eighteen years unless, under the law applicable to the child, the *majority* is attained earlier’ (my emphasis added in italics). It clearly leaves it up to States Parties to regulate the age, making this provision quite acceptable to Arab and the Islamic Member States because it accords with and makes allowance for Islamic law provisions in terms of which (physical) ‘maturity’ can be attained earlier. The corresponding Article 1 of the CRCI simply defines a child to mean ‘...every human being, who, according to the law applicable to him/her, has not attained *maturity*’ (my emphasis added in italics). Article 21 (2) of the AU-ACRWC (dealing with protection against harmful social and cultural practices) which prohibits child marriage and specifies the minimum age of marriage to be 18 years and provides for the compulsory official registration of all marriages, therefore appears to be out of touch with cultural realities and practical realities in Muslim minority countries where Muslim marriages are not formally recognised. Notwithstanding that the age of marriage is set at 18 in several Muslim countries, for example, Egypt, the minimum age nonetheless remains the subject of much debate and a serious bone of contention. This is due to the fact that in terms of Islamic law, the termination of childhood has little to do with reaching a certain predetermined age and more to do with the physical ability or maturity to perform certain acts that would normally only be done by persons of an older age, and which would therefore, for example, justify child or early marriage. The CRC’s notion of childhood, therefore, conforms with a traditional Islamic law, and even cultural, understanding thereof. An interesting question is the following: Should a Muslim child get married before attaining the age of 18, and therefore attain majority through marriage, can the ‘married Muslim major *child*’ (now considered an ‘adult’) still rely on the provisions of the CRC for protection or will the child be disadvantaged as a result of the early marriage? While it may be contended that such protection is guaranteed by Article 41¹⁶¹ of the CRC, I have

¹⁶⁰ See Jamal Nasir, *The Islamic Law of Personal Status* (vol XXIII, Arab and Islamic Laws Series, 3 ed, Kluwer Law International 2002) 174.

¹⁶¹ Article 41 of the CRC provides as follows: ‘Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in: (a) The law of a State party; or (b)

difficulty in seeing how Article 41 guarantees the children's rights of a married child who is now an adult major by marriage. Article 2 of the CRC, pertaining to the prohibition of discrimination in the Convention's application or focus, states that its provisions shall '...without discrimination of any kind', including the child's or his/her parent's or legal guardian's sex and religion, apply to each child within the jurisdiction of a State Party. The Preamble to the CRCI highlights that consideration is to be given to the 'non-Muslim child' and, if compared with the UN position, may be deemed to have binding effect. However, having regard to its objectives (Article 2 (2)), the CRCI appears to focus on Muslim children only, but to extend to Muslim children everywhere (Article 2 (7)).

Another crucial area of distinction is the extent to which the right to life has been provided for. In terms of the CRC, and although the subject of academic debate which supports a view to the contrary¹⁶², the right to life is generally understood to apply upon the birth of the child and not prior to it. There is no direct reference in the CRC to the protection of the unborn from abortion, although such protection may be inferred from references made to the care of, or prohibition of discrimination against, the unborn in both its Preamble (given its general interpretative value) and the main body¹⁶³ of its text. Article 6 (1) of the CRCI, on the other hand, categorically guarantees the right to life to extend to the unborn foetus [child?]. Given the general conformity of Article 6 (1) with already existing provisions of Islamic law on the subject of abortion, and in terms of which ensoulment is deemed to occur at a certain stage after conception but before birth, abortion, with the exceptions condoned by Islamic law, has also been expressly prohibited. Article 6 (1) allows abortion 'under necessity warranted by the interests of the mother, the fetus, or both of them'. Without getting embroiled in the ethical 'moralities' and/or merits of pro-life and pro-choice arguments, from another and linked Islamic law perspective, the bond between mother and child is so invariably linked that she is even exempted from compulsory fasting during the holy month of *Ramadaan* (fasting), if her lack of nutrition might, for example, cause medical harm to the unborn foetus. So too, the unborn, in the case of a premature death, is entitled to a burial.¹⁶⁴ Furthermore, the fact that the compulsory *idda* [waiting period] observed by a pregnant Muslim woman upon both a revocable and irrevocable divorce only ends with the birth of the child adds weight to the fact that every effort is made to allow the innocent party (unborn child) to be born. In fact, in the case of a revocable divorce, the prospect of the birth of a child, apart from obviating any need to abort a foetus for financial reasons, can also promote reconciliation between spouses and ensure the child both the status of legitimacy and the guardianship and maintenance support of its father and the caring of its mother.

Another distinguishing factor between the rights provided in the CRC and the CRCI is the latter's extensive limitation of the application of its provisions to national laws and the

International law in force for that State.'

¹⁶² See in general Rita Joseph, *Human Rights and the Unborn Child* (Martinus Nijhoff, 2009).

¹⁶³ See, for example, Article 2 (1) of the CRC, which prohibits discrimination irrespective of 'birth or other status'. The use of the words 'or other status' (which can allude to an unborn status) directly next to the word 'birth', implies that birth is not necessarily the defining point at which human rights begin. Article 24 (d) also makes provision for '...pre-natal and post-natal health care for mothers'.

¹⁶⁴ Masoud Rajabi-Ardeshiri, 'The Rights of the Child in the Islamic Context: The Challenges of the Local and Global' (2009) 17(3) *The International Journal of Children's Rights* 479.

Shari'a. For example, while the CRC has provided a few such limitations, Article 3 (1) of the CRCI (dealing with its principles) indicates that in order to achieve its objectives (in terms of Article 2) it is obligatory to '[r]espect the provisions of the Islamic Shari'a, and observe the domestic legislations of the Member States'. The latter legislation, in most cases, is invariably dominated by Islamic law.

Another distinguishing area between the two instruments is the fact that Article 15 (3) of the CRCI (concerning the health of the child), in entitling the child to physical and psychological care, provides that prospective spouses (who are considering entering into a marriage contract with each other) undergo a compulsory medical examination '...in order to ensure the absence or causes of hereditary or contagious diseases which portend danger for the child'. Notwithstanding, for example, the scourge of HIV/AIDS which has deprived many young children of parents and for which such a provision may be deemed to hold merit, and given the human rights and criminal law-related implications, the CRC understandably contains no such or similar provision.

While both the CRCI (Article 9 (1)) and the CRC (Article 12 (1)) provide the child with the right to express personal opinions, the CRCI makes such expression subject '...to the Shari'a and ethics'. While it would, for example, be deemed natural for a Muslim child living in a secular country to rationalize why he or she would prefer to go to a co-educational rather than a same sex school, this might not be the case in a Muslim majority country. Article 12 (2) of the CRC takes into consideration the views of the child when judicial and administrative decisions are made by adults concerning their welfare, and Article 8 (2) of the CRCI also provides a child with a similar opportunity to make its views were known (heard). With regard to the periods of custody and guardianship, Islamic law rulings, which vary according to the *madhhab* [school of law] to which the family subscribes, often also allow a child to choose the parent it would prefer to live with following a divorce.¹⁶⁵ Article 13 (1) of the CRC, while expressly making provision for freedom of expression, also restricts the exercise of this right to the circumstances provided by law (Article 13 (2)). Article 21 of the CRC recognizes and/or permits [note not 'requires'] the system of adoption provided that it is in '...the best interests of the child', while adoption is not provided for in the CRCI. This is not surprising given that adoption is prohibited in Islam which deem the legal bond between children and their natural parents to be binding, and one that cannot be artificially severed by a process like adoption.¹⁶⁶ Nevertheless, there are some OIC Muslim majority countries, like Tunisia, where adoption is permitted by domestic law. As indicated earlier, Islamic law does, however, make provision for a permitted alternative system to adoption referred to as '*kafalah*'. This arrangement allows a child to be raised by someone other than its natural parents and for which provision is in any case made in terms of Article 20 (3) of the CRC and Article 7 (3) of the CRCI. The CRC does not force states to accept its provision pertaining to adoption and therefore to incur any obligations in this regard and also explicitly makes provision for *kafalah* as a viable alternative to adoption. That not all Muslim countries understand this to be the case or necessarily have the same Islamic

¹⁶⁵ Jamal Nasir *The Islamic Law of Personal Status* (n 109) 171.

¹⁶⁶ *ibid*, 153.

perspectives in this regard, is clear from the initial reservations to Article 20 and 21 of the CRC by countries like Egypt and their later withdrawal, and in the case of Pakistan, the withdrawal of a general reservation to the CRC detailed in Section 4.1 (below note 61). The right to social security, which covers the basic necessities of life, is also provided for in terms of Article 26 of the CRC and Article 14 (2) of the CRCI.

Finally, while the CRC does not confine its reference to education to any religious group nor make mention of any religious education, in terms of Article 12 (1) of the CRCI the right to education to which children are entitled emphasises ‘...learning the principles of Islamic education...and Shari’a’. This also adds weight to the earlier assertion that the CRCI seems to focus on Muslim children and not children of all religions. In addition, the right to equality and equal treatment of all children is unqualified in Article 2 of the CRC (dealing with the prohibition of discrimination) whereas Article 5 of the CRCI ‘...guarantees equality of all children as required by law’ regardless of, amongst others, sex, and religion, but subject to national law and/or *Shari’a*.

7.1 Concluding observations

The LAS has a dedicated Arab Human Rights Day. On 10, December 2007, the former Secretary General of the OIC, in a speech given in commemoration of Human Rights Day and the 60th anniversary of the adoption of the UDHR, expressed a ‘...appreciation for the efforts and progress realized by the International Community in building and reinforcing specific instruments and mechanism to promote and protect human rights values and obligations around the world.’ The bitter-sweet lessons for the post-Arab Spring Muslim world certainly confirm the significance of such a day as an annual reminder to citizens of the fragility of human rights, its grey areas, and the importance of not only making rights real but also to strive to keep them that way. Since the time that the UDHR was embraced in 1948, there has been no shortage of international human rights instruments. The passage of more than a half-century (68 years) of international human rights development has undoubtedly left an indelible mark on regional human rights systems and instruments.

While both the LAS and the OIC were already in existence prior to the first UN call in 1977 for the establishment of regional human rights regimes, it was only during the last 30 years that Islamic states and organisations began to issue a number of mostly non-binding Islamic declarations on human rights.

The fact that some of the early declarations have been succeeded by newer versions not only highlight that there is a continued demand for them, but also that many of the human rights issues discussed in the early declarations currently remain the same or are unresolved. Their value in holding many lessons for the further evolution of human rights in the Arab-Islamic world and in their often conflicting relationship with global human rights and UN instruments should therefore not be underestimated.

In comparison to the nine major international UN instruments, four regional Islamic instruments appear to represent a development that is both favourable to, and indicative of, a serious intent to assure the manifestation of human rights, and to ensure their

implementation, in the Arab and Muslim worlds. However, as far as the formal legal status of the four Islamic instruments is concerned, the overall picture looks both unclear and rather bleak. While the OIC Cairo Declaration is a non-binding legal instrument, and three of the four documents are binding in nature, only one document, the 2004 Arab Charter, can be said with certainty to have entered into force. As can also be gleaned from Tables 1 and 2, the rate of ratification of UN instruments by OIC and LAS Members is, more often than not, on par with, and sometimes even better than, those of UN Members per se. However, the fact that these ratifications are often accompanied by an often higher record of reservations and declarations, as, for example, demonstrated with regard to the CEDAW and the CRC, often render the protections that the instruments may offer, meaningless or of little value. The fact that the UN itself makes this possible means that it would be entirely justifiable to also credit it with part of the blame for the current situation. While there might be many areas of overlap and mutuality between Islamic and UN instruments, these are often outweighed by irreconcilable differences which are either genuinely, or purportedly, based on religion. It is nonetheless comforting to know that the UN does take especial cognisance of the cultural and religious contexts of their Arab and the Islamic Member States and that it has done so directly through provisions in one UN human rights instrument (the CRC) or by making allowances for reservations to be added to them. However, more often than not, it is ultimately governmental delegates or diplomats of these countries, whose views may also substantially differ, who play an instrumental role in the creation of international human rights standards and treaties. They ‘...are usually more concerned with negotiating the official positions of their governments into “expedient” ambiguity than with achieving conceptual clarity on the basis of the realistic beliefs, attitudes, and practices of their national constituencies.’¹⁶⁷ The Arab Spring uprisings in several parts of the Arab and Muslim worlds have been both a stark reminder of and bear testimony to this fact. Regardless of the fact that Member States may have ratified UN instruments and are therefore duty bound to give effect to their provisions, ultimately it is not only religious factors but also political, cultural and ideological factors and contexts that dictate ‘...the realistic prospects of implementation of those treaties’.¹⁶⁸ A critical, comparative analysis of especially some of the more controversial provisions in major UN and more recent Islamic instruments nevertheless also highlights that Islamic instruments are unique in nature and therefore rightfully belong to a *sui generis* category.

While they may therefore also contain flaws or may not quite yet have caught up with current developments and may possibly not intend to do so anytime soon mainly because of religious, rather than cultural, considerations, they should nonetheless also be respected. There undoubtedly remains a growing need for the substantive provisions of Arab and Islamic instruments to be properly analysed and reviewed with a view to their renewal, rather than to have them compete and be compared with Western human rights constructs. However, this needs to be done from within their own traditions

¹⁶⁷ Abdullahi An-Na'im, 'Cultural Transformation and Normative Consensus on the Best Interests of the Child' (1994) 8 *International Journal of Law and the Family* 62, 65. See Susan Eileen Waltz 'Universal Human Rights: The Contribution of Muslim States' (2004) 26 *Human Rights Quarterly* 799, 814 and 839.

¹⁶⁸ An-Na'im (n 116) 65.

especially given the ‘...widely varying national versions of Islam’¹⁶⁹ clearly evident already from the time of the adoption of the UDHR and which continue to the present time. Moreover, since some UN instruments, the CRC being a case in point, are also flawed (‘out-of-date’ and ‘out of touch’ with current realities), and often to a greater extent than more recent Islamic constructs, the current expectation of the Western or secular world that it is Islamic instruments and not UN instruments that should be amended to accommodate conflicting *Shari’a* rules, is not only unreasonable but also unrealistic. It is suggested that both sets of instruments are in need of adaptation and revision.

Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them both in letter and in spirit within the framework of that order. While striving to seek a balance between Islamic and international human rights instruments is a lofty goal, it is, therefore, both impractical and ‘ill-fitting’ to expect that international instruments will be able to accommodate different ‘sizes and shapes’ and to do so all of the time. This is clearly evident in the manifold reservations that Muslim countries make to these instruments. There is, therefore, nothing precluding any other religion from following suit and adopting similar declarations.

It is ultimately the responsibility of all states, in conformity with the UN Charter (Article 1 (3)), to ‘...promot[e] and encourag[e] respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion...’.

The role of human rights NGOs in advancing the promotion and protection of human rights in the Muslim world and whose memberships and protections extend to include men and non-Muslims, must also not be underestimated. Through encouraging and welcoming the establishment of parallel regional systems and human rights instruments, the UN acknowledges that while human rights are deemed to be universal, notwithstanding political and economic factors, regions also have various cultural and religious backgrounds that are peculiar only to them. The UN itself, through the Vienna Convention, therefore also makes allowances for such cultural and/or religious considerations be accommodated and, in the process of doing so, for individual rights and protections to be both limited and obfuscated. If therefore certain UN instruments are deemed to not have any ‘teeth’ and the UN is viewed as a body without the power to enforce the individual rights guaranteed to all people by international instruments, then these concerns are not entirely without merit. Although beyond the purview of this article, a very credible case can be made in support of an argument that more than the mere ‘allowances’ by the UN for the Member States to limit the application of its instruments at the regional level is necessary. The UN could, for example, acknowledge that some of its own instruments may be outmoded and therefore in need of revision. The Muslim Member States should also take cognisance of their lived realities and the current challenges which they face.

Having examined the role of the LAS and OIC in the field of human rights development, it

¹⁶⁹ Ann E Mayer ‘General Remarks on Human Rights and Islam in the Middle East’ in Elliesie H (ed) *Islam and Human Rights* (Peter Lang GmbH 2010) 219.

is nonetheless contended that, ultimately, the advantages of having these human rights systems and instruments and the limited protections that they may offer, outweigh the disadvantages of not having them at all.

While some authors may have deemed the effect of the LAS and the OIC in the field of human rights as nothing more than 'symbolic', this article has demonstrated that this is not an entirely accurate or fair assessment of their (especially the OIC's) past, current, and potential future impact as far as the advancement of human rights, contained in both their own regional instruments and in the UN instruments to which their members subscribe, are concerned. Given that two human rights systems, with overlapping or international memberships across four continents or regions, respectively exist in the Arab and Muslim worlds, one can argue that the Arab and Islamic systems have the potential to double the strength of cause on human rights in these countries. However, the Arab Spring uprisings bear testimony to the fact that membership of the LAS and OIC has made little real difference to the improvement of human rights in the Member States. While it may be better to have a deficient system that will gradually improve than no system at all, what has to be given serious consideration is whether the LAS has not become a superfluous body from both law-making and human rights perspectives. This is so not only because of the common aim of both the LAS and the OIC to promote unity among their Member States but also because of the various constraints that must accompany the duplication of common human rights issues and concerns and even instruments. For example, it is theoretically possible that a Member State belonging to all four bodies, the OIC, LAS, UN, and AU, may have to contend with four different instruments concerning the child. However, given possible reservations thereto, they may be practically impossible to implement. Certainly, as far as co-ordinating the promotion of human rights and implementing the protections that these human rights instruments might offer, an argument can be made that it would make much more practical sense for the OIC and LAS to combine forces and to have one strong and functional overarching body in this regard which it would ultimately be easier for the UN and the West to work and understand, as well as for it to be taken seriously as both a strengthened and unified body, with clout. Although the OIC was established in 1969, some 24 years after the LAS was founded in 1945, in view of the geographical and collective memberships that the OIC spans, the similar objectives and areas of cooperation¹⁷⁰ of the OIC and the LAS, and the potential of the OIC for further exponential growth, one of the ways that the suggested overarching body could be achieved, would be for the two organisations to unite to form one streamlined human rights system which would pave the way for a more meaningful, economical and effective functioning. This will enable a movement towards a human rights regime that is both more in tune with the needs of member countries' citizens and normative Islam, on the one hand, and the UN universal system to which all OIC states, except Palestine with its observer 'state' status, also belong, on the other. While the Palestinian-Israeli problem was a primary consideration for the formation of

¹⁷⁰ The ties of cooperation between the two bodies remain close. This is evident from the fact that, even though no direct reference is made to human rights, in 2009, the 1989 Cooperation Agreement between the LAS and OIC was replaced by an amended version. See 'Amended Cooperation Agreement Between the Organization of the Islamic Conference and the League of Arab States' http://www.oicoci.org/data/cooperation/with_league_of_arab_states/cooperation_oic_league_2009_en.pdf accessed 5 April 2016.

the LAS and OIC, provision is also made for the protection of the human rights of all Muslims. To date, however, such protection has been overshadowed by the Palestinian problem. With a view to seeking a solution to the current impasse in this regard, while at the same time also ensuring their effectiveness as human rights systems, the LAS and the OIC, as regional bodies, could consider, as a starting point, the admission of Israel, if not as a full member, then with observer status. As a member, Israel, in turn, can then also be held accountable for any subsequent human rights violations. However, given the political contexts of the LAS and the OIC, it is idealistic to expect that this will ever materialise. Historical and political considerations and contexts have played an instrumental role in the establishment of all three (the UN, LAS and OIC) organisations. Since many of these issues still remain relevant for the LAS and OIC, especially the situation in Israel, the occupied territories and the Middle East, they appear to have received greater attention than the establishment of human rights regimes that are more in tune with the UN or even other regional human rights systems. Given that (overlapping) membership of the LAS and OIC may therefore not have resulted in any significant contribution to or improvement of human rights in the member countries, it is not surprising that the Arab and Islamic systems are hardly given much consideration in major and seminal works pertaining to human rights, or for that matter, even in the official websites of their own organisations. Ironically, the Palestinian issue, although remaining of cardinal importance, and which was among the primary reasons for giving birth to both the Arab and Islamic systems, continues to be used to divert attention away from the equally pressing human rights concerns closer to 'home' in the rest of the Muslim world. The Arab Spring is clear proof of this. Devoting considered attention to these human rights concerns can possibly also be a stepping stone towards the amicable resolution of the Israel-Palestine situation. That Israel appears to belong to no human rights regional body, and that OIC members also belong to other regional bodies, including a considerable AU membership, should be seen as a further incentive to take the lead in this regard. However, it appears that membership of the AU has unfortunately been of little help since the AU has had a very little influential impact on changing the status quo. While Arab and Islamic instruments of regional systems may be treated in the academic writings and discourse of many, though not all, Western authors on the subject, as 'defunct' and 'discriminatory' and therefore hardly given a proper place and space alongside discussions of other regional instruments and systems, it does not detract from their potential to improve the standards of human rights protection that has already been achieved through the UN. The LAS was founded around the same time as but just before the UN in 1945. It is therefore not a newcomer to human rights and its members can proudly be counted among the founding UN states which have helped shape UN instruments from its inception.

Our world is a culturally and 'ideologically-religiously' distinctive and plural one with gradations of 'First' and 'Third' Worlds which intersect and where multiple identities, for example, being Muslim, Indian and African, are common. Provisions in some Islamic instruments may inadvertently also extend to include non-Muslims within their ambit, for example, in cases of inter-faith marriages. Treaties like the CEDAW and the CRC, highlight the imposition of obligations not only on States Parties but increasingly on individuals and even children that may not necessarily serve the 'best interests' of either

of the latter parties. While this implies controversy rather than consensus, and different norms and worldviews, it can also mean three things: first, innovation as is evident in the more recent Islamic instruments; secondly, the need to revise especially the older UN instruments like the CRC; and thirdly, that human rights should become more human(e). Islamic instruments make provision for issues that are not covered in UN instruments. While some of these innovations might be deemed problematic when viewed from a Western perspective, for example, compulsory medical testing for couples wishing to get married and obliging children to take care of needy parents, others, such as, protecting the environment during war and prohibiting the charging of interest, are often welcomed by Muslims.

Perhaps the ultimate messages to be gleaned from this article, as also evidenced by the events which precipitated the uprisings, is the following: the Arab Spring was not an event that took the world by surprise or was 'sprung' unannounced– it was a human rights bubble waiting to burst. The 'twitter revolution', as the Arab Spring uprisings have also been labelled, has taught us the following: that advanced technology, literally, 'virtually' makes it difficult to 'delete' or 'hide' rights and then to expect that such infringements will remain invisible or without repercussions for very long; that the quest for socially just societies based on principles of freedom of religion, equality and the dignity of every human being is universal and essentially conforms with international understandings and values; that the human rights instruments containing and providing for their protection are not mutually exclusive and should, therefore, be treated as a 'package deal'; that even though UN, Arab and Islamic instruments share the objective of protecting and promoting the enhancement of human dignity (or a wide interpretation thereof) as probably more important than equality, most important, and preceding any considerations of a hierarchy of human rights systems, pecking order of human rights, or even access to them, is the freedom to be able to have, what I believe should also be classified as a meta-right (right that protects rights), *the right to have human rights*. Failing to acknowledge this fundamental point makes all other rights worthless or mere paper rights and human rights instruments mere paper protections.

Signatures, ratification, accession (a) or succession (d) to nine major UN treaties and their optional protocols by OIC and LAS states as at 30/03/2016

UN TREATIES & PROTOCOLS	1 CERD 1965		2 ICCPR 1966		ICCP R OP I 1966		ICCP R OP II 1989		3 ICESCR 1966		ICES CR OP 2008		4 CEDAW 1976		CED AW OP 1999		5 CAT 1984		CAT OP 2002		6 CRC 1989		CRC-AC OP I 2000		CRC-SC OP II 2000		CRC-CP OP III 2011		7 CMW 1990		8 CRPD 2006		9 CED 2006			
	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified				
	OIC member States (LAS States in bold)																																			
1 AFGHANISTAN		a		a					a			x	x			x	x			x	x		a		a								a			
2 ALBANIA		a		a		a		a		a			a		a	x	x		a	x	x		a		a	x	x		a	x	x	x	x	x		
3 ALGERIA	x	x	x	x		a			x	x			a			x	x			x	x		a		a					a	x	x	x	x		
4 AZERBAIJAN		a		a		a		a		a	x		a	x	x		a	x	x		a		x	x	x	x			a	x	x	x	x			
5 BAHRAIN		a		a					a			a				a					a		a		a							x	x			
6 BANGLADESH		a		a					a			a	x	x		a			x	x		x	x	x	x					x	x	x	x			
7 BENIN	x	x		a		a		a		a	x		x	x	x		a	x	x	x	x	x	x	x	x	x	x	x		x		x		x	x	
8 BRUNEI												a			x							a			a							x				
9 BURKINA-FASO		a		a		a		a		a	x		a	x	x		a	x	x	x	x	x	x	x	x	x				x	x	x	x	x	x	
10 CAMEROON	x	x		a		a		a				x	x		a		a	x		x	x		x	x	x					x		x		x		
11 CHAD		a		a		a			a			a	x			a	x		x	x		x	x	x	x					x		x		x		
12 COMOROS	x	x	x						x				a			x						x	x			a				x		x		x		
13 COTE D'IVOIRE		a		a		a			a			x	x		a		a			x	x		a		a	x					x	x				
14 DJIBOUTI	x	x		a		a		a		a			a			a				x	x		x	x	x	x							a			
15 EGYPT	x	x	x	x				x	x			x	x			a				x	x		a		a				a	x	x					
16 GABON	x	x		a			a		a	x	x	x	x		a	x	x	x	x	x	x	x	x	x	x	x		a	x		x	x	x	x	x	
17 GUINEA	x	x	x	x	x	x			x	x		x	x			x	x	x				a			a				a	x	x					
18 GUINEA-BISSAU	x	x	x	x	x	x	x	x		a	x		x	x	x	x	x	x		x	x		x	x	x	x	x			x		x	x	x		
19 GUYANA	x	x	x	x		a			x	x		x	x			x	x			x	x		a		a					x	x	x	x	x		
20 INDONESIA		a		a					a			x	x	x		x	x			x	x		x	x	x	x				x	x	x	x	x		
21 IRAN	x	x	x	x					x	x											x	x		x										a		
22 IRAQ	x	x	x	x					x	x			a								a			a		x								a		a

23 JORDAN	a	x	x					x	x			x	x			a			x	x	x	x	x	x							x	x				
24 KAZAKHSTAN	a	x	x	x	x			x	x	x		a	x	x		a	x	x	x	x	x	x	x	x	x						x	a		a		
25 KUWAIT	a		a					a				a				a			x	x		a		a												
26 KYRGYZSTAN	a	a	a	a	a			a				a			a				a	a	a	a	a	a			a	x								
27 LEBANON	a		a					a				a			a				x	x	x	x		x	x							x				
28 LIBYA	a		a		a			a				a			a				a	a	a	a	a	a			a	x								
29 MALAYSIA												a							a	a	a	a	a							x	x					
30 MALDIVES	a		a		a			a	x			a			a	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x			
31 MALI	a		a		a			a	x			x	x		a				a	x	x	x	x	x			a	x								
UN TREATIES & PROTOCOLS	1 CER D	2 ICCP R	ICCP R OP I	ICCP R OP II	3 ICESC R	ICES CR OP	4 CEDA W	CED AW OP	5 CAT	CAT OP	6 CRC	CRC- AC OP I	CRC- SC OP II	CRC- CP OP III	7 CMW	8 CRPD	9 CED																			
	1965	1996	1966	1989	1966	2008	1976	1999	1984	2002	1989	2000	2000	2011	1990	2006	2006																			
OIC member States (LAS States in bold)	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified	signed	ratified		
32 MAURITANIA	x	x		a				a			a					a			x	x	x	x		a				a			a	x	x			
33 MOROCCO	x	x	x	x				x	x		a			x	x	a			x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
34 MOZAMBIQUE	a		a		a			a			a			a		x	x		a							x	x	x	x	x	x	x	x	x		
35 NIGER	x	x		a	a			a			a			a		x	x		a						x	x			a	x	x	x	x	x		
36 NIGERIA		a		a							x	x	x	x		a			x	x	x	x	x	x	x	x			a	x	x	x		a		
37 OMAN		a									a																									
38 PAKISTAN	x	x	x	x				x	x		a			x	x				x	x	x				x	x										
39 <i>PALESTINE</i>		a		a				a			a																								a	
40 QATAR		a									a								x	x				a												
41 SAUDI ARABIA		a									x	x																								
42 SENEGAL	x	x	x	x	x	x		x	x	x	x	x	x	x	x	x	x		x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
43 SIERRA LEONE	x	x		a	a			a			x	x	x	x	x	x			x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		
44 SOMALIA	x	x		a	a			a																												
45 SUDAN		a		a				a																												
46 SURINAME		d		a	a			a																												
47 SYRIA		a		a				a			a																									
48 TAJIKISTAN		a		a				a																												

49 THE GAMBIA		a		a		a				a			x	x			x				x	x	x												a					
50 TOGO		a		a		a				a	x			a			x	x	x	x	x	x	x	x	x	x	x	x			x		x	x	x	x				
51 TUNISIA	x	x	x	x		a				x	x			x	x		a	x	x	x	x	x	x	x	x	x	x					x	x	x	x					
52 TURKEY	x	x	x	x	x	x	x	x	x	x				a	x	x	x	x	x	x	x	x	x	x	x	x	x			x	x	x		x	x					
53 TURKMENISTAN		a		a		a		a		a				a		a						a		a													a			
54 UGANDA		a		a		a				a				x	x						a						x	x		a		a				a	x	x	x	
55 UAE		a												a								a															x	x		
56 UZBEKISTAN		a		a		a		a		a				a								a		a														x		
57 YEMEN		a		a						a				a								x	x		a												x	x		
Total OIC states (57)	21	5	15	5	5	3	2	11	14	49	10	2	19	54	13	21	19	49	16	19	42	57	28	45	25	54	9	2	16	22	45	46	23	13						
% total OIC states	3	9	26	8	9	5	4	19	2	86	18	6	3	95	2	3	3	86	2	3	74	100	49	78	44	95	16	6	28	39	78	81	40	23						
Total LAS states (22)	9	2	7	17	0	5	0	1	7	17	0	0	5	20	0	2	5	19	1	4	15	22	7	17	5	20	1	0	2	6	15	18	6	4						
% total LAS states	41	1	32	7	0	2	0	5	3	77	0	0	18	91	0	9	2	86	5	18	68	100	32	77	23	91	5	0	9	27	68	82	27	18						
Total UN states (194) Palestine (196) CRC	8	1	74	16	3	11	3	81	71	164	4	21	9	189	8	10	8	159	7	8	140	196	130	162	121	172	5	26	38	48	160	162	95	51						
% total UN states	4	9	38	8	18	5	19	4	3	85	2	11	51	97	41	5	4	82	3	41	71	100	67	84	62	89	2	13	20	25	82	84	49	26						

Table 1

Estimated number of OIC and LAS states that have entered reservations and declarations to four UN treaties & the AU-ACRWC as at 30/03/2016

Table 2

OIC States (LAS States in bold)		ICCPR 1966		ICESCR 1966		CEDAW 1976		CRC 1989		AU – ACRWC See Section 4.1 for an explanation			
	Estimated % Muslim Population	reserva tion	declar ation	reserva tion	declar ation	reserva tion	declar ation	reserva tion	declar ation	OIC states of AU (LAS in bold)	sig ned	ratified / accede d	reserv ation
1 AFGHANISTAN	100		d		d				d				
2 ALBANIA	75												
3 ALGERIA	99		d		d	r			d	ALGERIA	x	x	
4 AZERBAIJAN	93.4												
5 BAHRAIN	100	r			d	r							
6 BANGLADESH	85	r	d		d	r		r					
7 BENIN	15									BENIN	x	x	
8 BRUNEI	63					r		r					
9 BURKINA-FASO	50									BURKINA- FASO	x	x	
10 CAMEROON	55									CAMEROON	x	x	
11 CHAD	85									CHAD	x	x	
12 COMOROS	86									COMOROS	x	x	
13 COTE D'IVOIRE	60									COTE D'IVOIRE	x	x	
14 DJIBOUTI	94							r		DJIBOUTI	x	x	
15 EGYPT	94		d		d	r		r		EGYPT	x	x	x
16 GABON	1									GABON	x	x	
17 GUINEA	95		d		d					GUINEA	x	x	
18 GUINEA-BISSAU	70									GUINEA- BISSAU	x	x	
19 GUYANA	15		d										

20 INDONESIA	95		d		d	r		r					
21 IRAN	99							r					
22 IRAQ	97		d		d	r		r					
23 JORDAN	95					r	d	r					
24 KAZAKHSTAN	51.2												
25 KUWAIT	89	r	d	r	d	r		r	d				
26 KYRGYZSTAN	76.1												
27 LEBANON	70					r							
28 LIBYA	100		d		d	r					LIBYA	x	x
OIC States (LAS States in bold)		ICCPR 1966		ICESCR 1966		CEDAW 1976		CRC 1989		AU – ACRWC			
	Estimated % Muslim Population	reserva tion	declar ation	reserva tion	declar ation	reserva tion	declar ation	reserva tion	declar ation	OIC states of AU (LAS in bold)	sig ned	ratified / accede d	reserv ation
29 MALAYSIA	52					r	d	r	d				
30 MALDIVES	100	r				r		r					
31 MALI	90							r		MALI	x	x	
32 MAURITANIA	100	r				r		r		MAURITANIA		x	x
33 MOROCCO	98.7					r	d		d				
34 MOZAMBIQUE	29									MOZAMBIQUE		a	
35 NIGER	91					r	d			NIGER	x	x	
36 NIGERIA	75									NIGERIA	x	x	
37 OMAN	100					r		r					
38 PAKISTAN	97	r		r		r	d	r					
39 PALESTINE	Gaza (98.7) & West Bank (75)												
40 QATAR	100					r	d	r					
41 SAUDI ARABIA	100					r		r					
42 SENEGAL	95									SENEGAL	x	x	
43 SIERRA LEONE	65									SIERRA LEONE	x	x	
44 SOMALIA	100							r		SOMALIA	x		
45 SUDAN	85									SUDAN		x	x

46 SURINAME	25												
47 SYRIA	90		d		d	r		r					
48 TAJIKISTAN	85												
49 THE GAMBIA	90	r								THE GAMBIA		a	
50 TOGO	55									TOGO	x	x	
51 TUNISIA	98						d	r	d	TUNISIA	x		
52 TURKEY	99.8	r	d	r	d	r		r					
53 TURKMENISTAN	87												
54 UGANDA	36									UGANDA	x	x	
55 UAE	96					r		r					
56 UZBEKISTAN	88												
57 YEMEN	99		d		d		d			Total OIC (26) of AU (54)	22	24	3
Total LAS States (22)			9 of 17		8 of 17		17 of 20		15 of 22	% of OIC	85	92	12
% total LAS (ratified)			53%		47%		85%		68%				
Total OIC States (57)			18 of 50		14 of 49		25 of 54		25 of 57	Total LAS (9) of AU (54)	7	7	3
% total OIC (ratified)			36%		29%		46%		44%				
Total UN States (194) plus Palestine			67 of 168		50 of 164		79 of 189		74 of 196	% of LAS	78	78	33
% of UN States			40%		30%		42%		38%				

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