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EFFECT OF INTERNATIONAL
HUMAN RIGHTS LAW IN THE ARAB WORLD

With special focus on women and children's rights

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Dedication

To the spirit of my father Georges, who has always inspired me by his eagerness to learn and dedication to teach and who could not finish his Ph.D. due to his early demise;

To my mother Najat, who has dedicated herself to providing me and my sisters Mireille and Nancy with the best education and equipped us with ethics, positive attitudes and solid skills to overcome life challenges;

To my wife Patricia, for her constant and great support for always being next to me and supporting me in my study, research and career development;

To my children: Georges, Stephanie and Alexandre;

I dedicate this thesis, which is the result of 22 years of professional progressive experience in research, activism, programming and advocacy in the area of human rights, women and children's rights and three years of intensive research at Paris Descartes University under the supervision of Professor Jean-Yves de Cara.

EFFECT OF INTERNATIONAL HUMAN RIGHTS LAW IN THE ARAB WORLD

With special focus on women and children's rights

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INTRODUCTION

« ...D'un point de vue pratique, ce qu'il advient des droits de l'homme dépend donc dans une grande mesure de l'endroit où l'on a la chance, ou le malheur, de vivre. »

Jack Donnelly-05 Décembre 2009

Lately, the expansion of the fields of international law led the international treaties to occupy a prominent position among the sources of international law. Treaties and Conventions are now considered the most important sources of the contemporary international law. At the same time, they play a crucial role in the creation of the international and the internal legal norms, which led through the ages to the prosperity of contemporary international life, especially with the circulation of the international legislated treaties and the creation of the inspiring humanitarian principles. The role of International Law appears also as a tool to preserve the supreme interests of the State¹, in addition to the emergence of the role of the United Nations² with its specialized agencies, and its direct interest in human rights issues, and in particular in women's and children's rights.

Since its creation, the United Nations pledged itself, based on the its Charter approved in San Francisco in 1945³, to promote human rights and freedoms through enhancing the International Law of Human Rights. Article 1(3) of the United Nations Charter provides for the pursuit of international co-operation by resolving international problems of an economic, social, cultural or humanitarian character. It promotes and encourages respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

¹ Mohamed Fouad Rashad Dr., rules of treaty interpretation in Islamic law and international law, Alexandria, Al Fikr Al Jami'i publishing house, the first edition, 2007, p. 90, 91

² The name "United Nations" was devised by President Franklin D. Roosevelt and was first used in the "Declaration by United Nations" of 1 January 1942, during the Second World War, when representatives of 26 nations pledged their Governments to continue fighting together against the Axis Powers.

³ This Charter was drawn up by the representatives of 50 countries at the United Nations Conference on International Organisation, who met at San Francisco from 25 April to 26 June 1945.

The growing importance of international treaties – including the humanitarian principles and the law-making rules resulted in a direct impact on the internal Arab legal systems that are following with prudence what is happening at the international level and trying to keep pace with what is occurring on the international scenery and strive to contribute to its development.

On the other hand, the role of the State in the making of international rules diminished due to the increasing role of international organizations, in particular, the United Nations organization.

Similarly, the national legislature lost some of its powers due to the emergence and the enhanced role of the law-making treaties, especially those related to human rights. This comes definitely under the universality of human rights and the need to have them applied all over the world, everywhere, which explains the compatibility to a large extent of most of the Arab constitutions with international treaties.

These constitutions that made sure also to reflect the principles and the humanitarian values that have been adopted by the international community, through codification in international legally binding covenants and conventions.

From the League of Nations to the United Nations Organization, more than 100 treaties, declarations, guidelines, recommendations and international instruments have been adopted, which together set out the international legitimacy of women and child rights. These international instruments have been created and adopted through a long struggle that has used and continue to use the language of rights as a fundamental and powerful tool for social change. This struggle has caused the positive development of the traditional concept that considered “Rights” as legal enforcement procedures only, to turn it into a concept that consecrated “Rights”, and specifically women and children’s rights as an effective tool for the improvement of the situation of children all over the world, empowering them through their full participation in all matters affecting their lives. This struggle has also narrowed the gap between reality and the ideal, through applying minimum standards covered by international human rights instruments.

In our contemporary life, the term “Human Rights” has become one of the most frequent terms across the globe. Nowadays, it constitutes a major component of Human Development and represents a key issue in various fields comprising

media, politics, diplomacy and education. Human rights have become a present cause in crisis and wars, as well as all local, regional and international issues.

Nevertheless, such a development was not a coincidence neither a grant. It was, however, a culmination of a humanitarian struggle over hundreds of years. Such an unparalleled struggle contributed to the adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations, the supreme international organ, in 1948. This adoption reflected the acknowledgement of the international community of basic human rights against war, injustice, humiliation, famine, displacement, slavery, oppression, ignorance, deprivation, intolerance, tyranny, discrimination based on race, gender, religion, ethnic origin, language, colour or any other reason.

The expression “Human Rights and Fundamental Freedoms” has been mentioned seven times in the United Nations Charter, reassuring human dignity as a key component of pacific relationships between people across the world. Hence, human rights have no longer been an internal matter handled separately by each country, but rather a universal issue handled by the international law⁴.

The 20th century started with no rights almost for women and children. However, thanks to the human struggle, the 20th century ended up with very strong conventions aiming at upholding women and children rights all over the world. In 1948, The General Assembly of the United Nations Organization adopted on 10 December the Universal Declaration of Human Rights (UDHR).

Despite its importance, the UDHR was submitted to voting, orally and by show of hands, without signature or ratification, because it is not a legally binding instrument, according to International law. Declarations are statements of general principles and intent. They enjoy moral rather than legally binding value. However, in the case of the Universal Declaration of Human Rights, it was later on considered as part of Customary International Law, acquiring consequently the legal binding form. Customary International Law is the law that compiles the general and consistent practices followed by States at international level And with time, these practices have got the power of Law and have become binding to all States⁵.

⁴ Ghassan Khalil, *The Will to Change in a Changing World*, published in the report of the 5th International Scientific Conference, Dubai Police College, 2011.

⁵ Ghassan Khalil, *Child Rights: The Historical Evolution*, Publi Wave, Beirut, 2013.

The first article of the UDHR stipulates that “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” But the question remains: Do women and children enjoy equal rights with other society members? Is their inherent dignity always recognised and respected? Moreover, do women and children in the Arab world enjoy the rights covered by international instruments ratified by their respective countries/governments?

International Human Rights Law aimed at creating, amongst other, a new culture of respect for women and children, worldwide. However, every social change necessitates a comprehensive and holistic development, stemming from the adoption of new social patterns and practices, based on clear concepts. Any social change which is not generated from a comprehensive and holistic development remains an isolated and scattered intervention, and this is what this Thesis has highlighted in its Second and Third Parts. Initiating social modernization needs a knowledge boost and a qualitative behaviour change through re-visiting social values related to women and children, within and outside the family and the society.

Human rights activists in the Arab world started looking back in the seventies of the previous century at International Law as a saviour for women and children. However, time contributed to diminishing the value of International Law in terms of positive effect in the lives of women and children in the Arab world. It should be noted that legal texts may be very different from the practice, especially in the Arab world. Moreover, thoughts and mentality of people may be very different from the legal texts as well.

The main reason for that is that legislation and legislative action in the Arab world does not always come from the will of people and does not necessarily express the desire of people. University research in this regard is also to be mentioned as it is not adopted as a reference based on which the executive power suggests legislations and legislative power passes laws and regulations.

Based on that, the thesis has studied the compliance of legal texts in the Arab world with the practices on the ground. Whereas international conventions represent the legacy of the legal culture of women and children's rights, people's daily practices are on the other hand the truthful representation of the overall mentality. In the Arab world legal texts are in many instances very different from reality. This is due to many reasons, including the non-reliance

on academic research when drafting laws and the non-democratic processes to understand people's needs and aspirations. This leads to having legislations representing the thoughts of a group of people who are the parliamentarians, and who were elected in a societal system which may not necessarily have a sound democratic concept and practice.

The Thesis aimed at assessing and understanding the level to which International Law of Human Rights has been able to reach and to affect positively the lives of women and children in the Arab world. For that, the thesis relied on the following research techniques and methods-

- Desk review analysis of constitutions, laws, decrees, international instruments, national social policies, and other relevant documents;
- Interviews with legal experts in 18 Arab countries;
- Analysis of pre and post questionnaires, filled out mainly by judges;
- Interviews with senior officials in Ministries of Justice, Interior, Social Affairs, Higher Institutes of Magistracy, Universities and other institutions;
- In-depth interviews with Judges, professors and students;
- Interviews with beneficiaries, mainly through NGOs; and
- Case studies.

The basic assumption is that International Law should lead to the improvement of the lives of people. That was the conviction, and based on that many people in the Arab world became strong advocates for women and children's rights. They worked for the promotion of international conventions, mainly the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). They struggled also for their ratification by relevant national authorities, believing that such ratification would bring valuable positive changes to Arab women and children. However, time has been weakening that belief, knowing that the standards set in International Law have not always touched the lives of women and children.

The CEDAW became part of the International Law of Human Rights after it was adopted by the UN General Assembly on 18 December 1979⁶ and ratified by 20 States⁷. It was the result of thirty years of efforts and struggle by the UN Commission on the Status of Women (CSW)⁸. This Convention included women issues in the objectives of the United Nations and at the top of its priorities. The principle of equality prevails in this Convention. It emphasizes the importance of the human element and equal rights for men and women in several ways.

In the context of Child Rights, the CRC includes four General Principles (Non-discrimination, best interests of the child, survival and development and respect for the views of the child/the right to participation). Legally, every ratifying state is bound by these principles and also by the provisions covered by the CRC. But can we assume that the mindset is ready to assimilate and apply these principles and provisions? If not, what is needed to prepare the jurists and the law enforcement agents to respect children's human rights and their inherent human dignity? What about education systems and educational curricula; how much rights-based are they? And how much are they ready to promote the Rights of children as enshrined under the Convention on the Rights of the Child⁹.

In 1979, the Working Group set up by the UN Commission on Human Rights started drafting an international convention on the rights of the child. The official name of the drafting body was the open-ended Working Group on the question of a Convention on the Rights of the Child. For ten years, while the Convention was under preparation, the Working Group benefited from the participation of non-governmental organizations, which played a major role, based on their practical experience. Thus, the Convention on the Rights of the Child came out as an applicable instrument, based on the real problems and needs of the world's children.

On 20 November 1989, exactly thirty years after the adoption of the Declaration of the Rights of the Child (20 November 1959), the United Nations General Assembly unanimously and by consensus adopted the Convention on the Rights

⁶ This Convention was adopted by resolution no. 34/180 in 1979.

⁷ This Convention entered into force on September 3, 1984.

⁸ The Commission on the Status of Women is the principal technical body of the United Nations for the development of substantive policy guidance with regard to the advancement of women.

⁹ Ghassan Khalil, lecture given at the College of Education of Sultan Qaboos University in Muscat, Oman, on 19 March 2011.

of the Child, which has already been ratified by 191 states¹⁰. This Convention has the highest number of States Parties of all international human rights treaties¹¹. It entered into force on 2 September 1990, following ratification by 20 States.

When it comes to the highest legal texts in the Arab countries, namely the constitutions, it has been established through the analysis of Part I of this thesis that the Arab constitutions are not very far from what international women's and children's rights instruments have stipulated. But it has been noted on the other hand that the constitutions and the texts are very different from the laws passed by the legislative power in the Arab countries. There is a state of divorce between the constitution and the national laws on one hand, and the constitutions and the practice on the other hand.

Combined to the above-mentioned complexities is the problem of non-compliance in the Arab World. In fact, not a single Arab country conducted a comparative legal study between the national legislation and the CEDAW and the CRC before ratification. Arab countries started looking at harmonizing the national legislation with the Convention after ratification, and in most of the cases countries adopted a very defensive position to prove that their legislations cover all the issues covered by the two Conventions.

The only areas in the convention which were scrutinized are those articles which have been considered in contradiction with the Islamic Law. It should be noted that the parliament or the legislative assembly of a western state, being the sovereign authority, can abrogate an existing statute or introduce a new law as it may deem fit. The legislative organ of an Islamic state, on the other hand, cannot abrogate the Quran or the Sunnah, although it may abrogate a law which is based on *maslahah* or *istihsan*¹². This issue besides many other issues related to the applicability of international ratified conventions in the light of the supremacy of Sharia are discussed in Part II of the thesis.

Needless to say that scrutinizing the constitutionality of laws is not a process and a practice that is always conducted in the Arab countries; Lebanon and Egypt are an exception for instance. We may therefore find many laws passed by the national legislative power which are not in line with the constitution as

¹⁰ The CRC was even accepted by non-states entities such as the SPLA Movement in Southern Sudan

¹¹ Only two countries have not ratified yet, USA and Somalia.

¹² Mohammad Hashim Kamali, *Principles of Islamic jurisprudence*, Cambridge 1989- 1991, PP:2, available at: www.kuleuven.be

well as many principles and legal articles in the constitution which have never been translated into laws and consequently never brought up any real value into the lives of citizens. Therefore it has been crucial and very much necessary to scan and study the Arab constitutions to find out to what extent they have ensured and guaranteed women and children's rights.

The thesis shows that most of the Arab countries have placed ratified conventions above the national law which is something very positive, however we find very little application when it comes to granting priority and higher legal authority for the ratified convention over the national law. This problem is related mainly to the non-application of the ratified international conventions by the national judiciary, and amongst others, below are two reasons:

First: Judges do not study ratified legal conventions and they are not aware of the principles and legal provisions stipulated in the conventions, which means that the ratified convention will never get into practice, will never reach women and children in terms of affecting positively their lives through a judicial judgment. In this context, two points should be noted. The first is the fact that many Arab countries have granted international ratified conventions primacy over national law passed by the legislative power, such as Algeria, Egypt, Jordan, Lebanon, Libya, Tunisia and others. But in reality, it is extremely difficult to find judicial judgements that honoured this principle. When interviewed judges expressed very clearly that they cannot accept the fact that an international convention is higher and stronger than the national law.

This issue raises countless questions about the effectiveness and value of granting ratified international conventions a legal power higher than the national law passed by the parliament. This proves, once again, the gap between the legal texts and the mentality of the Arab jurists on one hand, and the legal texts and the legal practice on the other hand. In the Arab world, most constitutions mention that Islam is the religion of the state and that the principles of the Sharia are the foundation of legislation, giving thus Sharia a very privileged position, above all other positive laws. It is noteworthy that the Quran and Sunnah provide the indicators from which the rules of Shariah can be deducted¹³.

¹³ Mohammad Hashim Kamali , Principles of Islamic jurisprudence, Cambridge1989- 1991, PP:2, available at: www.kuleuven.be

Various trends of Islamic thought and Muslim law schools differ with regard to the contents of the Sharia. According to the prevalent view, the Sharia is comprised of three main parts – religious dogmas, Islamic ethics and the so-called practical norms. The latter are further divided into worship instructions establishing procedures of the observance of religious duties, and norms regulating all the other aspects of Muslims' conduct and their secular relationships. It should be underscored that the norms aspect is no mere supplement to Islamic dogmas and ethics, but it is its most important part – to all intents and purposes its core. It is no accident that some authoritative researchers believe that theology is subordinate to law in the *Shari'ah*,¹⁴ or they generally attribute to the *Shari'ah* instructions that regulate the individual's behaviour but that have no direct bearing on his religious conscience and inner motivations¹⁵.

Second point is about the ambiguity of Arab legal systems on the question of whether ratified international conventions are directly applicable or they need to be recognized and promulgated by a national law. This question remains very vague to judges in various Arab countries, and some of them have been dealing with it on a discretionary basis.

The issue of the relation of International Law with Domestic Law is considered one of the concepts that have been enshrined since a considerable time in the contemporary international law. The dualist theory is an extension to the school of thought contingent on the will in the interpretation of the basis of the binding force of International Law; it is based on the difference between the sources of both the International Law and Domestic Law, as well as the difference in the legal nature and structure of both legal systems, in addition to the difference in the subject and the individuals addressed by the legal rule in both systems.

The adoption of this theory entails a complete independence between the two systems and the abstention of the domestic Judiciary from applying the international legal norms unless they are translated into domestic legal norms through the so-called reception. As for the monist theory, it is an extension of the contemporary positivistic school and considers that international law and domestic law constitute one legal system. In case of conflict between these two

¹⁴ Joseph Schacht, *Islamic Religious Law, The Legacy of Islam*, Oxford, 1979, p. 392. CA& CC press, *Sharia and Muslim-law Culture*, available at: <http://www.ca-c.org/>

¹⁵ Leonid Sykiäinen, *Shari'ah and Muslim-law Culture*, CA&CC Press, Sweden, available at <http://www.ca-c.org/dataeng/08.syki.shtml>

laws, proponents of monism are divided between those who adopt monism and give supremacy to international law and they are the majority, and those who call for this theory but give precedence to the domestic law¹⁶.

In all cases, the ratified CEDAW and CRC could not reach after several years of ratification a significant level of application by the judiciary at the national level. Throughout the Arab World, there is an extremely poor record of judicial decisions which were taken on the basis of the provisions of the Convention. From Mauritania to the Arab Gulf, judges still argue that they are not bound by International Law in general. They consider in fact that ratification is a duty performed by the Ministries of Foreign Affairs, but not necessarily affecting the judiciary. This was voiced in most of the Arab countries by senior and junior judges during interviews¹⁷ and it reveals a serious problem related to the implementation of international women's and children's rights.

International human rights law cannot be viewed in the abstract. Its meaning, application, and effect cannot be fully evaluated without reference to the state. Generally speaking, international law does not operate without states. While international human rights law has increasingly been brought to bear on non-state actors, states remain the principal focal point of international law generally, and international human rights law specifically¹⁸.

At the same time, "the general description of the *Shari'ah* as an aggregate of precepts established by Allah and transmitted to people via the Prophet has become established in Islamic literature. This raises some questions, however. Precisely which precepts are implied by the *Shari'ah*? Is it confined to religion or is the *Shari'ah* something broader? To attempt to answer these questions it is necessary to proceed from the nature of Islam as a whole, about which V. V. Bartold once made this apt observation: 'Whereas a Christian, in order to meet the requirements of his faith, should ignore himself for the sake of God and his

¹⁶ Abulkheir Ahmad Attia Omar, 'Implementation of International Treaties in the Domestic Legal System, Dar-Annahda Al-Arabia, First Issue, 2003, pp. 13 to 15. And COMBACAU(J), SUR(S), Public International Law (Droit international public), Editions ALPHA, MONTCHRESTIEN, 2009, p. 183. Samia Bourouba, Jurisprudence, In the Application of Human Rights Standards in Arab Courts, PP: 22

¹⁷ Interviews were conducted by Ghassan Khalil, during the three years of preparation of this thesis.

¹⁸ Anver M Emon, Mark S Ellis, and Benjamin Glahn, Islamic Law, PP: 5-6, available at: <http://www.academia.edu/>

neighbour, law requires a Muslim that he should not, amid his pursuits, forget God, should offer up prayers at prescribed times and give to the poor'¹⁹.

Almost every country has laws regulating family affairs and the sources of inspiration behind these laws differ according to whether they rely on circumstantial or on religious views. Several Arab countries based their family laws on the provisions of the Islamic Sharia, or made these laws a combination of both circumstantial and religious provisions. In addition to the influence of religion on the formulation of these laws, large parts of the International Human Rights Law now deal with family-related issues especially in conventions on specific subjects such as: the CEDAW adopted on December 18 1979 or the CRC adopted on November 20 1989²⁰.

What further complicates the matter is the case where a specific convention is ratified, but not published in the national Gazette. This is the case of Jordan for instance where judges denied for decades to implement international human rights conventions based on the fact that they were not published in the national Gazette.

Another reason is related to the mentality of the law enforcement agencies and the judges may not always be in line with the standards covered by the convention.

Therefore, the thesis went into assessing the real value of the CEDAW convention and the CRC convention in the legal system of the Arab countries. What is the use of a convention and of its ratification if it does not lead to making positive changes in the lives of people? International law and specifically international human rights law started out by militants and by activists in order to ensure human dignity for people and in order to make their lives better.

In the Arab world, there are major complex issues which prevent ratified international conventions from being fully applied. One of those issues, addressed by this thesis, is the political interference and the pressure exercised by powerful states aiming at expediting the recognition of certain rights before

¹⁹ Bartold, V. V., *Musul'mansky mir (The Muslim World)*; and Bartold, V. V., *Collected Works, Vol. VI: Works on the History of Islam and the Arab Caliphate* (in Russian), Moscow, 1966, p 218. CA& CC press, Sharia and Muslim-law Culture, available at: <http://www.ca-c.org/>

²⁰ Raoul Wallenberg Institute, *Jurisprudence, In the Application of Human Rights Standards In Arab Courts*, PP: 90, available at: <http://rwi.lu.se/>

others - such as favouring civil and political rights over economic, social and cultural rights – and/or pushing for ratification or non-ratification of particular conventions. In fact, politics have been at the centre of the human rights movement since the adoption of the UDHR in 1948. It is because of the divergence between the Western and Eastern blocs that the UDHR was submitted to voting, orally and by show of hands, without any procedure for signature or ratification, and did not get at the time a binding legal authority, according to the rules of International Law. It was only later on considered as part of the International Customary Law, acquiring thus the legal binding form.

In the Arab World, countries have followed since the beginnings of the twentieth century either the Western or the Eastern bloc. The first includes capitalist States, the leader being the United States, and the second includes communist and socialist States, the leader being the ex-Soviet Union. The Arab countries that followed the Western bloc granted civil and political rights priority over economic, social and cultural rights. The Arab countries that followed the Eastern bloc granted economic, social and cultural rights priority over civil and political rights. Very few Arab countries adopted a middle-ground. This political situation affected social systems in the Arab countries and created later on obstacles for the implementation of the CEDAW and the CRC.

Another dimension that the thesis tackled is the double-law systems in the Arab world, consisting of positive laws combined with religious Muslim law that affects a wide range of rights, the most affected being civil rights and family rights, including marriage. Consequently, having double legal standards leads to having double mandated authorities – civil authorities on one hand and religious authorities on the other hand, which creates significant obstacles to the implementation of international human rights law, which deals in principle with legal civil authorities mandated by the constitution of the State, and acquires its legal power from the civil laws and not religious laws.

Most Arab countries adopted the Sharia as the main source of legislations. There are some Arab countries which adopted Sharia as the source but not the main and only one. But in both cases all Arab countries which apply Islamic law (except Lebanon which applies Islamic law only for Muslims in personal status affairs) do grant priority for Sharia/Islamic law over civil law and especially over international law.

It is noteworthy however the case of Iraq where successive governments have sought to forge Shi'a, Sunni, Orthodox Christian, Arab, Kurdish, and other groups into a semblance of national coexistence. Part of the attempt to bring these diverse elements under the unified authority of one nation has been the enactment of unified legislation, such as the Iraqi Civil Code and the Iraqi Code of Personal Status. These two legal documents have, for the majority of the nation's modern history, comprised Iraq's civil law²¹. Since the enactment of the Iraqi Civil Code, Iraqi civil law has treated Sharia only as a subsidiary source of law, unequivocally stating that the written provisions of the Civil Code are dominant. The Civil Code states that when the written law is silent on a certain topic, Iraqi courts will decide matters in accordance with normal custom and usage. Only when there is no applicable custom or usage to which the court can turn may an Iraqi court look to Sharia to decide the merits of an issue. The new constitutional language changes that in that all laws must now be rooted in Sharia and may not contradict the undisputed rules of Islam. Not only does this make the sources of law expressed in the civil code problematic, ratcheting Sharia to the top of the hierarchy, but it calls into question the continued applicability of the majority of laws and provisions in the Iraqi Civil Code. The analysis of the Iraqi codal provisions above reveals that the majority of civil laws in force in Iraq are derived from Western legal systems—namely continental civil law—rather than Shari'a²¹.

In this context, Muhammad ibn Idris al-Shafi'i (d. 819) was concerned about the variety of doctrine and sought to limit the sources of law and establish a common methodology for all schools of Islamic law. His efforts resulted in the systemization of *usul al-fiqh*, the following four sources of Islamic law:

1. the Quran;
2. the Sunna or tradition (I would call it lifestyle and practices) of the Prophet;
3. "Qiyas" or analogies;
4. Ijma' or unanimous agreement on interpreting the Quran.

²¹ Dan E. Stigall, *Iraqi Civil Law: Its Sources, Substance, and Sundering*, PP:3-4, 64-65, available at: <http://www.law.fsu.edu/>

Throughout history these sources were used in descending order by Muslim jurists in determining the legality of an issue. If the legality was not based on an explicit command in the Quran, then the jurists turned to look for explicit commands in the hadith, and so on. Unfortunately, not all aspects of the methodology were unanimously agreed upon; the Quran could be interpreted differently, some traditions of the Prophet were questioned for their authenticity and to what extent they were religiously imperative, the use of analogies was greatly debated and there was little unanimous agreement among scholars in Islamic history about inexplicit issues.²²

Besides, Islamic courts apply what is called Juristic preference, or *istihsan*, which is a rationalist doctrine and a recognized proof of Islamic law. It consists essentially of giving preference to one of the many conceivable solutions to a particular problem. The choice of one or the other of these solutions is mainly determined by the jurist in the light of considerations of equity and fairness²³.

Personal interviews with judges in eighteen Arab counties revealed serious questioning of the need to resort to international law in the existence of Sharia. The value of having international conventions is not really justified by most of the Arab senior officials whether legal, social, or civic officials.

This is compounded by the fact that all Islamic doctrinal schools agree on the fact that Sharia/Islamic law should be above all other positive laws, including of course international women's and children's rights conventions. This reminds us of Joseph Schacht opinion that the practical importance of the sacred law for the pious Muslim is much greater than that of any secular legal system for the ordinary law abiding citizens²⁴.

So far, this discourse has shown a combination of two considerable factors that may reduce to a large extent if not eliminate the effect of international law on women and children's rights in the Arab world. In the case of Egypt, religious courts retained jurisdiction and applied religious law. This created a jurisdictional split between state courts and religious courts. Zweigert and Kötz note: "There thus arose in Egypt a sharp division between cases involving family relations or inheritance, for which there were religious courts applying

²² Muslim Women's League, September 1995, Intellectual Background: Islamic Sources of Information and their Development into Islamic Law, available at: <http://www.mwlnusa.org/>

²³ Mohammad Hashim Kamali, Principles of Islamic jurisprudence, Cambridge 1989- 1991, PP:2, available at: www.kuleuven.be

²⁴ Joseph Schacht, An introduction to Islamic Law, cited earlier

religious law, mainly Islamic, and disputes on economic matters, for which there were state courts applying law principally of French origin²⁵.” Thus, in the 19th century, French law found a foothold in Egypt and became a part of its legal tradition. In time, Egypt became fully independent and sought to adopt a legal model that comported with the more industrialized European countries. For the task of drafting a modern civil code for a Middle Eastern country, there was no one more suited than Abd al-Razzaq Al-Sanhūrī, a French-educated Egyptian jurist who was appointed principal drafter of the Egyptian Civil Code²⁶.

Since the Sharia/ Islamic law is considered as the highest source of legislation and the highest legal authority, it has been extremely crucial to assess whether the international conventions that have been ratified by the Arab countries are compliant with the Sharia. This includes a large array of discrepancies within Islamic doctrine based on the different schools of Islam which may differ in terms of interpretation of religious text, and this is what this thesis has gone deeply into studying. It is noteworthy that the four school thoughts of Islam are the Hanafi school founded by Imam Abu Hanifa, the Shafi'i school founded by Imam al-Shafi'i, the Hanbali school, founded by Imam Hanbal and the Maliki school, founded by Imam Malik²⁷.

Another important issue to analyze and come up with recommendations about it is the reservations made by Arab countries to certain articles of the CEDAW and the CRC. While the expression of reservation is the unequivocal right of every state, it is also the responsibility of states to review the validity and usefulness of reservations periodically, to ensure they are in the best interests of the people concerned in general, and in the best interests of the children, in the case of the reservations made to certain articles of the CEDAW and the CRC. At a first glance, the researcher figures out that the Arab countries have reserved to certain articles based on the Islamic Law. However, not all Islamic countries have reserved to the same articles, which means that there is no consensus on which articles may be in contradiction with Islamic Law. On the other hand, there are many interpretations regarding these reservations which significantly

²⁵ Konrad Zweigert, *An Introduction to Comparative Law*, 1998.

²⁶ Abdullahi Ahmed An-Na'im, *Globalization and Jurisprudence: An Islamic Law Perspective*, 54 EMORY L.J. 25, 47 (2005). See Dan E. Stigall, *Iraqi Civil Law: Its Sources, Substance, and Sundering*, PP:10, available at: <http://www.law.fsu.edu/>

²⁷ Harun yahya, *The Importance Of The Ahl Al-Sunnah*, available at: <http://www.harunyahya.com/>

differ from one country to another and from one religious group/confession to another as well.

It is noteworthy that some countries have put reservations against all articles and provisions which are against Sharia. Such reservation should be in principle rejected, and such reservation jeopardizes the whole ratification and turns out the ratification of an international instrument into a legal act with no significance. Declarations and reservations imposed by Arab countries have undermined significantly international law, and this is very much in line with the opinion that the whole sphere of law had been permeated with the religious and ethical standards proper to Islam²⁸.

A reservation against article 2 of the CEDAW defeats in fact the purpose of the ratification itself. This leads again to the non- significance of ratification when measuring the value and the importance of the ratification based on the end-results that a convention is supposed to bring about to women and children in the Arab world. This is the legal complexity where there is a wide gap between the legal text and the practice adding to that complexity the very low knowledge of the contents and the standards of ratified conventions by legal actors including judges, in addition to the duality of two legal systems coexisting in the Arab countries namely civil laws of which international conventions are part, and the religious laws which take primacy over civil laws. When, if ever, should personal religious morality take precedence over neutral, public laws and standards of justice? In a civil, secular society the answer should probably be "never," but not all religious believers agree with this. One issue which underlies so many religious conflicts, not to mention religious extremism, is the conviction held by many religious believers that their religious morality, supposedly from their god, should take precedence when they believe the law has failed²⁹.

The third major field which stems from international law to a large extent is politics. This area is particularly important following the Arab situation. The uprising of people in some Arab countries was labelled under freedoms, human rights, and dignity. Women were very active at the beginning of the Arab spring; even children took part in demonstrations. Women acted during the Arab Spring within a progressive concept of Islam. Zeina el Tibi reflected this

²⁸ Joseph Schacht, An introduction to Islamic Law, PP:37, available at: <http://www.youquran.com/>

²⁹ Austin Cline, Religious Morality vs. Civil Law: Religious Conflicts over Neutral, Civil Laws, available at <http://atheism.about.com/od/secularismseparation/a/SecularLaw.htm>

very well in her book titled *L'islam et la femme*, by writing "Indeed, the Quran and the Prophet provide an opportunity for believers to link the old to the new, to adapt, to get renewed". The author stresses the fact that we must "make the necessary distinction between the Muslim religion and customs and other practices or habits that are different and far from Islamic requirements"³⁰.

The Arab spring showed however at a later stage a regression in the rights of women, and due to lack of security and due to the absence of law and order, children's rights are also affected negatively by the implications of the Arab spring. Political participation of women was supposed to increase but on the contrary we have seen that political participation of women was almost absent in elections which followed the Arab spring. This should lead to rethinking the legal model on which the Arab spring was based and how can such a movement be based on progressive thinking models, similar to the above-mentioned thinking expressed by Zeina el Tibi, and the one expressed by Mashood Baderin by considering that contrary to a strict historical perception, the evolutionary nature of Islamic law is currently reflected in the practices of most Muslim States and communities as well as in the views of contemporary Muslim jurists and scholars in the Muslim world and amongst Muslim communities in the West generally. While there are Muslim and non-Muslim commentators who do advance a strict historical perception of Islamic law, current trends clearly demonstrate that the humane objectives of the *Shari'ah* can be better realized through the evolutionary perception of Islamic law in a continually changing world³¹.

This also brought the thesis to wonder to what extent international instruments, and mainly in this context, women and children's rights instruments have been used and invested in nurturing the new emerging culture of the Arab spring. Within the same context, one has to ask whether those conventions ratified by Arab countries have been properly disseminated, following their ratification. We have undoubtedly to investigate to what extent political movements can be distant, if independent being unrealistic, from religious doctrine. What the Arab world has seen during the Arab Spring is a total manifestation of religious extremism, taking freedoms and human rights as a cover, but not bound or relating by any means to the legitimacy of the international law of human rights.

³⁰ Zeina el Tibi, *L'islam et la femme*, Paris, DDB, 2013.

³¹ Mashood Baderin, *Historical and Evolutional Perceptions of Islamic Law in a Continually Changing World*, available at: <http://www.the-platform.org.uk/>

In this context, it is noteworthy that while a growing number of Muslim-majority states have adopted Islamic law in part or on a broader scale, a significant number of Muslims when polled or given the opportunity to participate in elections, maintain that while steadfast in their Islamic identity, remain resistant to political movements that simply seek to reinstitute broad-based classical Islamic law without significant reform. Instead, they have charted a middle ground, Islamic law without the law: Islamic ethics. Islamic ethics (akhlaq) has always been a fundamental element of Islamic thought, and is central to both Islamic law and theology ('aqidah)³².

States have the obligation when ratifying a convention to disseminate the standards and principles that this convention covers. This brings us back to the very few judicial decisions that have been taken in the Arab countries based on Women's and children international instruments. It is obvious that a judge who did not study an international instrument ratified at a judicial institute neither at the law school, and has never heard about the principles of this convention would not apply that convention. In our conclusions we found out that the ratified human rights instruments, including women's and children's conventions have stayed to a large extent far from producing a positive impact on the lives of people in the Arab world, because they did not reach properly the ground.

In the light of the failure of governments in bringing women's and children's ratified conventions to a living status, able to change the lives of women and children, the thesis did not neglect the role of the civil society in the struggle to bring out some significance to the international law at national level. This struggle conducted actively in many countries in the Arab region, was conducted at both administrative and judicial levels. The civil society has been trying to achieve tangible results in administrative issues as well as judicial proceedings. It should be noted that there are complex sociological aspects which the civil societies in the Arab countries have been addressing. Amongst these sociological aspects the remarkable disparities between the legal and theoretical advancement of the concept of rights in international law versus the concept of rights in the popular culture and in the mentality of people in the Arab world. To add that in the Arab countries there is Strong Interference and

³² See M. Hakan Yavuz, "Ethical, Not Shari'a Islam: Islamic Debates in Turkey," *Review of Faith and International Affairs* 10, no. 4 (2012): 32–33, Hamid Khan, J.D. International network to promote the rule of law, INPROL, Islamic law, July 2013, PP:52, available at: <http://inprol.org/>

interdependence between the past and present cultures; and finally, the existence of rooted culture of non-acceptance of the “other”, which leads to significant discrimination.

Regarding the civil sector, it should be noted that there are huge differences, at structural and operational levels, between civil societies in various Arab countries. In some countries civil society are strong and well established, whereas in others they still nascent and not always significant. The independence of non-governmental organizations is a very important issue as well. It is noteworthy that judges who took decisions based on the CEDAW or the CRC were closely connected to the civil society movement. This has been seen as well after the Arab spring in which the civil society was very active. The thesis has highlighted the positive pilot experiences conducted by the civil society in various Arab countries as efficient tools to enhance the application of international law in order to produce a positive effect in the lives of women and children in the Arab world. At the same time, the negative aspect has also been disclosed and from that will see an opportunity of how to invest the current political context in order to improve the understanding and the effectiveness of international law.

The civil society, especially in countries like Egypt and Lebanon contributed significantly towards turning out the notion of rights from a mere legal procedure, into a practical tool able to ensure people’s dignity.

The civil society has worked actively towards lifting of reservations against CEDAW to a large extent and against CRC to a lesser extent. Particular attention has been given to article 16 of the CEDAW; and Tunisia represents a very good case in this regard. Article 28 of the draft Tunisian constitution guaranteed the protection of women’s rights, but within a concept of “complementarity”, which is a concept suggested by Islamists-oriented parties and groups to consecrate that women and men have different rights and obligations within the family. This comes in compliance with gender equity (*insaf*) whereby complementarity rather than equality becomes the model for an ideal Muslim family. In contrast to Egypt, the Tunisian Salafists, who advocate a conservative position on women in the form of gender segregation, did not

participate in the elections. One of the notable features of post-revolution Tunisia is the increased wearing of the hijab and the niqab (the face veil)³³.

Based on all the above, the thesis revolves around the “problématique” of the contradiction between the international legal reality and the real practice in the field of women’s and children’s rights, including the numerous variations and dissimilarities between the written international legal legacy, enshrined mainly in the CEDAW and the CRC. The thesis covered also the Arab legal framework, fostered by the League of Arab States. The thesis is indeed a “reality check” of the extent to which international law has been able to affect positively the lives of women and children in the Arab world.

The aim of the thesis is to contribute to narrowing the gap between the reality and the expected results, through applying the minimum standards covered by the international human rights law. The thesis keeps questioning: to what extent do state respect their citizens when they ratify a convention and they don’t apply it? And consequently, to what extent does international law contribute to improving the lives of women and children in the Arab world. Women and children, and men obviously in the Arab world are not living in static societies; Social dynamics are there and changes will take place. Why and how the cultural components, lived for instance by women under the Spanish califat change? These ‘shades’ of the Caliphate are not merely metaphorical, however, and remain to be found in the visual nexus of tourism and its moments of engagement, or what we refer to as its cultural moments. The Moorish presence in Spain, the Reconquest and the Spanish imperial expansion that followed have created cultural and historical complexities that reflect these varied world views, each of which is represented in the material culture not only of Spain, but also the Americas and to some extent the rest of Europe³⁴.

The women of Islamic Spain like their counterparts in many pre-modern Muslim societies were active participants in political and cultural affairs. They helped shape the cosmopolitan civilization associated with the Muslims. The Umayyads ruled Al-Andalus for the first three centuries of Muslim rule in Iberia (roughly 711-1031 CE). The Umayyad household provided a strong, centralized vision for developing a distinct Andalusí culture. Women of the royal household

³³ CMI institute, Prospects for gender equality after the Arab Spring, PP: 3, available at: <http://www.cmi.no/publications/file/4761-marriage-is-politics.pdf>

³⁴ Emma Waterton, Shades of the Caliphate, available at: <http://www.academia.edu/>

along with other courtly women played prominent roles within this culture. One historical account states that the Umayyad chancery employed 70 women copyists and Qur'an calligraphers. Hundreds of other women served the vast imperial household. Perhaps the most famous female Umayyad scion is Walladah bint Mustakfi (d. 1091 CE). Despite the decline of the caliphate, Walladah styled herself as the reigning debutante of Córdoba, hosting exclusive salons for poets, musicians and artists. She challenged certain upper class social conventions such as veiling³⁵.

On the other hand, and according to a different interpretation of Islamic Law, Ibn Abdun listed numerous rules for female behavior in everyday life: "boat trips of women with men on the Guadalquivir must be suppressed"; "one must forbid women to wash clothes on the fields, because the fields will turn into brothels. Women must not sit on the river shore in the summer, when men do"; "one must especially watch out for women, since error is most common among them." The average woman in Andalusia was treated much the same as elsewhere under Islamic sharia, with practices like wearing the hijab (following Quran S. xxxiii. 59), separation from men, confinement to the household, and other limitations that did not exist in Catholic lands. What misleads some observers is a phenomenon occurring in many societies: on the one hand, men treat their wives, sisters, and daughters as worthy of respect in certain ways the men consider well-intentioned, which may include sheltering them in the house, keeping them away from opportunities to have sex outside accepted channels, or even hiding their faces and the contours of their bodies; on the other hand, the same men grant much "freedom" to women they do not consider worthy of respect, such as dancers, singers, concubines, mistresses, slaves, or prostitutes, who may display greater "knowledge" and "intellectual sophistication" than their more respected sisters³⁶.

In today's Muslim countries, the principal area of substantive law still totally governed by Islamic law is the area of personal status, namely marriage, divorce, inheritance, and child custody. International human rights law cannot be viewed in the abstract. Its meaning, application, and effect cannot be fully evaluated without reference to the state. Generally speaking, international law does not operate without states. While international human rights law has

³⁵ Critics of light, Extraordinary Women of Al-Andalus, available at: <http://www.islamicspain.tv/Andalusi-Society/WomenofAl-Andalus.htm>

³⁶ Darío Fernández-Morera, The Myth of the Andalusian Paradise, PP: 5-6, available at: http://www.mmisi.org/ir/41_02/fernandez-morera.pdf

increasingly been brought to bear on non-state actors, states remain the principal focal point of international law generally, and international human rights law specifically³⁷.

Based on the above, the thesis observes women's and children's rights guarantees in the Arab world mainly through scrutinizing the international standards related to women and children's right in the majority of Arab constitutions, which also includes the fundamental rules of ratification and accession to international conventions (Part I), and secondly the applicability of these rights in the legal system of the Arab world (Part II), following which the thesis has studies the recent dynamics in the Arab world and their links to international law and politics and their effects on women's and children's rights (Part III).

³⁷Anver M Emon, Mark S Ellis, and Benjamin Glahn, *Islamic Law*, PP: 5-6, available at: <http://www.academia.edu/>

PART I: WOMEN'S AND CHILDREN'S RIGHTS GUARANTEES IN THE ARAB WORLD

In the Arab world, societies claim that women and children are very well protected and their rights are ensured and maintained. This claim is supported mainly by men, who consider that it is their duty to protect women and children, within a perfectly patriarchal society and social system. Part I of this thesis will explore the guarantees of women and children's rights within the highest legal instrument in the State, i.e. the Constitution. The analysis will cover however other areas and further layers in the following parts. But we believe that it is crucial to start analyzing legal guarantees in the strongest legal tool, which is the constitution, being a cornerstone for ensuring rights. It is noteworthy however that the constitution is necessary but not sufficient to ensure that people's rights are respected and upheld.

Chapter I: Women's Rights in the Arab Constitutions

Chapter I will study the guarantees provided for Arab women in various constitutions of the Arab countries in two different sections. The first Section will cover civil and political rights, and the second Section will cover economic, social and cultural rights. Historically, these are known as the two generations of human rights. The first generation covering civil and political, and the second generation covering economic, social and cultural.

This Chapter elaborates a set of provisions related to human rights, and the scope of which these provisions are adopted in the constitutions of Arab countries. These provisions include gender equality, non-discrimination, rights of women, political participation & freedom of association, citizenship/nationality, education, employment, equal before the law, marriage & family life, and limitations. Arab countries include Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, State of Palestine, Qatar, Saudi Arabia, Sudan, Syria, Somalia, Tunisia, United Arab Emirates and Yemen.

Section I: Women's Civil and Political Rights in Arab Constitutions

Most of the Arab constitutions included in their provisions many civil and political rights for all citizens in general, and these principles are a reflection of the contents of the Universal Declaration of Human Rights and the subsequent international treaties on Human Rights. We will therefore address the most important civil and political rights as stated in the Arab constitutions.

Paragraph I: Principle of Equality between Men and Women

Most of the Arab constitutions focused on confirming the principle of equality between men and women in all fields of life. This principle is considered in fact one of the most important principles related to women's rights in general, and one of the main pillars of the human rights system.

The principle of equality between men and women engendered a big debate among jurists, at both regional and international levels. Through the examination of Arab constitutions, it becomes clear that this principle is sometimes explicit and sometimes implicit. However, the majority of Arab constitutions stipulated that the citizens are equal before the law, without any discrimination because of gender (Egypt, Algeria, Bahrain, Sudan, Iraq, Somalia, Oman, Palestine, Qatar and Kuwait).

There are some constitutions that contain a provision covering the principle of equality among all citizens, without mentioning the term gender as one of the grounds of discrimination (Lebanon, Jordan, UAE, Tunisia, Syria, and Morocco).

In these constitutions, we find in the beginning an obvious provision stating that the citizens are equal before the law, and a confirmation that there is no discrimination between them even though they differ in race, language or religion, without mentioning the gender amongst the subjects that should not be grounds for discrimination between citizens. Although this should not be interpreted as if it can contain or is likely to allow any discrimination between men and women, it would have been much better however to clearly state that gender should not be a reason or ground for any kind of discrimination.

One of the constitutions, which explicitly includes a provision on equality between men and women, is the Egyptian constitution, in particular article (40) which mentions: "All citizens are equal before the law".

They have equal public rights and duties without discrimination between them due to race, ethnic origin, language, religion or creed. Then article (11) of the Egyptian constitution provided for: "State shall guarantee the proper coordination between the duties of women towards the family and her work in the society, considering her equal with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence".

The Moroccan constitution stipulates also in its preamble that the State undertakes to abide by international conventions and the granting of equal rights for women and men. And Article (5) of the same constitution stipulates that: "All Moroccans are equal before the law". Article (8) states also that: "Men and

women enjoy equal political rights. All citizens of age of both sexes are electors, provided they enjoy their civil and political rights”.

But the Moroccan constitution did not provide for equality in other civil, political, economic, social and cultural rights, but these rights are recognized through the general context of the provisions.

The Syrian constitution included in Article (25) that: "The citizens are equal before the law in their rights and duties". Article (45) provided also for the protection of the family and to grant women their full rights.

The Kuwaiti constitution stipulated in Article (29) that: "All people are equal in human dignity and in public rights and duties before the law, without distinction to race, origin, language, or religion”.

The Qatari constitution covered the same in article (35).

This has been also confirmed by the Tunisian constitution, which stipulates in Article (6) that: “All citizens have the same rights and the same duties. They are equal before the law”.

The Lebanese constitution, provided in Article (7) that: “All Lebanese are equal before the law. They equally enjoy civil and political rights and equally are bound by public obligations and duties without any distinction”.

The Yemeni constitution covered in Article (31) and Article (40) the principle of equality.

By reviewing the provisions of Arab Constitutions regarding this principle, it is clear that the principle of equality between men and women has a positive role, in the acceptance of the principle of equality among citizens, despite their different gender, in addition to another role which is to prohibit and prevent discrimination among citizens on the basis of gender.

The principle of equality between men and women has been associated in some Arab countries with another principle, which is the principle of equal opportunities for everyone regardless of gender, and based on competence (such as Jordan, Syria, Egypt, Kuwait, and Yemen).

It is also clear that the problem of women's rights is not a religious or a legal problem, but it is a social and political issue that must be resolved in the light of

the circumstances of the social and political and economic environment, and we should hence look at the issue of women with a wide and comprehensive look³⁸.

All Arab constitutions and legislations did not define, neither the principle of equality between men and women nor the principle of equal opportunities. This was reflected in the judicial decisions which have not in turn defined these two principles as well, neither how to practically apply them in the real life of citizens. Moreover, most of international reports issued by the Arab States, in relation to the CEDAW and to other conventions connected to women, did not include any analysis of the impact of laws on the principle of equality and equal opportunities.

In conclusion, we can say that practical and efficient mechanisms to promote the principle of equality are missing in the Arab legal systems.

Paragraph II: Personal Freedom

The majority of Arab constitutions ensured the Personal Liberty of all citizens and this includes the right to personal liberty, the person's right to be free from constraints and arrest or inspection except in accordance with the law, and it also includes the freedom of movement and the right not to be incarcerated or confined unless according to the law.

Some Arab constitutions stipulated that Personal Liberty is guaranteed or conserved, such as the Jordanian constitution mentioned in Chapter (7) that: "Personal freedom shall be guaranteed".

The same was mentioned in the Kuwaiti constitution, in Article (30).

And the Algerian constitution stated in Article (34) that: "The State guarantees the inviolability of the human entity".

Some other Arab constitutions have linked between the protection of personal liberty and not to be subjected to arrest or inspection, except in accordance with the law. The UAE constitution stipulated in Article (26) that: "Personal liberty is guaranteed to all citizens. No person may be arrested, searched, detained or

³⁸ Abdel-Hamid Al Shawarbi Dr., Political Rights of Women in Islam, knowledge institution in Alexandria, 2003, without the edition number, p. 16.

imprisoned except in accordance with the provisions of law. No person shall be subject to torture or to degrading treatment”.

In this context also the statute of Oman stated in Article (18) that: "Personal freedom is guaranteed in accordance with the Law. No person may be arrested, searched, detained or imprisoned, or have his residence or movement curtailed, except in accordance with the provisions of the Law”.

And also the provision of the Egyptian constitution in Article (41) mentioned that: “Individual freedom is a natural right and shall not be touched. Except in cases of a flagrant delicate no person may be arrested, inspected, detained or his freedom restricted or prevented from free movement except by or necessitated by investigations and preservation of the security of the society.

This order shall be given by the competent judge or the Public Prosecution in accordance with the provisions of the law. The law shall determine the period of custody.”

Also the Article (57) of the Egyptian constitution added a very important guarantee for the protection of personal liberty, which stipulated that: "Any assault on individual freedom or on the inviolability of private life of citizens and any other public rights and liberties guaranteed by the constitution and the law shall be considered a crime, whose criminal and civil lawsuit is not liable to prescription. The State shall grant a fair compensation to the victim of such an assault”.

The same is stated in the Yemeni constitution in Article (47), and the Lebanese constitution in Article (8), and the Qatari constitution in Article (36).

By reviewing all the provisions of Arab constitutions regarding the right to personal freedom, it appears that these provisions stipulated general and broad terms which provide a good level of protection. National laws of course stipulated in more details provisions related to the protection of personal freedom.

One of the practical legal procedures protecting the women's personal freedom in Arab laws is what is stipulated in some criminal procedures laws regarding the inspection of the female, where most of the Arab procedural laws stressed the necessity of examining a female by another female, and that it is forbidden for a man to examine a female, because this may cause a violation for the

woman's body and her personal freedom, and so it is mandatory to repeal the procedures if this happened.

If a male officer for instance inspected a female, this procedure itself would be legally void, and the consequent further actions should be considered void as well (Egypt, Oman, Lebanon, UAE, Qatar, Libya).

Paragraph III: Freedom of Belief and Worship

Most of Arab Constitutions included an affirmation of the freedom of belief and worship for all, without discrimination between women and men, and this principle has been confirmed in most Arab constitutions through different features, such as freedom of belief, freedom to adopt a religion, freedom not to be forced to adopt a religion or a certain belief. The constitutions linked also between the principle of freedom of belief and worship and the respect of the traditions, without any prejudice to public order or general social ethics and morality.

The Egyptian constitution in Article (46) states that: "The State shall guarantee the freedom of belief and the freedom of practice of religious rites".

Also the Moroccan constitution in Article (6) mentions that: "Islam is the religion of the State which guarantees to all freedom of worship".

The Jordanian constitution claims in Article (14) that: "the state shall safeguard the free exercise of all forms of worships and religious rites in accordance with the customs observed in the Kingdom, unless such is inconsistent with public order or morality"

The same is stated in the Sudanese constitution in Article (24).

And the Lebanese constitution stated in Article (9) that: "There shall be absolute freedom of conscience. The state in rendering homage to the most high shall respect all religions and creeds and guarantees, under its protection, the free exercise of all religious rites provided that public order is not disturbed. It also guarantees that the personal status and religious interests of the population, to whatever religious sect they belong, is respected".

Also, the UAE constitution, in Article (32) mentioned that: "Freedom to exercise religious worship shall be guaranteed in accordance with established customs, provided that it does not conflict with public or violate public morals".

In this context, the same is mentioned in the Jordanian constitution in Article (4), and the Bahraini constitution in Article (22), and the Tunisian constitution in Article (5), and the Algerian constitution in Article (36), and the Official Statute of Oman in article (28), and the Qatari constitution in Article (50), and the Kuwaiti constitution in article (35).

Most of Arab constitutions have primarily focused on the freedom of religion and freedom of worship and freedom of religion's ceremonies and manifestations, and have also included the emphasis on non-coercion in religion and respecting the feelings of others. These formulations, in general, were mentioned without distinction between men and women.

Paragraph IV: Freedom of Thought, Opinion and Expression

The majority of Arab constitutions have shown interest in the freedom of thought and expression for all, men and women alike. In this context the Jordanian Constitution stipulated in article (15) that: "The State shall guarantee freedom of opinion. Every Jordanian shall be free to express his opinion by speech, in writing, or by means of photographic representation and other forms of expression, provided that such does not violate the law".

The main feature of the Jordanian constitution is the link between freedom of opinion and freedom of the press, as well as many means of expressions, for example; which are the Word, the Writing and the Photography.

However, the UAE constitution, in Article (30) claimed that: "Freedom of opinion and expressing it verbally, in writing or by other means of expression shall be guaranteed within the limits of law "

On the other hand, the Bahraini constitution, in Article (23), stated that: "Freedom of opinion and scientific research is guaranteed. Everyone has the right to express his opinion and publish it by word of mouth, in writing or otherwise under the rules and conditions laid down by law, provided that the fundamental beliefs of Islamic doctrine are not infringed, the unity of the people is not prejudiced, and discord or sectarianism is not aroused".

The constitution of Bahrain is characterized by the link of freedom of opinion and freedom of scientific research, which also the constitution of Kuwait and the constitution of Qatar share, and also by practicing this right without prejudice to the foundations of the Islamic faith and unity of the people and to what give rise to discord or sectarianism among the citizens.

The basic System of Government in Saudi Arabia, in Article (39) stated that: "Information, publication, and all other media shall employ courteous language and the state's regulations, and they shall contribute to the education of the nation and the bolstering of its unity. All acts that foster sedition or division or harm the state's security and its public relations or detract from man's dignity and rights shall be prohibited".

It is clear that this puts a limitation on the freedom of opinion and expression; it is a commitment to the good word and to the regulations of the state and its public relations, and prohibited what leads to sedition or division or prejudice to the security of the State or to human dignity and rights. It didn't explicitly stipulated on the guarantee of the freedom of thought, expression or opinion, but stated that the means of expression must have some figures, and prohibit several other things.

As for the constitution of Tunisia, it claims in Chapter (8) that: "The liberties of opinion, expression, the press, publication, assembly, and association are guaranteed and exercised within the conditions defined by the law. The right of unionization is guaranteed".

This constitution used the following expression: "The liberties of opinion, expression, the press, publication ... guaranteed", and that by considering that the freedom of the press and publication are a part of the freedom of expression.

The constitution of Sudan, in Article (25) ensured the freedom of opinion and thought without causing any constraint from citizens toward the authority, as well as it ensured the freedom of expression, and related this matter by receiving freely the information, the publication and the press, and put one restriction on the exercise of these freedoms; which is causing no harm to the security, the order, the safety or the public ethics.

The Provision of the Mauritanian constitution claims in Article (10) that the State must ensure to all the citizens the public and individual freedoms, and in

particular, the freedom of opinion and freedom of thought, freedom of expression, freedom of intellectual and artistic and scientific creativity, as provided for non-compliance of liberty except by law.

Article (47) of the Egyptian constitution stated that: "Freedom of opinion is guaranteed. Every individual has the right to express his opinion and to publicize it verbally or in writing or by photography or by other means within the limits of the law. Self-criticism and constructive criticism is the guarantee for the safety of the national structure".

And the same is also adopted by the Yemeni constitution in Article (41).

Thus, it is clear that most of the Arab constitutions preferred to use the term "freedom of expression" because it is the most comprehensive, and the majority of constitutions focused on stating and naming the various means of expression. And the wording is general and it includes men and women.

Paragraph V: Right to Complain and to Address the Public Authorities

All the Arab constitutions ensured the citizens the right to protest and to address the public authorities, and they did not dictate any discrimination between men and women. The wording was general and included everyone. Some Arab constitutions however varied in the formulation of that right. The Jordanian constitution for instance mentioned in Article (17) that "Jordanians are entitled to address the public authorities on any personal matters affecting them".

And this is a deficiency in the wording because it limited the right of addressing to Jordanians only, which is in contrast to what was stated by the United Arab Emirates in Article (41) which stated that: "Every person shall have the right to submit complaints to the competent authorities", however the Bahraini constitution has used in Article (29) another formula where the text states: "Any individual may address the public authorities in writing over his signature".

The lesson of these provisions and sentences is to determine who has the right to complain. While it was confined by the Jordanian constitution – although it is most probably just a defect in the wording - but each person who has a complaint, can protest to the competent authorities - Most of other constitutions left the field open to anyone with a complain.

The Egyptian constitution stated in Article (63) that "Every individual has the right to address public authorities in writing and with his own signature. Addressing public authorities should not be in the name of groups, with the exception of disciplinary organs and legal personalities".

The same was taken by the Statute of the Sultanate of Oman and the constitution of Qatar and Kuwait.

As for Saudi Arabia, despite the opportunity for all to submit grievances, as stated in Article (43) of the Basic Law System, a Saudi woman remains deprived of this right. She cannot talk to a police officer nor have access to the police station unless she is accompanied by her guardian. The report of the United Nations' Expert on violence against women in Saudi Arabia, in 2008, mentions the following:

"The atmosphere prevailing gender segregation makes women reluctant to speak to anyone into a police station (as all the officers of police stations are men). And many of Saudi Women are reluctant in just contacting the police station without the presence of the guardian at house. An activist of the Human Rights Watch stated: "A woman cannot enter the police Station simply. She should be accompanied by her legal guardian". Saudi authorities did not respond to the request of Human Rights Watch for providing information about whether the police formally request the permission of the guardian to allow women into the police station".³⁹

Paragraph VI: Freedom of the Press

Most Arab constitutions guaranteed freedom of the press and full equality between men and women. The provision of Article (48) of the Qatari constitution claims that: "Freedom of press, printing and publication shall be guaranteed in accordance with law".

And the Kuwaiti constitution followed the same approach in article (37), and also the statute of the Sultanate of Oman in article (31) that added to it after ensuring the freedom of the press "banning what leads to discord, or violates the security of the state or deteriorates the human dignity and rights".

³⁹ Of the report of the United Nations Expert on Violence against Women in Saudi Arabia in 2008, published on the following page: <http://saudiwomenrights.wordpress.com/category>.

As for the Jordanian constitution, it stated in Article (15) in its second paragraph "Freedom of the press and publications shall be ensured within the limits of the law". And the third paragraph stipulated "Newspapers shall not be suspended from publication nor shall their permits be revoked except in accordance with the provisions of the law".

The fourth part however endorsed that "In the event of the declaration of martial law or a state of emergency, a limited censorship on newspapers, publications, books and broadcasts in matters affecting public safety and national defense may be imposed by law".

The fifth paragraph of the same article stipulates that: "Control of the resources of newspaper shall be regulated by law". That also was taken by the Egyptian constitution, in Article (48).

The Syrian constitution stipulates in Article (38) that the state guarantees freedom of the press, printing and publication in accordance with the law. The same is stipulated in the Lebanese constitution.

Article (8) of the Tunisian constitution declared that "(1) The liberties of opinion, expression, the press, publication, assembly, and association are guaranteed and exercised within the conditions defined by the law; (2) The right of unionization is guaranteed."

The most important characteristic of the Tunisian constitution is the coverage of the freedom of individuals working in the media and the press, especially that most of Arab constitutions avoided talking about freedom of journalists and media professionals. In a practical case that has been raised repeatedly, the veiled presenters are not allowed to appear on the official channels of the state in Egypt. This led to the prohibition of the appearance of many of the presenters on the screen of the Egyptian official television channels, and which has been perceived as a violation of personal freedom, in contrary to the U.A.E, Qatari, Omani or Yemeni television channels.

Although the above-mentioned countries allow the appearance of foreigner presenters on the television without the veil, they do not allow the citizen presenters to appear uncovered, albeit in rare cases. This has become in fact a practical issue and inherited ritual in public life.

It is noteworthy that Saudi Arabia completely prohibits the appearance of women in the Saudi television.

Some Gulf states consider the veil as the formal woman uniform, as it imposes on man to wear "Dishdashe" and the turban or the head cord or the dagger as it is the national formal uniform, thus it is forbidden, in general, for woman to work in governmental newspapers if she is not wearing the veil or the black dress (the gown).

Paragraph VII: Freedom of Movement

The majority of Arab constitutions emphasize on the Freedom of Movement for all, without discrimination between men and women, and at the same time, the National Legislations included, in many Arab countries, a flagrant discrimination in the terms of this right, where some laws consisted of non-disclosures of movement for women except under certain conditions.

The UAE constitution, in its article No (29), declared that: "Freedom to Movement and residence shall be guaranteed to citizens within the limits of law." This was also taken by the Tunisian constitution, in Article No. (10), which pointed out to ensure freedom of movement, at home as abroad, the same in the Algerian constitution in Article (44), and the Sudanese constitution in Article (23).

The Egyptian constitution has ensured the freedom of movement. It considers that the principle is the authorization to move freely, and the exception is the limitation or constraints on movement; where it is stipulated in Article (50) that "No citizen may be prohibited from residing in any place and no citizen may be forced to reside in a particular place, except in the cases defined by the law". And the same content was also mentioned also in the Syrian constitution, in Article (33).

The Bahraini constitution linked between the freedom of movement and the inadmissibility of arrest or confinement, where Article (19) stipulated that "A person cannot be arrested, detained, imprisoned or searched, or his place of residence specified or his freedom of residence or movement restricted, except under the provisions of the law and under judicial supervision".

This was also taken by the Statute of Oman in the article No. (18), in addition to the Qatari constitution in Article (26) and the Kuwaiti constitution in Article (31).

Although the Fundamental Statute of KSA declared in the article (36) that "The state provides security for all its citizens and all residents within its territory and no one shall be arrested, imprisoned, or have their actions restricted except in cases specified by statutes", the domestic laws prevent women from travelling without a male guardian (Muhram), and it is forbidden to get a visa or a passport without the permission of the guardian. Women are also barred from boarding an aircraft without the permission of her guardian. Saudi women are still banned from driving a car also, despite the social and economic need.

When it comes to education, marriage, work, travel and specific surgeries, women in Saudi Arabia are treated as legal minors. The government did not live up in fact to the promise presented in 2009 to the United Nations Human Rights Council, which is to abolish the system of men ruling women.⁴⁰

This also violates the General Comment number (27) of the Human Rights Committee, related to the freedom of movement, where it states: "The permissible limitations imposed on the rights protected under Article (12) must not nullify the principle of freedom of movement, and are governed by the requirement of necessity provided for in Article (12), paragraph (3), and the need for consistency with the other rights recognized in the Covenant".⁴¹

Paragraph VIII: Right to Hold Public Office

Arab constitutions included the right of citizens to Public Employment, and most of them used general terms, applicable to all citizens without distinction between men and women. The text of the Algerian constitution stated in Article (51) that "Equal access to functions and positions in the State is guaranteed to all citizens without any other conditions except those defined by the law".

According to article (12) of the Statute of the Sultanate of Oman, "Public employment is a national service entrusted to those who carry it out. The State employees while performing their work shall seek to serve the public interest

⁴⁰ Report of the United Nations Expert on Violence against Women in Saudi Arabia in 2008, published on the following page: <http://saudiwomenrights.wordpress.com/category>.

⁴¹ General Comment No. 27 on article 12 related to Freedom of Movement, United Nations Document A/55/40, Annex VI, A.

and society. Citizens are considered equal in taking up public employment according to the provisions of the Law”

This was also mentioned in the Qatari constitution in Article (54), in the Kuwaiti constitution in Article (26), the Moroccan constitution in Article (12), the UAE constitution in Article (35), and the Bahraini constitution, in Article (16).

On the other hand, the Lebanese constitution linked between the right to hold a public position and the competency to get the position. This is covered by Article (12), which states that “Every Lebanese has the right to hold public office, no preference being made except on the basis of merit and competence, according to the conditions established by law”. However, the practice in Lebanon has been since the adoption of the constitution so different from the text, especially under the religious confessional system which rules the public positions and the public sector in Lebanon. In the same meaning also, the Palestinian constitution in Article (26) claimed that: “Palestinians shall have the right to participate in the political life individually and in groups. They have the following right in particular: to hold public office and positions, in accordance with the principle of equal opportunities”. This is also stipulated by the Jordanian constitution in Article (22).

The Egyptian constitution included, in addition to the right of citizens to hold a public position, an essential guarantee which is the inadmissibility of dismissing any public servant unless through disciplinary ways, according to the law. Article (14) stated in this regard that “Public offices are the right of all citizens and an assignment for their occupants in the service of the people.

The State guarantees their (the occupants) protection and the performance of their duties in safeguarding the interests of the people.

They may not be dismissed unless by a disciplinary way, except in the cases specified by the law”.

Although Most of Arab constitutions included the principle of equality between men and women in holding a position, there are still some prohibited functions for women such as assuming the function of the judiciary; Despite the presence of some Arab countries that allow women to assume the duties of a judge, such as Lebanon, Syria, Sudan, Yemen, Tunisia and Egypt, there are still some Arab

countries that ban this public position on women, for instance the UAE according to the Article (18) of the Code of Federal Judicial Authority in the UAE No. 3 of the year 1983. This is in spite of the provision of article (35) of the UAE constitution, which stipulates that “Public office shall be open to all citizens on a basis of equality of opportunity in accordance with the provisions of law. Public office shall be a national service entrusted to those who hold it. The public servant shall aim, in the execution of his duties, at the public interest only”.

It should be noted that the law of the UAE judiciary authority has been amended to allow women to assume the position of the judiciary, and this in the framework of the national strategy to strengthen the UAE women. At the end of 2007, H.H. Shaikh Khalifa bin Zayed Al Nahyan, President of the UAE, issued a governmental decree to appoint the first two women as prosecuting attorneys to work in the UAE Judicial Department, in Abu Dhabi, and so this decree allows women to access the position of judiciary.

In January 2008, the Malaysia's Tan Dato Jacobs was appointed as first judge woman in the UAE, then in October, of the same year, followed the appointment of the UAE's Khouloud EL Thahiri, to be the second Gulf woman holding the judiciary in the Gulf Cooperation Council (GCC), after Mona Jassem Al Kuwari from Bahrain, who was appointed by the King of Bahrain in 2006 as a judge of the Civil Court, and so El-Kuwari is considered the first woman reaching the judicial power in the GCC.

Qatar has also appointed the first female judge in March 2010, and also another Qatari female judge was appointed.

It is noteworthy that constitutions in most countries stipulate general conditions for holding the position of judge, without mentioning anything specific to men or women. Many Arab countries refused for a long time to allow women to assume the duties of judge under the pretext of appropriateness and adequacy. Egypt adhered, for several years, to appropriateness and adequacy considerations, until an end was put to this pretext in 2003.

And considerations of appropriateness and adequacy favored by the trend that refuses women to hold judiciary positions, means - from their point of view – that it is not appropriate in the current period for a woman to be appointed as a

judge, because of lack of acceptance by society, and that those responsible for the appointment of judges (who are males) find that it is unacceptable for women to take this action. Nevertheless, the supporters of this pretext do acknowledge that there is no legal reason in Sharia to prevent women from taking the task of a judge, but the social considerations prevent her from being a judge. They also acknowledge that this could be on a temporary basis and may change in the future when the society becomes more mature. The big problem however, is that the same people who are against women assuming the duties of a judge are the same ones who believe that they have the right to decide when the society would be ready and would be mature enough to allow women to play such a role.

We believe that this is a short-sighted position, and that society is evolving and growing faster than what the proponents of this position think. For instance, is it possible that the Sudanese society, where women have been appointed in judicial position since 1979, is more developed and advanced than the Gulf society, where the Sultanate of Oman for instance is still banning women from being judges on the pretext of lack of appropriateness and adequacy and argues that it is enough for to hold the position of public prosecutor. Saudi Arabia on the other hand believes that women should not occupy any position in the judiciary system.

However, Libya took a courageous step regarding the right of women to occupying judiciary positions, as stated in Article (1) of Law No. 8 of 1989, that "women have the right to hold positions in the judiciary system, public prosecution and litigation in the same conditions decided for men". This step taken by Libya was unique at the level of Arab legislations which did not stipulate explicitly the right of the woman, in equality with men, in holding positions in the judiciary system, the public prosecution and litigation.

Paragraph IX: Right to Litigation

The right to litigate is an important and necessary right for every human being. And most Arab constitutions stated that every human being has the right to resort to litigation in order to demand and defend his/her right.

The Bahraini constitution stipulated in Article (20/f) that "The right to litigate is guaranteed under the law". The same has been taken by the Sudanese

constitution in Article (31). Similarly, Article (47) of the Saudi regime stated that "The right to litigation is guaranteed to citizens and residents of the Kingdom on an equal basis. The law defines the required procedures for this".

In spite of that, we find that the domestic Saudi law does not allow women to come before the courts unless accompanied by her guardian.

According to article (25) of the Statute of the Sultanate of Oman, it is stated that "The right to litigation is sacrosanct and guaranteed to all people. The Law defines the procedures and circumstances required for exercising this right and the State guarantees, as far as possible, that the judicial authorities will reconcile the litigants and settle cases promptly".

Also, the Egyptian constitution linked between the right to Litigate and the judge as an integral part of protecting the right of prosecution, where Article (68) stated that: "The right to litigation is inalienable for all, and every citizen has the right to refer to his competent judge. The State shall guarantee the accessibility of the judicature organs to litigants, and the rapidity of settling on cases. Any provision in the law stipulating the immunity of any act or administrative decision from the control of the judicature is prohibited".

This has been also taken by the Palestinian constitution in Article (30). And the Yemeni constitution covered the same in Article (48).

Similarly, the Syrian constitution stipulates in Article (28/4) that "The right of litigation, contest, and defence before the judiciary is safeguarded by the law".

Paragraph X: The Right to Political Participation (Voting and Nomination)

The right to voting and nomination is considered one of the most important human rights in general, and women's rights in particular, and many Arab constitutions have confirmed this right. However, it is not enough to stipulate this right in the constitutions and laws, but the laws governing the use of these rights should be practical enough to allow the citizens, including women, for a real political participation in the society.

The political participation has an impact on the individual and the general policy of the state. As for the individual it develops his/her autonomy, his value and his political consciousness in the society in which he/she lives. It develops

as well his belonging to his nation and makes him more aware of his responsibilities towards his society. At the level of public policy, this reflects the wishes of the citizens to participate in guiding the country's government and political decision-making and self-determination for democracy.⁴²

In terms of women's right to political participation, we can divide the Arab constitutions into two groups; the first group includes the countries which did not provide for women, in their constitutions, the right to participate in the political life (such as Kuwait and the UAE), but recently, the Kuwaiti constitution has been amended to give women this right.

And the second group clearly states the right of women to participate in the political life, namely Tunisia, Egypt, Syria, Iraq, Jordan, Morocco, Lebanon, Yemen, Bahrain and Qatar. It is clear that dealing with the political rights of women in the Arab societies has been dependant on complex factors which some of them are attached to cultural heritage and traditions, and interpretation of religious texts.

Amongst the constitutions that explicitly stipulated the right of women to political participation, voting and nomination, is the Algerian constitution which provided in Article (31 bis) that the State shall work towards advancing women's political rights through broadening women's opportunities to get represented in elected councils.

The Egyptian constitution stated also in Article (62) that "Citizen shall have the right to vote, nominate and express their opinions in referendums according to the provisions of the law. Their participation in public life is a national duty."

On the other hand, the Egyptian legislature adopted the concept of quota for woman by law No. (22/1979), according to which, the quota for women in the parliament was 30 seats. But the Egyptian legislature moved away from the quota in 1986 and the explanatory memorandum justified this decline by stating that "women are playing an important role in political life and within parties".

Thus, the situation returned to normal and women became equal with men in the right to vote and to nomination without privilege and without any positive discrimination as some would like to call it. It is noteworthy that some jurists

⁴² Dr. Mansour Mohammad Mohammad Al Waseai, The Right of Voting and Nomination in the Yemeni Constitution, a Comparative Study with the Egyptian Constitution, Ph.D Thesis, Faculty of Law, Assyout University, published on the following link: <http://www.yemen-nic.info/contents/studies/detail.php?ID=23385>

considered that the quota system that was adopted in Egypt was unconstitutional and illegal⁴³. But we disagree with this opinion based on the provision of article (4/1) of the CEDAW, which stipulates that the state may take urgent measures to achieve equality between women and men without considering these measures as discrimination against men. Anyway, we do believe that the problem of women's political participation is of a political nature at the first place, rather than a legal or constitutional one. The current constitution of Egypt has put in action, as a general rule, the principle of equality between women and men and did not mention maleness as a condition for nomination to membership in the parliament, not even for the President of the republic. Article (75) of the Constitution stipulates the conditions that must be met in a person for the nomination to the presidency, as well as the laws of the parliament and the State Council, did not include, regarding membership, any discriminatory condition between women and men.⁴⁴

The Moroccan constitution claimed in Article (8) that "(1) Men and women enjoy equal political rights; (2) All citizens of age of both sexes are electors, provided they enjoy their civil and political rights".

The constitution of Qatar provided in Article (42) that "The State shall ensure the right of citizens to elect and be elected in accordance with the law". This has been also taken by the Palestinian constitution in Article (26), as well as the Sudanese constitution, which stipulated in Article (41) that "(1) Every citizen shall have the right to take part in the conduct of public affairs, through voting as shall be regulated by law; (2) Every citizen who has attained the age specified by this constitution or the law, shall have the right to elect and be elected in periodic elections, through universal adult suffrage in secret ballot, which shall guarantee the free expression of the will of the electorate".

Thus, the majority of Arab constitutions have clearly put a general rule which is the country's commitment to ensuring the right to vote and nomination for all; where the word "citizens" was used and this includes men and women. It should be noted here that the expansion of democratic participation cannot be achieved without women becoming full citizens, because the liberation of women on one hand, and the achievement of equality and democracy-building on the other hand, are two complementary tasks. The liberation of women in the

⁴³ Dr. Mohammad Anas Qassem Jaafar, *Women's Political Rights*, Dar Al Nahda Al Arabia, without an edition number, pages 105 and 106.

⁴⁴ Dr. Mohammad Anas Qassem Jaafar, cited op., p. 100

fields of personal and civil freedoms, as well as human rights, dignity, equality and independence, in addition to sharing of authority, would necessarily lead to the liberation of other social groups within the political system.⁴⁵

Paragraph XI: Freedom of Assembly

The freedom of Assembly is considered a main right for which the majority of Arab constitutions gave due attention, although laws and regulations imposed at a later stage obstacles towards this right. The Qatari constitution stipulated in Article (44) that "The right of the citizens to assemble is guaranteed in accordance with the provisions of the law", and the same was for the Jordanian constitution in Article (16), the UAE constitution in Article (33), the Tunisian constitution in Article (8), and the Algerian constitution in Article (41), the Sudanese constitution in Article (26), the Syrian constitution in Article (39), the Iraqi constitution in Article (13), the Statute of the State in the Sultanate of Oman in the article (32), and the Lebanese constitution in Article (13).

There has been also a positive tendency, in some Arab constitutions, to prohibit the supervision of the private assemblies. In this context, the Bahraini constitution banned the practice of security control of private assemblies. And the right of the congregation was covered by Article (28) which states that "a. Individuals are entitled to assemble privately without a need for permission or prior notice, and no member of the security forces may attend their private meetings; b. Public meetings, parades and assemblies are permitted under the rules and conditions lay down by law, but the purposes and means of the meeting must be peaceful and must not be prejudicial to public decency".

The same was stated in the Kuwaiti constitution in Article (44), and the Palestinian Basic Law in Article (26).

The Egyptian constitution, stated in Article (54) that: "Citizens shall have the right to peaceable and unarmed private assembly, without the need for prior notice. Security men should not attend these private meetings. Public meetings, processions and gatherings are allowed within the limits of the law". This provision was different and unique among Arab constitutions, in prohibiting the

⁴⁵ Fadia Ahmad Al Faqir, research titled Democratic Women without Democracy, published in a book titled Citizenship and Democracy in the Arab Countries, Beirut, First Edition, 2001, p. 184.

carrying of weapons in the assemblies, it also included the phrase "serenity", and this statement opens the door to various interpretations, which restrict this right.

Section II: Women's Economic, Social and Cultural Rights in Arab Constitutions

The Arab constitutions provide a good level of attention to women's economic, social and cultural rights. The constitutional provisions have included many of the principles and rules concerning these rights, in an equal and identical image between women and men, even though not always expressly stated, but in general, the provisions include everyone. Some constitutions however have clearly mentioned the equality between women and men.

It should be noted here that the positive status of the constitution in regards to economic, social and cultural rights has been offset by some types of discrimination in national laws, especially labour laws which included articles and chapters related to the employment of women, and which are apparently designed to protect the worker woman, but in fact, they represent flagrant discrimination against women.

We will review in what follows the most important women's economic, social and cultural rights in Arab constitutions.

Paragraph I: Right to Social Care and Social Security

The Right to Social Care and Social Security is one of the most important rights related to human beings, especially in the light of capitalist development witnessed by all the countries of the world, and in the light also of globalization and technological development, which has created large economic gaps between a class that owns a lot, and many other classes that own nothing. Here comes the role of the state to achieve the concepts of justice through social care and social security, and in this context, the Arab constitutions, focused in general in their provisions to emphasize - and sometimes to specify - the right of every citizen in the social care and social security.

When reading the Arab constitutions, two main categories become clear in relation to social care and social security;

Category I focus is on the role of the state and the society in ensuring a safety net for citizens, in situations of emergency or special conditions; which are, for example, sickness, disability, old age and unemployment. This is what the UAE constitution provided in Article (16), stating that "Society shall be responsible for protecting childhood and motherhood and shall protect minors and others unable to look after themselves for any reason, such as illness or incapacity or old age or forced unemployment. It shall be responsible for assisting them and enabling them to help themselves for their own benefit and that of the community. Such matters shall be regulated by welfare and social security legislations".

The Sudanese constitution stipulated the same concept in Article (11). The Saudi Regime stated also in Article (27) that "The state guarantees the rights of the citizen and his family in cases of emergency, illness and disability, and in old age; it supports the system of social security and encourages institutions and individuals to contribute in acts of charity".

It should be noted that the Saudi Regime linked between charitable work and the right of citizens to social security, which should be a right for citizens on the state, and a commitment from the state to provide help and support to every citizen, and not just an act of compassion and morality. In other words, the obligation of the state remains the main source and the acts of charity and social ethics are voluntary and optional deeds.

The constitution of Oman considered social security as one of the social principles, and stated in Article (12) that "The State guarantees assistance for the citizen and his family in cases of emergency, sickness, incapacity and old age in accordance with the social security system. It also encourages society to share the burdens of dealing with the effects of public disasters and calamities".

The same was stated in the Qatari constitution in Article (28), in the Kuwaiti constitution in Article (11), the Palestinian constitution in Article (22) and the Yemeni constitution in Article (55).

Category II focus is on providing a special care for Women and Children, and the commitment of the state to support the balance between the duties of woman

towards her family and her participation in the political, social and cultural life. This category includes some Arab constitutions which include a special paragraph reflecting the above. The Egyptian constitution for instance, stipulated in Article (11) that “The State shall guarantee the proper coordination between the duties of woman towards the family and her work in the society, considering her equal with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence”.

The Egyptian constitution emphasized also in Article (16) the social care for the village, where it was declared that “The State shall guarantee cultural, social and health services, and work to ensure them for the villages in particular in an easy and regular manner in order to raise their standard”. Besides, Article (17) focused on social security, by stipulating that “The State shall guarantee social and health insurance services and all the citizens have the right to pensions in cases of incapacity, unemployment and old-age, in accordance with the law”.

In this context, also came the Bahraini constitution, which stipulates in Article (5) that:

“b. The State guarantees reconciling the duties of women towards the family with their work in society, and their equality with men in political, social, cultural, and economic spheres without breaching the provisions of Islamic canon law (Sharia).

c. The State guarantees the requisite social security for its citizens in old age, sickness, disability, orphan hood, widowhood or unemployment, and also provides them with social insurance and healthcare services. It strives to safeguard them against ignorance, fear and poverty”.

The Syrian constitution stated in Article (45) that “The state guarantees women all opportunities enabling them to fully and effectively participate in the political, social, cultural, and economic life. The state removes the restrictions that prevent women's development and participation in building the socialist Arab society”.

Through an in-depth look at the Arab social security laws, we see some advantages and some disadvantages. One advantage – related to the Arab social security laws which came as a reflection of the general principles and rules that were stated in the constitutions – is that most of these laws included several

categories eligible for social security pensions (Egypt, Yemen, Sultanate of Oman, Qatar, UAE) and in particular, the groups of women, namely the divorced, the widow, the unmarried daughter, and the deserted, and this regardless the benefit from other social categories, such as old age, disability, unemployment and orphan-hood.

One main disadvantage on the other hand is the insufficiency of social security pensions that are paid in most of the Arab countries, generally in the form of monthly salaries or as monetary help, or in-kind assistance, and the complicated procedures required by citizens in order to benefit from the social security services.

Paragraph II: Right to Education

No argument about the importance of education in human life, especially in the early stages. The majority of the Arab constitutions made sure to stipulate the importance of education, and the commitment of the state to ensure the provision of education. None of the constitutions has mentioned any discrimination against women in this field. But by reviewing the domestic laws of some Arab countries, some aspects of discrimination against girls appear, especially in Saudi Arabia, which continue to prevent girls from entering some technical colleges. We find for instance that the only section where the girls are authorized to enrol in the engineering schools is the Department of Architecture, while other sections are forbidden to girls, such as the section of electricity, mining, mechanics and others, under the pretext to protect girls from forced labour. Girls in Saudi Arabia are deprived also from practicing sport at school, and the reason for this deprivation is not very clear.

In this relation, article (153) of Saudi Arabia's education Policy states the following: "Girls education aims at giving her a sound Islamic education in order for the girl to undertake her task in life, by being a successful housewife and an ideal wife, and a good mother."

There are also many aspects of discrimination in the educational laws in Saudi Arabia, such as discrimination between girls and boys regarding the type of education, and the requirement of parental consent for girls, in all levels of education, and also the approval of the field the girl wants to be enrolled in.

As for the rules that organize education in Arab constitutions, we can divide them into two main categories:

Category I includes the constitutions that provide for compulsory and free of charge education, such as the Jordanian constitution, which stipulates in Article (6/2) that “The Government shall ensure work and education within the limits of its possibilities, and it shall ensure a state of tranquillity and equal opportunities to all Jordanians”.

This provision has linked between the insurance of the state to offer the right to education and the equal opportunities for all citizens. Article (20) of the same constitution, related to compulsory primary education, stipulates that “Elementary education shall be compulsory for Jordanians and free of charge in Government school”.

The same is provided in the UAE constitution where Article (17) stipulates that “Education shall be a fundamental factor for the progress of society. It shall be compulsory in its primary stage and free of charge at all stages, within the Union. The law shall prescribe the necessary plans for the propagation and spread of education at various levels and for the eradication of illiteracy”.

By this, the UAE constitution combined between the compulsory education at the primary level and the free of charge education for all educational levels.

The Bahraini Constitution stipulated also in Article (7) the compulsory and the gratis education in the early educational levels. The Palestinian Basic Law, stipulated in Article (24) that “Every citizen has the right to education. It shall be compulsory until at least the end of basic grades, and it shall be free in public schools and institutes”.

In this context, the Egyptian constitution, stipulated in Article (18) that “Education is a right guaranteed by the State. It is obligatory in the primary stage and the State shall work to extend obligation to other stages”.

Article (20) of the same constitution added: “Education in the State educational institutions shall be free of charge in its various stages”.

The same content has been covered by the Algerian constitution in article (53), in the Palestinian constitution in article (24), in the Qatari constitution in article

(49), in the Kuwaiti constitution in article (13), and also in the Syrian constitution in Article (37).

Category II includes the constitutions that provide for the importance of education in the progress as well as in the life of the community, but it did not provide for compulsory or gratis education. For example, the Saudi Regime provided in article (30) that "The state provides public education and pledges to combat illiteracy", and in this context too, the Lebanese constitution, stipulated in Article (10) that

"Education is free in so far as it is not contrary to public order and morals and does not interfere with the dignity of any of the religions or creeds. There shall be no violation of the right of religious communities to have their own schools provided they follow the general rules issued by the state regulating public instruction".

The same has been stipulated by the Sudanese constitution in Articles (12.14), Statute of Oman in article (13), the Moroccan constitution in article (13), the Mauritanian constitution in article (57), the Iraqi constitution in article (14), and the Libyan constitution in article (15) of the Great Green Charter of Human Rights.

None has diverged from these two categories except the Somali constitution which provided for gratis only, where it stated in Article (35/2) that "Education in its first stage is free of charge in governmental schools". As for the Yemeni constitution, it stipulated the compulsory condition only, in Article (53).

Paragraph III: Right to Health Care

The majority of Arab constitutions emphasize on the right to health care, and all the Arab constitutions did not distinguish in this regard between men and women, it is right generally granted to all. Article (54) of the Yemeni constitution translates what has been mentioned above. The same applies to the UAE constitution in article (19), the Bahraini constitution in article (8), the Algerian constitution in article (54). The Egyptian constitution states in Article (17) that the "State shall guarantee social and health insurance services and all the citizens have the right to pensions in cases of incapacity, unemployment and old-age, in accordance with the law".

The constitution of Oman stipulated also in Article (12) that “The State cares for public health and for the prevention and treatment of diseases and epidemics. It endeavours to provide health care for every citizen and to encourage the establishment of private hospitals, clinics and other medical institutions under State supervision and in accordance with the rules laid down by Law. It also works to conserve and protect the environment and prevent pollution”.

The Qatari constitution stated as well in Article (23) that "The State shall foster public health; provide means of prevention from diseases and epidemics and their cure in accordance with the law". And the same context was in the Sudanese constitution in Article (13), in addition to the Syrian constitution, in Article (46), and the Kuwaiti constitution in Article (15).

In Libya, Article (14) of the Great Green Charter for Human Rights issued in 1988, declared that the republican society is the care taker of those who do not have a care taker.

The Saudi Statute stipulated in article (31) that "The state takes care of health issues and provides health care for each citizen”.

Despite that the provision included everyone, but the Saudi Ministry of Health requires the consent of the guardian for a surgical procedure for an adult women, while the man himself signs consent of a medical or surgical intervention when adult. It is noteworthy that the same may be practiced in other Gulf countries, but without being a part of the legislation. As a general rule, the consent of the guardian or the husband is not required for adult women, but only in critical situations where the patient - a man or a woman – are unconscious and unable to express his approval, so his present relatives will give the approval.

Paragraph IV: Right to Property

The Arab constitutions focused on protecting the Right of ownership, and there was no exception against woman regarding this right. It is one of the rights that has been formulated in general without any allocation, and therefore everyone, women or men, benefits from it.

The Arab constitutions dealt with this right in two methods; the first is the stipulation that the private property is guaranteed and protected'. A good example is the Tunisian constitution, which stipulates in Article (14) that "The right to property is guaranteed. It is exercised within the limits established by the law". In this context, the Algerian constitution stated in Article (52) that "Private property is guaranteed".

The second method is the provision to ensure and protect the right of property, as well as some other guarantees for the protection of this right. So the Kuwaiti constitution stated in Article (18) that "Private property is inviolable. No one shall be prevented from disposing of his property except within the limits of the law. No property shall be expropriated except for the public benefit under the circumstances and in the manner specified by law, and on condition that just compensation is paid".

The same has been stated by the Jordanian constitution in Article (11.12), the Statute of KSA in Article (18), the constitution of UAE in Article (21), the Bahraini constitution in Article (9), the Qatari constitution in Article (27), the constitution of Somalia in Article (24), the Lebanese constitution in Article (15), the Egyptian constitution in Article (34), the Yemeni constitution in Article (7) and the Statute of Oman in article (11).

We conclude that most of the Arab constitutions include a provision to emphasize the protection and to enshrine the right to private property, and to put strong guarantees to ensure this right, such as: First, non-discrimination between women and men in the right to property; second, no extraction or abduction by the state, except for the public benefit; third, to be expropriated according to the law; and fourth, to compensate the owner with fair compensation.

In the light of these guarantees, most of Arab constitutions have been formulated, without any distinction between women and men.

As for granting state-land to the citizens, the majority of Arab countries treat men and women in equality. The Sultanate of Oman used to limit the right to grant a state-land to men only. Women used to be eligible only if they were in inequitable conditions where it requires on the woman to be the only breadwinner for herself or for her family. This situation changed by the issuance of the royal imperial decree No. 125 of 2008 A.D, which amended the law and

granted women an equal right to men in having a state-land from the government.

Paragraph V: Right to Form Associations

It is Indisputable that women played a major role in the civil society organizations, especially the civil associations in all the Arab countries. All Arab constitutions stipulated provisions to ensure and protect the right to create and form civil associations, and none of the constitutions has mentioned anything specific to women regarding this right; and the language of Arab constitutions generally included all the citizens.

It is noted however that the majority of Arab constitutions treated this right through two major trends. The first is about ensuring the right of association, for instance the UAE constitution in Article (33) which stipulates that "Freedom of Council and establishing associations shall be guaranteed within the limits of law". The Tunisian constitution, which stipulates in Article (8) that "The liberties of opinion, expression, the press, publication, assembly, and association are guaranteed and exercised within the conditions defined by the law". And also the Algerian constitution, which provides in Article (41) that "Freedom of expression, association and meeting are guaranteed to the citizen", and Article (43) of the same constitution, which stipulates that "The right to create associations is guaranteed". In the same context, the Djibouti constitution stipulates in Article (15) that all citizens have the right to freely form associations and trade unions as long as they respect laws and regulations. And the Lebanese constitution stipulates in Article (13) that "The freedom to express one's opinion orally or in writing, the freedom of the press, the freedom of assembly, and the freedom of association are guaranteed within the limits established by law".

The same was stipulated by the Sudanese constitution in Article (26), the Syrian constitution, in article (48), and Article (13) of the Code of the State Administration of Iraq for the Transitional Period, the Qatari constitution in Article (45), the Moroccan constitution in Article (9), and the Yemeni constitution in Article (57).

The second trend of Arab constitutions went to enumerate some of the controls and including them in the provisions of the constitution to regulate the work of

the civil associations. For instance, Article (33) of the Statute of the Sultanate of Oman, stated that “The freedom to form associations on a national basis for legitimate objectives and in a proper manner, in a way that does not conflict with the stipulations and aims of this Basic Law, is guaranteed under the conditions and in the circumstances defined by the Law. It is forbidden to establish associations whose activities are inimical to social order, or are secret, or of a military nature. It is not permitted to force anyone to join any association”.

Within the same context, the Jordanian constitution stipulates also in Article (16) that: (i) Jordanians shall have the right to hold meetings within the limits of the law.

(ii) Jordanians are entitled to establish societies and political parties provided that the objects of such societies and parties are lawful, their methods peaceful, and their by-laws not contrary to the provisions of the Constitution.

(iii) The establishment of societies and political parties and the control of their resources shall be regulated by law”.

As well as the Bahraini Constitution, which stipulates in article (2) that formation of associations and trade unions is free as long as it is based on national foundations and it created for legitimate objectives and by peaceful means, and without any prejudice to religious foundations and public order. In addition, article 2 includes that no one should be obliged to join any association or trade union or to continue being a member in it.

The Somali Constitution stipulates also in Article (26) that:

1. “Every person shall have the right freely to form associations without authorization.
2. No person may be compelled to join an association of any kind or to continue to belong to it.
3. Secret associations or those having an organization of military character shall be prohibited.

And the Egyptian Constitution which stipulates in Article (55) that “Citizens shall have the right to form societies as defined in the law. The establishment of

societies whose activities are hostile to the social system, clandestine or have a military character is prohibited”.

Through the review of these provisions, it is clear that most of the conditions required by the constitutions are to make the objectives of the association legitimate, to use peaceful means, not to violate the Constitution and the law, to prohibit creating anti-social, covert or military associations, without prejudice to the principles of religion and public order (Bahrain), as well as to an important guarantee which is not to force anyone to participate in the association.

As for the situation in the Kingdom of Saudi Arabia, the Saudi Statute did not include any mention to the right to form civil associations or the right of assembly in general. Similarly, the KSA law of associations and civil institutions of 2008A.D did not include women's right to establish civil associations. However, women's associations have been created in KSA but the membership in these associations is limited to women only. Women can be authorized also to be members of other civil associations, with a total separation between men and women in all activities.

Paragraph VI: Right to form a Family

Arab Constitutions emphasized the role of the family in the society. Some constitutions did not hide also that the woman is the genuine partner in building a family. Some Arab Constitutions stressed on the importance of women's role and the commitment of the State in protecting maternity and childhood, for example, the provision of the Bahraini Constitution, in Article (5) provides that: “a. the family is the basis of society, deriving its strength from religion, morality and love of the homeland. The law preserves its lawful entity, strengthens its bonds and values, under its aegis extends protection to mothers and children, tends the young and protects them from exploitation and safeguards them against moral, bodily and spiritual neglect. The State cares in particular for the physical, moral and intellectual development of the young.

b. The State guarantees reconciling the duties of women towards the family with their work in society, and their equality with men in political, social, cultural, and economic spheres without breaching the provisions of Islamic canon law (Sharia)”.

Also the Article (44) of the Syrian Constitution, which stipulates that: “The family is the basic unit of society and is protected by the state. The state protects and encourages marriage and eliminates the material and social obstacles hindering it. The state protects mothers and infants and extends care to adolescents and youths and provides them with the suitable circumstances to develop their faculties”.

In this context, the Sudanese Constitution stated in Article (15) that:

“(1) The family is the natural and fundamental unit of the society and is entitled to the protection of the law; the right of man and woman to marry and to found a family shall be recognized, according to their respective family laws, and no marriage shall be entered into without the free and full consent of its parties.

(2) The State shall protect motherhood and women from injustice, promote gender equality and the role of women in family, and empower them in public life.”

Some Arab Constitutions emphasized the role of the family in society and the commitment of the state to provide family care and protection. In this context, the UAE Constitution stated in Article (15) that “The family is the basis of society. It is founded on morality, religion, ethics and patriotism. The law shall guarantee its existence, safeguard and protect it from corruption”.

Article (58) of the Algerian constitution stipulates that "The family gains protection from the State and the society." And article (10) of the Saudi Statute stipulates that “The state will aspire to strengthen family ties, maintain its Arab and Islamic values and care for all its members, and to provide the right conditions for the growth of their resources and capabilities.”

In this context the Qatari Constitution stipulated in Article (21) that “The family is the basis of the society. A Qatari family is founded on religion, ethics, and patriotism. The law shall regulate adequate means to protect the family, support its structure, strengthen its ties, and protect maternity, childhood, and old age”.

The Basic System of Oman stated a similar provision in article (12), the Kuwaiti Constitution in Article (9), the Egyptian Constitution in Article (10), and the Yemeni Constitution in Article (26).

Based on that, one can say that Arab constitutions have implicitly acknowledged the right of the Arab women to form a family, on the basis that all Arab countries recognize the family which is formed of a husband and a wife, and that all the legal systems in the Arab countries require the consent of the woman to marry.

Paragraph VII: Right to Work

Almost all Arab Constitutions stipulated the right to work for all citizens, and the worker's right to choose the right job for him/her, and the right also in the appropriate remuneration, for example, the Statute of Oman, which provided in Article (12 / 5) that "The State enacts laws to protect the employee and the employer, and regulates relations between them. Every citizen has the right to engage in the work of his choice within the limits of the Law. It is not permitted to impose any compulsory work on anyone except in accordance with the Law and for the performance of public service, and for a fair wage".

And also the Constitution of UAE, which provided in Article (34) that "Every citizen shall be free to choose his occupation, trade or profession within the limits of law. No person may be subjected to force labor except in exceptional circumstances provided by the law and in return for compensation. No person may be enslaved".

The same was stated in Article (13) of the Bahraini Constitution, in Article (55) of the Algerian Constitution, in Article (15) of the Constitution of Djibouti, in Article (28) of the Saudi regime, in Article (28) of the Sudanese Constitution, in Article (36) of the Syrian Constitution, in Article (14) of the Iraqi Administrative Law, in Article (25) of the Palestinian Basic Law, in Article (28) of the Qatari Constitution, in Article (41) of the Kuwaiti Constitution, in Article (13) of the Moroccan Constitution and in article (29) the Yemeni Constitution.

Some Arab Constitutions affirmed also the right of women to work. The provision of the Egyptian Constitution for instance, stipulated in Article (11) that "The State shall guarantee the proper coordination between the duties of woman towards the family and her work in the society, considering her equal with man in the fields of political, social, cultural and economic life without violation of the rules of Islamic jurisprudence". Article (28) Of the Libyan Law

No. 20 of 1991, stated also that the woman has the right to a work which suits her and that she should not be placed where she has to work in what does not suit her nature.

The Jordanian Constitution stipulated in Article (23) that “(i) Work is the right of every citizen, and the State shall provide opportunities for work to all citizens by directing the national economy and raising its standards. (ii) The State shall protect labour and enact legislation therefore based on the following principles:

- a. Every worker shall receive wages commensurate with the quantity and quality of his work.
- b. The number of hours of work per week shall be defined. Workers shall be given weekly and annual days of paid rest.
- c. Special compensation shall be given to workers supporting families and on dismissal, illness, old age and emergencies arising out of the nature of their work.
- d. Special conditions shall be made for the employment of women and juveniles.
- e. Factories and workshops shall be subject to health safeguards.
- f. Free trade unions may be formed within the limits of the law”.

The Somali Constitution stipulated a similar provision in the third paragraph of Article (36), stating that “Every worker shall have the right to receive, without any discrimination, equal pay for work of equal value, so as to ensure an existence consistent with human dignity.”

Although all Arab Constitutions have focused on emphasizing the value of work considering it the right of every human being; and in spite of the fact that Arab Constitutions have focused on providing adequate conditions for women to work, as stated for instance in the Jordanian Constitution (article 23), and the Somali Constitution (article 36), most of the Arab countries have endorsed a serious discrimination against women in employment. The Jordanian Constitution for instance, after affirming in the first paragraph of Article (23) that the Work is a right for all citizens, confirming thus the full equality of rights and duties in the field of employment for all citizens, men and women,

conversely stated in paragraph (2/d) that the legislation had to assume special conditions for the work of women.

The same is observed in the constitution of Somalia. In Arab national laws, in contrary to the constitutions that have confirmed full equality, labour codes have placed special conditions on women's work, which include restrictions on the fields where a woman can work out, as well as determining the hours during which women can work, and the hours during which they can't work., The Jordanian Labour Law No. 8/1996 for instance determines in Article (69) the jobs in which employment of women is prohibited. The same is covered in Article (149) of the Saudi Labour regime. The Egyptian Labour Law No. 12 / 2003 stipulates the same also in Article (90).

The Oman Labour Law No. 35 / 2003 stipulates the same in Part V, articles (80, 81 and 82), the UAE Federal Law for Regulation of Labour Relations No. 8/1980 A.D in Article (33), and the Bahrain Civil Law Work No. 23 / 1976 A.D in Article (65). Other Arab laws gave the Minister of Labour or the Minister of Manpower authorities to determine the jobs in which women can work and those that women cannot perform, the working hours during which women are allowed to work, in addition to the kind of jobs that are healthy or morally harmful to women and other conditions that ministers would decide on behalf of women.

Arab countries justify this position by saying that it is for the protection of women. We find this justification however unacceptable due to the following reasons-

First - All Arab Constitutions have embodied a general principle of equality among all citizens. In spite of that, we find that discrimination against women and violations are spread and common in all the Arab labour codes. However, there is a constitutional principle that must be respected by all authorities in the state.

Second- Arab countries ratified many international conventions and treaties such as the International Covenant on Economic, Social and Cultural Rights and ILO conventions and the Arab CEDAW. All these instruments provide for equality between women and men, especially in the field of work, without any reservation in the provisions related to equality between women and men in

working conditions and salaries, and thus Arab countries are under the obligation of implementing their international commitments.

Third-Labour laws assumed implicitly that women are minors and gave the competent minister (minister of labour) a jurisdiction over all women in determining the conditions and the benefits and the field they work or do not work out, as well as the working hours. This is despite the emphasis in all the Arab constitutions on equality between men and women in working conditions and salaries, It is not permissible hence to impose tutelage over women, especially if women are not properly represented in decision taking positions.

Conclusions and Recommendations

Through the analysis of the Arab constitutions, we conclude that all of them gave appropriate attention to the coverage of basic human rights in the constitutional provisions. Most of them included as well separate provisions to confirm the protection of the principle of equality between men and women and the equality between all citizens. This is undoubtedly due to the influence of the international community, and especially the Universal Declaration of Human Rights and the subsequent international conventions on human rights.

Therefore, two important issues should be raised in this regard-

The first issue is at the level of constitutional provisions, which we find adequate and appropriate, especially in the formulation of general principles of human rights, including women's rights. However the serious problems appear during the application of these rights due to contradictory provisions in the laws, decrees, regulations, and other domestic binding legal instruments.

This is in spite of the supremacy of the Constitution, which should not be violated by other regular laws or regulations. There are in fact many laws in the Arab countries which entail discrimination against women and they contradict the constitutions. Such laws are also in contradiction with the international conventions ratified by the state. For instance, labour laws, educational laws, nationality laws, the laws of transportation and travel, and other laws that contradict the constitutional provisions totally.

In this regard, we refer to the annual report on Women's Rights in the Middle East and North Africa, issued by Freedom House (US organization) - titled

“Citizenship and Justice”- which analyzed the gap between the rights of women and men in the Arab region. The report states that most of the Arab constitutions include guarantees to protect the rights of women, but they are not seriously applicable by the government authorities, especially that there is a clear discrimination against women in the traditions and the legal issues.

This report shows also a semi-Arab consensus that the best profession for women is to be a housewife, who should obey her husband⁴⁶.

The second issue is the complete absence in all Arab constitutions of any mention of the issue of combating violence against women. This is in spite of the adoption of the Universal Declaration on the Elimination of Violence against Women in 1993 by the General Assembly of the United Nations, which defined violence against women in its first article as follows: “For the purposes of this Declaration, the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”

There are also many International Conventions, which focus on the issue of violence against women in the context of the right to personal safety, or the fight against harmful traditional practices, early marriage, or abortion and documentation of marriage contracts.

At the level of national laws, the Arab penal laws dealt with violence against women in several forms, including:

1. Violent crimes in general, which are murders, beatings, embarrassment, abuse, kidnapping, and others;
2. Sexual crimes, rape, indecent assault, indecent assault and sexual exploitation;
3. Criminalization of female genital mutilation; and
4. The so-called honour crimes, a murder or abuse motivated to maintain honour, or due to a doubt in the behaviour of a woman. The attitude of the judiciary in dealing with these kinds of crimes, which results in a

⁴⁶ Freedom House Annual Report on the status of women's rights in the Middle East and North Africa, published on the following link: <http://www.ahewar.org/debat/show/art/asp?aid=204667>

special treatment to reduce the penalty of the killer, which is a justification for impunity.

Although most of Arab countries accepted the Declaration on the Elimination of Violence against Women, Arab Constitutions have remained free from covering the issue of violence against women in its various forms and types. Arab constitutions do not contain also any commitment of the states in helping women victims of violence, in terms of rehabilitation, helping them in the care of their children, supporting them and providing them treatment, counselling, in addition to offering them health care and social services.

While the issue of violence against women needs a separate and an in-depth study, we tried in the above to show the need to give more attention to this issue in the Arab world, in harmony with the attention this issue is getting at the international level.

In terms of gender equality we found out that it is adopted to some extent in all Arab countries except in Saudi Arabia. Non discrimination is also not adopted in this country. This provision is not available also in Algeria, Djibouti, Iraq, OPT, Tunisia, United Arab Emirates and Yemen. Most of Arab countries do not adopt Rights of Women. Only Morocco, Syria, and Yemen adopt this provision. Provisions related to Political Participation & Freedom of Association are available in some countries and unavailable in others. These provisions are not adopted in Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia and Yemen. Right to Citizenship/Nationality is only available in Djibouti and Iraq. Education provision is strongly adopted in Algeria and morocco. The same occur for employment provision. Jordan and Qatar also adopt this provision. Equal before the Law is adopted in most countries except Saudi Arabia, Syria, and Yemen. Marriage & Family Life provision is not available in Djibouti, Egypt, and Lebanon. Status of Religious/Customary Law is the only provision that is adopted in all Arab countries with no exception. Status of International Law (including human rights law) is adopted in most Arab countries except for Bahrain, Egypt, Jordan, and Syria. Limitations exist only in Algeria and Tunisia.

Amendments were made to these provisions in Arab countries constitutions. In 2008, amendments were made to the constitution of the People's Democratic Republic of Algeria, to article 31 regarding equality and Political Participation & Freedom of Association. Amendments were made to provision of Education

(Art. 53), Employment (Art. 51), Equality before the Law (Art. 29), Marriage & Family Life (Art. 58), Status of Religious/Customary Law, Status of International Law (including human rights law) (Art. 28), Limitations (Art. 63). Constitution of the Kingdom of Bahrain made its amendments to the provisions in 2002. This include amendments to Equality (Art. 4), Non-Discrimination (Art. 18), Political Participation & Freedom of Association (Art. 1), Equal Before the Law (Art. 18), Marriage & Family Life (Art. 5), Status of Religious/Customary Law (Art. 2). Provisions to rights were amended in the constitution of the Republic of Djibouti in 2010. Amendments were made to Equality (Art. 1), Political Participation & Freedom of Association (Art. 5), Citizenship/Nationality (Art. 3), Equality before the Law and Status of Religious/Customary Law (Art. 1), and Status of International Law (Art. 9). Egypt's provisional Constitutional Law was amended in 2011. Amendments were made to provisions of equality, non-discrimination, and Equality before the Law (Art. 7), political participation & freedom of association (Art. 38), Status of Religious/Customary Law (Art. 2). Iraqi Constitution was amended in 2005. Provisions include equality (Art. 16), Political Participation & Freedom of Association (Art. 20), Citizenship/Nationality (Art. 18), Equal before the Law (Art. 14), Marriage & Family Life (Art. 29), Status of Religious/Customary Law (Art. 2), Status of International Law (Art. 8). The Constitution of the Hashemite Kingdom of Jordan was amended in 2011. Amended provisions include equality, non-discrimination, equal before the law, Marriage & Family Life (Art. 6), employment (Art. 23), Status of Religious/Customary Law (Art. 2). The constitution of the State of Kuwait was amended in 1962. Amendments to provisions include equality (Art. 7), non-discrimination, equal before the law (Art. 29), Marriage & Family Life (Art. 9), Status of Religious/Customary Law (Art. 2), Status of International Law (Art. 177). Amendments to the Lebanese constitution were recently made in 2004. Amendments were made to provisions of equality, non-discrimination, and Equality before the Law (Art. 7), Status of Religious/Customary Law (Art. 9), and Status of International Law (Art. 9). Libya constitutional declaration for the transitional Stage was released in 2011. Amended provisions include equality, non-discrimination, equal before the law (Art. 6), Marriage & Family Life (Art. 5), Status of Religious/Customary Law (Art. 1), Status of International Law (Art. 8). Morocco Constitution was amended in 2011. Amendments were made to provisions of equality (Art. 6), non-discrimination (Art. 4), right to women (Art. 34), Political Participation & Freedom of Association (Art. 7), Education

and employment (Art. 31), Equality before the Law (Art. 6), Marriage & Family Life (Art. 32), Status of Religious/Customary Law (Art. 1), and Status of International Law (Art. 3). Oman, Basic Statute of the State was amended in 1996. This include amendments to Equality (Art. 9), Non-Discrimination and Equal Before the Law (Art. 17), Marriage & Family Life (Art. 12), Status of Religious/Customary Law (Art. 2), Status of International Law (Art. 10). Basic Law of the Palestinian National Authority was amended in 2005. Amendments were made to provisions of equality (Art. 4), Political Participation & Freedom of Association (Art. 26), Equality before the Law (Art. 9), Marriage & Family Life (Art. 29), Status of Religious/Customary Law (Art. 4), and Status of International Law (Art. 10). Constitution of the State of Qatar was amended in 2004.

Amended provisions include equality (Art. 18), non-discrimination (Art. 35), employment (Art. 30), equal before the law (Art. 35), Marriage & Family Life (Art. 21), Status of Religious/Customary Law (Art. 1), Status of International Law (Art. 6). The Basic Law of the Government of Saudi Arabia was amended in 2003. Provisions include Marriage & Family Life (Art. 9), Status of Religious/Customary Law (Art. 1), Status of International Law (Art. 81). The constitution of the Syrian Arab Republic was amended in 2012. Amended provisions include equality (Art. 7), non-discrimination (Art. 33), right of women (Art. 23), Political Participation & Freedom of Association (Art. 8), Marriage & Family Life (Art. 20), and Status of Religious/Customary Law (Art. 3). The Constitution of the Tunisian Republic was amended in 2008.

Amendments to provisions include equality (Art. 6), Political Participation & Freedom of Association (Art. 8), equal before the law (Art. 6), Marriage & Family Life (Art. 6), Status of Religious/Customary Law (Art. 1), Status of International Law (Art. 2) and limitations (Art. 7). The constitution of the United Arab Emirates was amended in 1996. This includes amendments to Political Participation & Freedom of Association (Art. 35), Equal before the Law (Art. 25), Marriage & Family Life (Art. 15), Status of Religious/Customary Law (Art. 7), Status of International Law (Art. 12). The constitution of the Republic of Yemen was amended in 2009. Amendments to provisions include equality (Art. 24), right to women (Art. 31), Marriage & Family Life (Art. 26), Status of Religious/Customary Law (Art. 2), and Status of International Law (Art. 6).

This reveals the unequal adoption of Human rights provisions by Arab states constitutions. Huge disparities occur among states especially in provisions related to women rights. In order to reach a full availability of rights, the following recommendations should be considered:

- Ensuring the equal and parallel application of all provisions supporting Human rights by Arab states.
- State party should take all appropriate measures to engage a process of legal reform to harmonize national laws with international Conventions
- Making efforts by NGOs to promote the application of provisions related to rights of women in Arab countries that do not adopt these provisions, and strengthening the application of provisions in countries which adopt women rights provisions.
- Setting laws that promote the principle of non discrimination in governmental and non governmental institutions.
- Making Arab states assume accountability in the full implementation of international provisions.
- Organizing coalitions to support the provision of equality in Saudi Arabia and United Arab Emirates. This may include arranging awareness campaigns, organizing demonstrations and taking actions by civil society organizations.
- Making efforts to set laws that provide women with equal job opportunities and salaries.
- Integrating the provision of citizenship/ Nationality as a priority in the constitution of Arab states.

Chapter II: Children's Rights in the Arab Constitutions

The Constitution – in most legal systems – is considered the supreme legal document in the State, and the majority constitutions comprise the most important principles that define the state, in particular the principles related to the administration of Justice, rights, freedoms and duties.

Most of the Arab constitutions are accustomed to implicate provisions of equality between men and women in all fields, and also adherent to always stress on the importance of protecting the family, children, and maternity, as well as to emphasize on the protection and care for working women.

Having said this, and despite the fact that the constitution is the supreme legal document in the state, there may be laws and regulations which may entail discrimination and/or lead to defects in the protection of women's and children's rights. Nevertheless, the constitutional legal guarantees remain the strongest, especially that all laws, decrees, regulation and resolutions/decisions should be fully compliant with the constitution, in principle, and are considered as lower degrees in the grading scale of the legal system.

The status of children in any society is considered as a clear reflection of the level of social justice and involves a complex set of correlated factors. Generally, the status of the children in the society is described in terms of livelihood, health and education. But according to the UN Convention on the Rights of the Child (CRC), the role the child plays in the family, in the community and in the society, in addition to the protection from abuse, exploitation, neglect and violence should also be an integral part of the legal system, enshrined by the constitution.

In this context, it is needless to mention that the role of the International Law of Human Rights has been tremendous in affecting the national legal systems, through the numerous international conventions and declarations that have been adopted since the Universal Declaration of Human Rights in 1948.

The expansion of the fields of International law, granted international treaties a prominent position whereby they are currently considered the most important sources of the contemporary International Law. Moreover, international treaties are also playing a significant role in the creation of internal legal norms, which

has led at the same time to the prosperity of international cooperation, especially with the ratification of treaties, whether those covering human rights or humanitarian principles.

Most of the Arab constitutions focused on the emphasis of the principle of equality between men and women in all fields of life, and the principle of equality between men and women is considered one of the most important principles related to children rights, as it is one of the most important pillars of the human rights system. Through the examination of Arab constitutions, it is clear that the existence of this principle is sometimes explicit and some other times implicit, so the majority of Arab constitutions stipulated that the citizens are equal before the law, without any discrimination (Algeria, Bahrain, Sudan, Iraq, Somalia, Oman, Palestine, Qatar and Kuwait).

There are some other constitutions that enshrine the principle of equality among all citizens, without mentioning "between men and women" (Lebanon, Jordan, UAE, Tunisia, Syria, and Morocco).

In these constitutions, we find in the beginning a clear provision stating that the citizens are equal before the law, and thus confirming that there is no discrimination between citizens based on race, language or religion.

The previous Egyptian Constitution for instance covered the principle of equality in Article (40).

It is noteworthy that the Moroccan Constitution stipulated in its Preamble that the State commits itself to be abiding by international conventions and the granting of equal rights for women and men. The same was confirmed in Articles (5) and (8) of the same Constitution.

The Syrian Constitution confirmed the same in Article (25) and the Kuwaiti Constitution in Article (29), and the Qatari Constitution in Article (35), the previous Tunisian Constitution, in Article (6), the Lebanese Constitution, in Article (7), and the Yemeni Constitution in Articles (31) and (40).

Some Arab constitutions stipulated, in addition to the principle of equality between men and women, the principle of equal opportunities for everyone regardless of the gender, and in accordance with criteria of competency (Jordan, Syria, Egypt, Kuwait, and Yemen).

This Chapter covers two sections. Section I deals with child rights principles and Arab constitutional law; and Section II deals with children's protection rights in the Arab world.

Section I: Child Rights Principles and Arab Constitutional Law

The CRC, adopted on 20 November 1989, was the landmark and the turning point in the history of children's rights at international level. Furthermore, the CRC is one of the conventions which affected the most national legal systems, in addition to the significant changes in the lives of children around the world⁴⁷.

And since the CRC has been ratified by 193 States, which makes it the convention that got the highest number of ratifications amongst all human rights treaties, all countries around the world are interested to be compatible with the CRC, and to reflect its principles and provisions in the national legal system.

The CRC has four General Principles, which according to the UN Committee on the Rights of the Child stem from Articles 2, 3, 6 and 12. These Principles are-

- Non-discrimination (Article 2);
- Best Interest of the Child (Article 3);
- Right to Survival and Development (Article 6); and
- Right to Participation (Article 12).

The first Article of the CRC is also of utmost importance, as it defines the "child" as every human being below the age of 18 years. Such a definition determines the legal scope of the protection that the constitution and the laws would provide once enacted.

In this regard, South Africa and Ghana defined the 'child' as a person under the age of 18 years (Article 28 (3) in the case of the Constitution of South Africa; and Article 28 (5) in the case of the Constitution of Ghana).

⁴⁷ Ghassan Khalil, *Child Rights: The Historical Evolution*, Publi Wave, Beirut, 2003.

Concerning the four General Principles of the CRC, most of the constitutions worldwide prohibited discrimination, either explicitly or implicitly. However, very few constitutions stipulated the principle of “Best interests of the Child”. Needless to say that Article 3 (the best interests of the child) constitutes the key philosophy of the CRC; and the existence of such a principle in the constitution provides a solid background and platform to all stakeholders and child rights activists to advocate for children's rights, in order to ensure that all laws, regulations, policies, and measures are compliant and in accordance with the principle of the best interests of the child. Two countries should be mentioned in this regard-

- South Africa: A child's best interests are of paramount importance in every matter concerning the child (Article 28 (2)); and
- Ethiopia: In all actions concerning children undertaken by public or private institutions of social welfare, courts of law, and administrative bodies, the primary consideration shall be the best interests of the child (Article 36 (2)).

A very important issue for children's rights is the recognition of the rights of children out of wedlock. This has been inspired by article 25 (2) of the UDHR, which states that all children, whether born in or out of wedlock, shall enjoy the same protection. Four countries are to be mentioned and commended in this regard-

- Ethiopia: “Children born out of wedlock shall have the same status and rights as children born in wedlock” (Section 36 (4)).
- Timor-Leste: “Every child born in or outside wedlock shall enjoy the same rights and social protection” (Section 18 (3)).
- Ukraine: “Children are equal in their rights regardless of their origin and whether they are born in or out of wedlock” (52 (a)).
- Ghana: “Every child, whether or not born in wedlock, shall be entitled to reasonable provision out of the estate of its parents” (Article 28 (1) (b)).

Having said this, it should also be noted that the CRC has allocated a great importance to the family, and to the family environment in which the child

should grow, and in case the child cannot grow with his/her biological parents, alternative family care then should be provided. And in all cases, institutionalization should be avoided to the maximum extent possible, and should remain as a measure of last resort, and for the shortest period of time.

The Constitution of Azerbaijan considered the family as the foundation of society and it shall be under the special protection of the State. To take care of the children and their upbringing shall be the obligation of parents (Article 17).

The Constitution of Ireland stipulated that the State recognizes the family as the natural primary and fundamental unit group of Society and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive laws (Article 41 (1)). The primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education for their children' (Article 42 (1)).

It is noteworthy that the Liberty Clause of the 14th Amendment of the USA Constitution gives parents the right to raise their own children, as long as there is no abuse or neglect.

To ensure the right of the child to survival and development, provisions are to be made to guarantee access to basic services. Given that detailed provisions would have been created under general provisions in relation to services such as education, health and nutrition, special provisions are to be brief, specific and focused on the special needs of children in the country. For instance, under article 53 of its provisions on education, the Constitution of Ukraine provides for free pre-school education, although this is not provided for under the CRC. The implication of guaranteeing pre-school education as a constitutional right is to secure an early start in life for all children. In addition, where countries have low school enrolment, constitutionally guaranteeing pre-school would also assist in accelerating implementation of Education For All (EFA) goals as well as gender parity in education in favour of girls.

In terms of protection, the Iraqi Constitution included "forced labour, slavery, commerce in slaves, the trading in women or children of the sex trade" in Article 35 (c) as crimes that the child should be protected against.

Another aspect of child protection, which has special significance in countries which are undergoing a transitional period following war or revolutions, is the protection of children from participation in armed conflicts. A prominent example in this regard is the constitutional review in Kenya, where the Constitution of Kenya Review Commission took full advantage of the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict by including a prohibition within its Draft Bill of Rights against the participation of children in hostilities or their recruitment into armed conflicts and their protection in such situations” (Article 40 (on children) (6) (h)). Cambodia has also integrated a provision on this within its special clause on children, by stipulating their protection during wartime (Article 48). Other constitutional provisions, such as those that deal with abuse, exploitation, neglect, detention and the best interests of the child, may also be used as references for the protection and prevention of the use of children in armed conflict.

This Section covers two paragraphs. Paragraph I is about Islamic constitutional law and the CRC; and Paragraph II deals with child rights principles in the Arab constitutions.

Paragraph I: Islamic Constitutional Law and the CRC

According to Islam, governments are the gatekeepers of Sharia, this is at least the main function they should perform.

Should the government of a Muslim society fail in its obligation to uphold the Sharia as the positive law, or the judges of this world fail in their obligation to administer justice in accordance with the Sharia, the individual believer would still be held to the responsibility incumbent upon all Muslims to conform their behaviour to the Sharia. On the Day of Judgment each Muslim will be held to account for any personal failures to comply with the commands and prohibitions of the Sharia.⁴⁸

The slipperiness, tilt, and incompleteness of the common ground may account for the reluctance of many in the Islamic world to stand on it. Sunni

⁴⁸ LINDSAY JONES, History of Sharia, available at: <http://www.islamawareness.net/>

jurisprudence employs analogical reason, *qiyas*, while Shi'a jurisprudence also employs independent reasoning, or *ijtihad*.⁴⁹

One distinctive feature of the Sharia law is that "It is the law that has moulded the people, and not the people moulded the law." It is accepted both in common law and Sharia law that evidence remains the surest means by which facts are proved before a Court of law.

The term evidence includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved, through the medium of witnesses, record, documents, concrete objects and the like. The same position is obtainable in Sharia law called *Shahada/Bayyinah*. The Sharia law recognizes and lays a lot of premium on the doctrine of burden of proof or standard of proof. It can even be said that the conditions or requirements under Sharia law are stricter than the ones under the common law.⁵⁰

The most distinctive feature of the Islamic view of politics is that in theory it does not recognize the validity and legitimacy of separating the religious and secular spheres of life. This unity is epitomized in the notion of sovereignty of God, which is to be realized through the Islamic state in all spheres of life: spiritual-secular, individual-collective, national-universal⁵¹.

The doctrinal approach interprets the supremacy of the Sharia to mean that those laws and injunctions laid down in the Koran (also rendered from the Arabic as Quran), and the examples of Prophet Muhammad, are in principle binding and irrevocable. Most fundamentally this implies that the word of God sets definite limits to the freedom of human beings. In political and legal terms this has been understood as a rejection of the concept of sovereignty of the people and the Western form of democracy.⁵²

Distinctive Characteristics of Islamic Law: Muslim law is made, the terms "Muslim law", "Islamic law" or "Muslim legal traditions" all have a similar

⁴⁹ J Budziszewski, *Natural Law, Democracy, and Sharia*, PP:11,12,13, available at: <http://www.undergroundthomist.org/>

⁵⁰ UMAR FARUK ABDULLAHI, *INTER RELATIONS BETWEEN COMMON LAW AND SHARIA LAW*, PP: 2,9, available at: <http://www.isrcl.org/>

⁵¹ Ahmed, Ishtiaq, *The Concept of an Islamic State: An Analysis of the Ideological Controversy in Pakistan*, (London: Frances Pinter, 1987), pp. 86-146. ISHTIAQ Ahmed, *WESTERN AND MUSLIM PERCEPTIONS OF UNIVERSAL HUMAN RIGHTS*, PP: 7, available at: <http://www.gap>

⁵² Maududi, Abul Ala, *The Islamic Law and Constitution*, (Lahore: Islamic Publications Ltd., 1980), this idea pervades the whole book see especially pp. 166-78. ISHTIAQ Ahmed, *WESTERN AND MUSLIM PERCEPTIONS OF UNIVERSAL HUMAN RIGHTS*, PP: 8, available at: <http://www.gap>

meaning. "Legal traditions" or "religious legal traditions" are more familiar terms for non-Muslim readers, because other religions and civilizations have such traditions as well.⁵³

The Islamic Sharia, the normative tradition commonly known as Islamic law, is much older"; although, even according to contemporary standards, most Muslim legal traditions are either consistent with or contribute to the development of human rights⁵⁴.

Islamic Law is not limited to regulating the interrelationships between individuals in society. It, first and foremost, regulates the relationship between the individual and the Creator by legislating different forms of worship like prayer, fasting, zakh, and Hajj⁵⁵.

Moreover, it defines the rights and obligations each individual has with respect to others, so that the potential harm any individual might cause for others is effectively negated the interpretations of the requirements of the Sharia are contained in the fiqh. In a general sense, fiqh means "knowledge" or "understanding," but it is also used in the more specific sense of Islamic jurisprudence. Sharia and fiqh are often treated as synonymous terms designating the body of rules constituting Islamic law. However, fiqh can also refer to the science of interpreting the Sharia.⁵⁶

It is noteworthy that both within the Sharia and beyond, justice is one of the key ideas of the Islamic concept of order in no way implies that Muslims regard the course of their civilization's history as a triumphant progress of law and justice.

Moreover, most of those who think about such things at all believe that the actual history of their religion and/or the societies characterized by it features a number of tragically misdirected developments from the very beginning The Koran and the religious literature that is based on it contain quite a number of other terms that (more or less precisely) mean "just" and/or "justice" or their

⁵³ For study of other legal traditions such as Chthonic, Talmudic, common law and Hindu, see generally , Patrick Glenn H, *Legal Traditions of the World, Sustainable Diversity in Law* (Oxford University Press, 2000), Kamran Hahsemi, *Islamic Culture in Support of Humanity: Formation of Regional Human Rights Mechanisms in the Muslim World*, PP: 8

⁵⁴ See generally Hashemi (note26) and Baderin (note18).), Kamran Hahsemi, *Islamic Culture in Support of Humanity: Formation of Regional Human Rights Mechanisms in the Muslim World*, PP: 8

⁵⁵ Islamic Sharia law, available at <http://www.ediscoverislam.com/islamic-law-and-legal-systems/islamic-sharia-law>

⁵⁶ LINDSAY JONES, *History of Sharia*, available at: <http://www.islamawareness.net/>

opposites, i.e. "injustice", etc. Thus, the Koran uses the term *qist* in chapter 57, verse 25 to describe the notion of justice.

The text runs as follows: "We have (in the course of time) sent our apostles (to mankind) with veritable signs and through them have brought down scriptures and the scales of justice, so than men might conduct themselves with fairness." As Muslims generally understand the Koran, it is the ruler more than anybody else who is called upon by Allah to act with moderation and justice.⁵⁷

Sharia judicial proceedings have significant differences with other legal traditions, including those in both common law and civil law. Sharia courts traditionally do not rely on lawyers; plaintiffs and defendants represent themselves. Trials are conducted solely by the judge, and there is no jury system.

There is no pre-trial discovery process, and no cross-examination of witnesses. Unlike common law, judges' verdicts do not set binding precedents⁵⁸ under the principle of *stare decisis*⁵⁹ and unlike civil law, Sharia does not utilize formally codified statutes⁶⁰ (these were first introduced only in the late 19th century during the decline of the Ottoman Empire, cf. *mecelle*).

The rules of evidence in Sharia courts also maintain a distinctive custom of prioritizing oral testimony.⁶¹

Islamic Law comprehends all branches of modern Law, general and specific. It investigates matters of International Law when dealing with issues relating to war, its methods, purposes, and results, and when dealing with issues pertaining to the relationship between the Islamic state and others."

The Islamic jurists, in works that range from concise to comprehensive, have investigated all four forms of modern Law that deal with internal affairs,

⁵⁷ Birgit Krawietz Helmut Reifeld, ISLAM AND THE RULE OF LAW, PP: 5, 6,7, 11, 12 available at: <http://www.kas.de/>

⁵⁸ Islamic Law, Legal Literature And Institutions, Jurisprudence: The "Sources" of the Law, The Modern Period, On Islam, Muslims and the 500 most influential figures, Shariiah, available at: <http://hitchhikersgui.de/>

⁵⁹ Saudi Arabia Basic Industries Corp. v. Mobil Yanbu Petrochemical Co., Supreme Court of Delaware, January 14, 2005 p. 52. On Islam, Muslims and the 500 most influential figures, Shariiah, available at: <http://hitchhikersgui.de/>

⁶⁰ Fatany, Samar (January 31, 2008). "Let Us Codify Sharia laws". *Arab News*. Retrieved September 17, 2011. Codification efforts remain incomplete, On Islam, Muslims and the 500 most influential figures, Shariiah, available at: <http://hitchhikersgui.de/>

⁶¹ Fortna, Benjamin C. (March 2011). "Education and Autobiography at the End of the Ottoman Empire". *Die Welt des Islams*. New Series, Vol. 41, Issue 1. pp. 1–31. On Islam, Muslims and the 500 most influential figures, Shariiah, available at: <http://hitchhikersgui.de/>

Constitutional Law, Administrative Law, Commercial Law, and Criminal Law⁶².

Muslim law is also positive law to the extent the norms and principles developed by the doctrine are practically realized. During the course of centuries the doctrine itself remained the leading source of Muslim positive law. In the modern world Muslim law coexists and interacts closely with other legal cultures⁶³.

The *Sharia* can be properly described as a religious phenomenon in which only individual traces of the legal principle are evident. Muslim law, on the other hand, is a predominantly legal phenomenon, albeit it sometimes appearing in a religious garb and geared to a religious ideology⁶⁴.

From this kernel the Sharia grew into a vast corpus of law. One of the great, challenging issues of Islamic intellectual history has been that of defining the relationship between the text of divine revelation and subsequent legal development, an effort that has entailed the working out of a theory of resources to provide an Islamic theoretical basis for resolving legal problems not explicitly addressed in the Qur'an.⁶⁵

It should be noted that analogy in Islamic Law is widely used. Interpretations in Islamic Law rely chiefly on analogy.

There are other acceptable means of deriving Islamic legal injunctions, besides the four primary sources. The Quran and Sunnah have given indication that these sources are also to be considered as legitimate means of establishing legislation, except that they play a subsidiary and subordinate role to that of the four primary sources⁶⁶.

On the other hand, Islamic jurisprudence exhibits greater stability and continuity of values, thought and institutions when compared to Western jurisprudence. This could perhaps be partially explained by reference to the respective sources of law in the two legal systems. Whereas rationality, custom,

⁶²Islamic Sharia law, available at <http://www.ediscoverislam.com/islamic-law-and-legal-systems/islamic-sharia-law>

⁶³Leonid Sykiäinen, *SHARI'AH AND MUSLIM-LAW CULTURE*, CA&CC Press, Sweden, available at <http://www.ca-c.org/dataeng/08.syki.shtml>

⁶⁴CA&CC press, *SHARIA AND MUSLIM-LAW CULTURE*, available at: <http://www.ca-c.org/>

⁶⁵LINDSAY JONES, *History of Sharia*, available at: <http://www.islamawareness.net/>

⁶⁶Discover islam page, *Islamic Sharia law*, available at: <http://www.ediscoverislam.com/>

judicial precedent, morality and religion constitute the basic sources of Western law, the last two acquire greater prominence in Islamic Law.

The values that must be upheld and defended by law and society in Islam are not always validated on rationalist grounds alone⁶⁷.

The claim about equality in Islamic law could be regarded as a historical claim about the *fiqh*, the body of legal opinion and rulings that constitute a particular tradition of Islamic jurisprudence, such as the four major Sunni schools, the Hanafi school, as exemplified by the *Multaka l-Abhur* of Ibrahim al-Halabi, a highly regarded statement of fully developed law in the sixteenth century⁶⁸.

In Western society, state-organized legal systems normally draw a distinctive line that separates religion and the law. Conversely, there are a number of Islamic regional societies where religion and the laws are as closely interlinked and intertwined today as they were before the onset of the modern age. At the same time, the proportion in which religious law (*Sharia* in Arabic) and public law (*qanun*) are blended varies from one country to the next. What is more, the status of Islam and consequently that of Islamic law differs as well. The meaning of secularization is different in an Islamic state and in the Muslim world from that of a constitutional state of the Western kind. Islam is not the religion of the state and in which the official separation between the state and religion is seen as particularly strict. The relationship between religion and the law is now subject to requirements that throw an entirely new light on the issue of law and justice in Islamic regional societies as well as in the largely secularized world of the West. This applies equally to modern Islamic and to Western secular law.⁶⁹

As for the relation between Islamic law and the CRC, the responsibilities of believers towards children are inviolable rights of the children because in Islamic jurisprudence rights and duties are correlated with each other. Children are enormous blessings from Allah; at the same time they are Amanah or trust from Him to us. The ultimate aim of preserving that trust is to do our best to protect them from hell-fire in the after-life, "O You Who Believe! Protect yourselves and Your Families from that fire, whose fuel will be humans and stones." (Al-Qur'an: 66: 6).

⁶⁷ M. H. Kamali, *Principles of Islamic Jurisprudence*, PP: 6, available at: <http://www.tayseerulquran.com/>

⁶⁸ International center for inquiry, *Islam & human rights*, pp: 17,18, available at: <http://www.centerforinquiry.net/>

⁶⁹ Birgit Krawietz Helmut Reifeld, *ISLAM AND THE RULE OF LAW*, PP: 5, 6,7, 11, 12 available at: <http://www.kas.de/>

All children, not just orphans, come into the category of 'vulnerable' – their parents and society as a whole need to ensure they are looked after, not only because children have intrinsic rights, but because Muslims have a duty to be charitable. Islam regards safeguarding children's rights as important because all human life is sacred to Allah⁷⁰.

It is noteworthy that according to Islam the soul is instated in the foetus 120 days after conception. This means that abortion in the first four months is not a sin. The verse reads however "And kills not your children for fear of poverty. We provide for them and for you. Surely, the killing of them is a great sin" (Al-Qur'an: 17:31).

The father should also do everything in his power to preserve the life of the unborn child, Allah says, "And if they are pregnant, then spend on them till they deliver" (Al-Qur'an: 65:6). Doing well to the expectant woman is mandatory, even if the mother had committed a crime or an offense against society. Her guardian should delay her punishment so that the unborn will not be affected by it. The evidence used here is the order given by the Prophet to the guardian of the woman, who had committed adultery and was pregnant, to be kind with her (Ibn Majah). The manner of the child's birth is not his sin, "And no soul shall bear the sin of another" (Al-Qur'an: 35:18). No matter how a child comes into the world, all of his rights, including rights for sustenance remain valid under Islamic Law.⁷¹

The above indeed is very much in line with the CRC article 6, and ensures the right to life, survival and development. In Buddhism also it is a sin to take life (all living creatures) and more importantly an unborn child as we believe that the souls of the dead beings searches for the body to enter (and sometimes takes ages depending on the karma the circle of life) and when it finally succeeds (through conception), if it is taken away then the soul has to again look for another frame to enter.

The need for a litigation strategy to address socio-economic rights as well as incorporating law enforcement dimensions into litigation, thus reflecting the

⁷⁰ Khabirul Haque and Kamal and Safiul Azam, Protection of children in Islam, Financial Express, available at <http://www.thefinancialexpress-bd.com/2014/01/04/12055/print>

⁷¹ Shabina Arfat, ISLAMIC PERSPECTIVE OF THE CHILDREN'S RIGHTS: AN OVERVIEW, pp: 1,2 available at: www.ajssh.leena-luna.co

equal importance of civil rights as well as socio-economic rights appears therefore to be a vital aspect of implementing CRC as a legal instrument.

Studies in diverse systems indicate that in the Common law and mixed or plural legal systems with a foundation of judicial precedent, the absence of a principle of law or norm on children's rights in legislation or codes has not prevented judicial creativity in recognizing child rights. It is for this reason that it seems important to understand the approach of a legal system to CRC incorporation and also develop a national jurisprudence through litigation which encourages courts to be catalysts in incorporating international standards including CRC.

The concept of "social responsibility" for children in Islamic law, and community rights responsibility and familial assistance to children, a common thread in customary laws in Asia and Africa reinforced CRC's socio-economic rights of survival and development and basic needs as basic rights. This was a focus absent in the Common law and Civil law due to a legal culture stressing civil rights. standards of the Western systems such as the 'Best Interests of the Child' and 'Non-discrimination' had travelled globally and already been internationalized and accepted as part of national law, either through national post-independence Constitutions that incorporated Bill of Rights or jurisprudence in the courts.

This cross fertilization of systems had already created a core of common principles of law, and procedures of enforcement that linked and harmonized with CRC. Similarly national legal systems derived from Common law, Civil law, Islamic and diverse customary laws had all tried to address the need for achieving a balance between parental rights and responsibilities and or the extended family and the rights of the child as an autonomous individual who gradually moves from a status of total dependence to individual autonomy⁷².

Thus the concept of an "age of puberty" in Islamic law had a link to the concept of "an age of discretion" in Common law and Civil law and mixed legal systems. Our study therefore reinforced the idea that adopting a culturally relativist approach is not an inherent dimension of recognizing the diversity in legal traditions and systems. Rather there was a common foundation for holding

⁷² Savitri Goonesekere, *Seeking Remedies For Violations of Children's Rights in Diverse Legal Traditions and Systems*, available at <http://www.docstoc.com/docs/67902279/Savitri-Goonsekere---Seeking-Remedies-For-Violations-off>

ratifying States accountable for implementing CRC, and providing a procedure for enforcement and remedies at the national level⁷³.

National systems derived from English law, Civil law or Islamic law or combining their influences adopted different approaches to incorporation depending on whether they adopted a 'monist' or dualist approach to international law. The Civil law systems and some Islamic countries tended to be 'monist' in their approach. This was an advantage because the act of ratification brought CRC into national law. This had the salutary impact of encouraging prior scrutiny and efforts at harmonization prior to ratification.⁷⁴

Paragraph II: Child Rights Principles in the Arab Constitutions

A. Algeria:

The Algerian Constitution guarantees protection against discrimination to all citizens. The pride of the people, their sacrifices, their sense of responsibility and their ancestral attachment to freedom and to social justice are the best guaranty for the respect to this Constitution which they adopt and transmit to future generations, heirs of the freedom pioneers and the builders of free society⁷⁵.

The Constitution also specifically provides that "all children are equal before the law. No discrimination shall prevail by reason of birth, race, sex, opinion or any other personal or social condition or circumstance." Nevertheless, more concrete measures are needed to promote tolerance and equality among children. In 2005, the Committee on the Rights of the Child noted "the persistent de facto discrimination faced by girls, children with disabilities, children living in poverty, children born out of wedlock, children in conflict with the law, street children, children living in rural areas and Western Saharan refugee children". Some steps were taken to address gender inequality in Algeria in 1984 and amended in February 2005 The legal age for marriage

⁷³ Ibid

⁷⁴ UNICEF, Seeking Remedies For Violations of Children's Rights in Diverse Legal Traditions and Systems, PP:5, available at: WWW.crin.org

⁷⁵ President elections, THE CONSTITUTION OF THE PEOPLE' OF THE PEOPLE'S DEMOCRATIC S DEMOCRATIC S DEMOCRATIC REPUBLIC REPUBLIC OF ALGERIA, PP:2-3, available at: <http://aceproject.org/>

under the Family Code for both men and women is 19 years and forced marriage is illegal.⁷⁶

The Algerian Constitution protects the family as the basic unit that assists the child to develop fully and provides special benefits and specific rights for children. While under Algerian law both parents share responsibility for the upbringing and development of the child, the Committee on the Rights of the Child has expressed concern that Algerian fathers exercise full power over the child in practice.

Children born out of wedlock are considered wards of the State. Although unmarried mothers reportedly have good access to medical care, because of strong social stigma many girls resort to abortion which is illegal and so is performed in extremely dangerous conditions. Foster parents can give a family name to the child under their care but inheritance rights are not possible⁷⁷.

The Algerian Constitution grants children the right to express their views and their opinions. The Constitution of Algeria guarantees freedom of conscience and opinion, freedom of expression and freedom of intellectual, artistic and scientific creation. Children can exercise their rights freely through mass communications such as newspaper, radio and television. However, the child's right to participation is seldom observed in reality.

Mechanisms to support children's participation are reported to be lacking, especially in community life⁷⁸. However, there are concerns that the right of the child to freedom of thought, conscience and religion is not fully respected in practice and that some children suffer discrimination based on religion. "The law limits the practice of other faiths, including prohibiting public assembly for purposes of practicing a faith other than Islam." The Parliament enacted a law on 20 March 2006 to regulate non-Islamic religions.

The law prohibits proselytising and imposes a penalty of up to five years in prison and a fine of between 500,000 and 1 million dinars (approximately USD

⁷⁶ Ordinance Number 05-02 ; see also " Entretien avec Fadila Bant Abdesslam, médiatrice juridico-sociale a l'ASFAD", Nadia Mellal, in *Revue des Droits de l'Enfant et de la Femme*, Centre d'Information et de Documentation sur les Droits de l'Enfant et de la Femme (CIDDEF), January-March 2006, pg 27, International Bureau for Children's Rights, Making Children's Rights Work in North Africa, PP:26 available at: <http://ibcr.org/>

⁷⁷ *Concluding Observations: Algeria*, 12/10/2005, CRC/C/15Add.269 pg 9.). International Bureau for Children's Rights, Making Children's Rights Work in North Africa. PP: 35, available at: <http://ibcr.org/>

⁷⁸ Meeting with the International Bureau for Children's Rights, Algiers, Algeria, November 2006, International Bureau for Children's Rights, Making Children's Rights Work in North Africa. PP: 45, available at: <http://ibcr.org/>

12,800) for any non-Muslim sharing her or his faith with a Muslim, including through providing services and publications⁷⁹. However, concern was expressed that “the existing domestic laws and policies do not adequately preserve and promote the Amazigh identity of children, including their right to use their own language.” No action has since been taken by the Government in this regard.

The Algerian Constitution prescribes the principle of the best interests of the child to safeguard families, young people and children. However, the Committee on the Rights of the Child recently considered that the Government did not give adequate attention to this principle in national legislation and policies, particularly in relation to custody decisions.

The general population has a low level of awareness about this principle. Some initiative have been taken to increase awareness⁸⁰. Nonetheless, children are still largely seen as the objects of rights rather than the subjects of rights. More efforts are needed to ensure that children's rights are adequately reflected in domestic legislation and are taken as a primary consideration in all decision-making.

The Constitution of Algeria guarantees the right to education to all children, without distinction of race, colour, sex or other factors. School is free and compulsory for all children, including non nationals, aged between six and 16. Civic and religious education is prioritized in the school curriculum from an early age in preparatory schools, kindergartens and nursery schools. The 2007 budget gives education the highest priority for public spending, before defence.

Additional efforts are needed to change attitudes and ease the social pressures that contribute to discrimination against girls. The Algerian girl child enjoys her rights without discrimination: 96 per cent of all girls now attend school, and they have achieved higher pass rates than boys. At some levels, there are more girl pupils than boys.

Furthermore, girls are entitled to complete health care both in the school environment and in the context of the public health system. Algerian legislators have taken a number of measures designed to protect human rights and freedom

⁷⁹ Al-Muheet, 2006, available on-line at <http://us.moheet.com/asp/country.asp?m=5> (last accessed 4 July 2006. International Bureau for Children's Rights, Making Children's Rights Work in North Africa. PP: 29, available at: <http://ibcr.org/>

⁸⁰ Meeting between IBCR and Centre d'Information et de Documentation sur les Droits de l'Enfant et de la Femme (CIDDEF), Algiers, Algeria, November 2006. . International Bureau for Children's Rights, Making Children's Rights Work in North Africa. PP: 29, available at: <http://ibcr.org/>

in general and the human rights and freedoms of women and girl children in particular, in line with international criteria applied in that area.

Under the Criminal Code, trafficking in women and girls (articles 342-349), immoral conduct (articles 333-395) and rape (article 336) are criminal offences punishable by terms of imprisonment ranging from five to 10 years, and the penalty is doubled (up to 20 years' imprisonment) where the victim is a minor.

The penalty is also more severe where the offender is a relative of the victim or a person having parental authority over the victim (article 337). Algeria has ratified many international instruments the most important of these instruments are⁸¹:

- ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (Convention No. 182), supplemented by recommendation 190, under Presidential executive order 387/2000 dated 28 November 2000;
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949);
- United Nations Convention against Transnational Organized Crime and its three protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

While the Criminal Code contains no provisions dealing with pornography as such, Algeria has ratified the Convention on the Rights of the Child, thereby committing itself, like other States Parties, to protecting children from all forms of sexual exploitation and sexual abuse, and to taking all appropriate measures to prevent the exploitative use of children in pornographic performances and materials (article 34 of the Convention).

Furthermore, the Criminal Code contains a provision prohibiting actions and activities relating to the use of information and communication technology or the Internet for pornographic purposes (article 333 (b)).

B. Bahrain:

The official amended text of the Constitution of the Kingdom of Bahrain was promulgated by King Hamad bin Isa Al Khalifa on February 14, 2002. The

⁸¹ United Nations, Reply to the Questionnaire to Governments on Implementation of the Beijing Platform for Action (1995), PP:16, available at: <http://www.un.org/>

Constitutional Amendments are characterized as a reflection of “the joint will of the King and the People.”

The Constitution consists of Six Chapters, encompassing a total of 125 Articles⁸².

Bahrain acceded to the CRC in February 1992. Bahrain does not apply the system of adoption as mentioned in the Convention, since the country's laws make provisions for the system of fosterage in accordance with the Islamic (*Shariat*) Law. The Law of Judicial Authority (2003) establishes the jurisdiction of the Lesser *Sharia* Courts “to rule in rights of custody, protection, and relocation with the child to another country.”

Since the *Sharia* accepts the authority of the Koran, these laws are binding upon children of all Muslim sects. However, the Bahraini judicial system takes into consideration the differences between the Sunni and Jaafari branches of Islam. However, as the Committee on the Rights of Child noted in its concluding report in 2002, traditional attitudes towards children in society limit respect for their views.

Children are also not systematically heard in court and administrative proceedings on matters that affect them. As the Committee also concluded, Bahrain's un-codified system may be subject to arbitrariness and lack of uniformity between different judges. Judgments and procedures may also vary for different Islamic sects and the secular courts. Thus, Bahrain today faces many structural and grassroots challenges to providing children with a special protective system that takes their views into consideration.

However, the past few years have seen significant positive development and respect for child rights has become a part of Bahrain's social, political and judicial reform agenda⁸³.

One of the basic rights that the Constitution of the State of Bahrain guarantees is education, as a basic right of Bahraini citizens on May 26, 1973, and effective since December 6, 1973. Article 4 of the Constitution refers to education as one of the "pillars of society guaranteed by the State." Article 5 ensures the government's oversight of the "physical, mental, and moral growth of youth."

⁸² Max-Planck-Institute, THE CONSTITUTION OF THE KINGDOM OF BAHRAIN of February 14, 2002 Introductory & Comparative Notes PP:1, available at: <http://www.mpil.de/>

⁸³ Concluding Observations, Section D1, Article 5, *supra* note 7. Available at: <http://www.law.yale.edu/>

Article 6 elucidates the Islamic orientation of Bahraini education: Article 7 sets forth the commitment to encouraging the arts and sciences, literature, and research, and to ensuring the provision of educational and cultural services to citizens. Primary education is made compulsory, and the government's plan to eliminate illiteracy is outlined. The article prescribes religious education (i.e., Islamic education) to foster an Islamic identity and pride in the Arab national heritage.

The establishment of private schools is permitted "under the supervision of the State," and the inviolability of educational institutions is guaranteed. In addition to the constitutional provisions, the government has enacted further legislation in support of education. The Education Law Project of 1989 specifically outlines the objectives underlying the regulation of education in Bahrain. These include opportunities for citizens to improve their standard of living through education; individual development along physical, mental, emotional, social, moral, and spiritual lines; the acquisition of critical thinking skills and sound judgment; and the inculcation of the Islamic faith and an Arab identity.

Legislation has also addressed private educational and training institutions, training systems, student evaluation systems, and equalization of GCC students in public education, school placement guidelines for new entrants, academic degree equivalence, and licensing of educational service providers. Such legislation has the general aim of promoting community-minded, socially active, educated citizens who are aware of their roles within local, regional, and international contexts⁸⁴.

C. Comoros:

Official corruption, bribery in particular, was a pervasive problem in the Comoros government at all levels. Children were subject to various forms of abuse from violence to forced labour, including the worst forms of child labour, and trafficking in persons.

Article 18 of the Constitution of Comoros provides that regularly ratified or approved treaties including the CRC are part of national law. In principle, treaties have superior force to domestic legislation. It is not clear whether the Convention has been cited in domestic courts.

⁸⁴ State university, Bahrain - Constitutional & Legal Foundations, available at: <http://education>

The Government, while committed to the protection of children's rights and welfare in theory, has an extremely limited ability to put this into practice. Population pressure and poverty force some families to place their children into the homes of others. The few legal instruments which address the rights and welfare of children are not enforced because of a lack of inspectors⁸⁵.

The government did not effectively enforce laws providing protections of worker's rights. Other human rights problems reported during the year included poor prison conditions, long pre-trial detention, restrictions on press freedom, violence and societal discrimination against women, and criminalization of consensual same-sex sexual activity. Impunity for violations of human rights existed.

The government rarely took steps to prosecute: there is no comprehensive or consolidated Children's Code in the laws of Comoros, rather provisions in relation to children can be found in a number of Codes, Acts and Orders.

Legislation of particular relevance to children includes, but is by no means limited to:

- The Criminal Code
- The Civil Code
- The Family Code
- The Labour Code
- The Nationality Code (instituted by Act No. 79-12/PR of 27 February 1980)
- The Health and Social Welfare Code (contained in Act No. 95-013/AF)
- Act No. 84-10/AF of 15 May 1984, the Civil Status Act
- Act No. 75-04/ANP of 29 July 1975 on the retention of French statutory provisions
- Act No. 88-14 of 29 December 1988 on education
- Order No. 66/84/IT-C of 22 January 1996 on the conditions of night work for women and children in industry.

⁸⁵ US, department of state, COMOROS HUMAN RIGHTS PRACTICES, 1994, available at: <http://dosfan.lib.uic.edu/>

Constitution: the preamble to the Constitution of Comoros includes a number of rights provisions that apply regardless of age, but only a small number of provisions throughout the Constitution make explicit reference to children⁸⁶:

- The preamble: proclaims the right of each child to an education and to instruction by the State, by the parents and by teachers chosen by parents. Article 39: includes the organization of education and the fundamental principles of organization of youth policy within the powers of the Federal Assembly.

Child rights according to the constitution are viewed as follows:

Birth Registration: Any child having at least one Comoran parent is considered a citizen, regardless of where the birth takes place. Any child born in the country is considered a citizen unless both parents are foreigners, although these children can apply for citizenship if they have lived in the country for at least five years at the time of their application. An estimated 15 percent of children were not officially registered at birth. Education: Universal education is compulsory until the age of 12, but not tuition free. The public education system was in severe disrepair; private schools, including madrassas, took up some of the slack. When families paid private school tuition, boys generally were more likely to attend schools than girls.

Child Abuse: The government did not take specific action to protect or promote children's welfare and did not enforce legal provisions that address the rights and welfare of children. Although there were no official statistics on child abuse, it was common and often occurred when impoverished families sent their children to work for wealthier families. There were also scattered reports of teachers raping students in some schools. Traditional societal networks rather than formal law enforcement investigations generally handled these cases.

Child labour: Prohibition of Child Labour and Minimum Age for Employment: Laws exist to protect children from exploitation in the workplace. The law establishes 15 as the minimum age for employment. The government did not enforce such laws. The Ministry of Labour is responsible for enforcing child labour laws, but it did not actively or effectively do so. There were three labour inspectors (one for each island). These inspectors were responsible for all

⁸⁶ CONSTITUTION of the FEDERAL ISLAMIC REPUBLIC OF THE COMOROS, October 30, 1996 , PP. 8, available at: <http://bettercarenetwork.org/>

potential violations of labour law and did not focus only on child labour cases. Children worked in subsistence farming, fishing, in the informal sector selling goods along roadsides, and extracting and selling marine sand. Children worked on food crops such as manioc and beans, and also on cash crops such as vanilla, cloves, and ylang-ylang (a flower used to make perfume). Some children worked under forced labour conditions, particularly in domestic service, roadside and market selling, and agriculture. In addition, many children were not paid for their work⁸⁷.

D. Djibouti:

Corruption appears to permeate every part of the machinery of Government in Djibouti. Significant human rights abuses in the country included difficult prison conditions; prolonged pre-trial detention; denial of fair public trial; interference with privacy rights; restrictions on freedoms of the press, assembly, and association; lack of protection for refugees; corruption; discrimination against women; female genital mutilation (FGM); discrimination against persons with disabilities; and restrictions on unions.

Citizenship is derived from a child's. In a report to the UN Committee on the Rights of the Child in 1998, Djibouti stated that "as is the case for all civilian and military jobs, young people under 18 may not be accepted into the army. Moreover, there is still no compulsory military service in Djibouti"⁸⁸ They undergo three months' military training at the Holl military school, and learn vocational skills for public service.⁸⁹

Djibouti is a republic with a strong elected president and a weak legislature.. A three party opposition coalition boycotted the race, which international observers from the African Union (AU) and the Arab League considered generally free and fair. Security forces reported to civilian authorities within the ministries of Interior and Defence, as well as to the director of national security.

⁸⁷ US department of state, Comoros, PP:10, 13, available at:<http://www.state.gov/>

⁸⁸ Initial report of Djibouti to UN Committee on the Rights of the Child, UN Doc CRC/C/8/Add.39, 3 August 1998, <http://www.ohchr.org>.

⁸⁹ "Le SNA ou le pari d'une insertion sociale des jeunes citoyens", La Nation, 2 Octobre 2003; Journal Officiel de la République de Djibouti, Arrêté n°2003-0914/PR/MDN portant Organisation et modalités de fonctionnement du Service National Adapté. Child soldiers international, DJIBOUTI, PP :1, available at : www.child

Significant problems are facing the government of Djibouti, regarding child rights. It can be summarized as follows:

- The government did not register all births immediately. There were difficulties in registering births of children in remote areas, there is a fee to register a child's birth, and this can sometimes result in unregistered births.
- Primary education was compulsory and available to all. However, enrolment, although increasing, was not universal. The government provided tuition-free primary and middle-school level public education, but other expenses could be prohibitive for poor families. Although the educational system did not discriminate against girls, societal attitudes resulted in lower school enrolment rates for girls than boys.
- Child abuse existed but was not frequently reported or prosecuted. Female genital mutilation (FGM) was widely performed on young girls. the most extreme form of FGM, continued to be widely practiced, especially in rural areas
- Child marriage occasionally occurred in rural areas; local society considered it a traditional practice rather than a problem. The Ministry for the Promotion of Women, Family, Welfare, and Social Affairs worked with women's groups throughout the country to protect the rights of girls, including the right to decide when and whom to marry.
- Despite government efforts to keep at-risk children off the streets and warn businesses against permitting children to enter bars and clubs, there were credible reports of child prostitution on the streets and in brothels. Children fell victims of commercial sexual exploitation after. Occasionally child prostitution occurred with the involvement of a third party, most frequently an older child or group of older children. There was no specific law prohibiting statutory rape; the age of majority was fixed by law at 18 for both men and women. The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction⁹⁰.

⁹⁰ US department of state, Comoros, PP:1, 15, 16, available at: <http://www.state.gov/>

E. Egypt:

The Egyptian Constitution enshrines the principle of equality between all citizens, while the 1996 Child Law specifically prohibits discrimination in relation to children. Nevertheless, challenges remain in terms of implementation. Egypt has put the survival and development of children at the centre of its policy agenda. In 1989, President Mubarak declared the 1990s the Decade of the Egyptian Child.

In 2000, the President launched the Second Decade for the Protection and Welfare of the Egyptian Child to improve health care services for all children, provide social protection to children and families in difficult situations, including children who drop out of school, child workers, children living on the streets, children in conflict with the law and children in institutions, and ensure the registration of all children in compulsory free education. This plan is currently being updated in cooperation with UNICEF⁹¹. Despite some challenges the situation of children in Egypt has improved on many levels. This can be summarized as follows:

- **Gender discrimination** continues to be an issue in Egypt. In 2003, Egypt observed the Year of the Girl Child to raise awareness about girls' rights and empower girls to protect themselves. There is still a 5% gender gap in school enrolment and girls living in rural regions are particularly vulnerable, having the additional pressure of caring for siblings. Often the eldest daughter will be required to forgo schooling to take household responsibilities or contribute to household income. In 2003, the Girls' Education Initiative was adopted to increase girls' enrolment in school, set up revenue generating activities for graduates and establishes school committees to raise community awareness. In addition, this Initiative led to the building of 594 schools to enrol approximately 19,500 students by the end of December 2006, 92% of whom were girls from disadvantaged areas within seven governorates. Since 2004, UNESCO has contributed to the establishment of multi-purpose community learning centres to assist children and women to become self reliant and to develop learning and cultural networks. Since 1992, the

⁹¹ Communication between International Bureau for Children's Rights and the National Council for Childhood and Motherhood, December 2006, International Bureau for Children's Rights, Making Children's Rights Work in North Africa. PP: 53, available at: <http://ibcr.org/>

- The Committee on the Rights of the Child was concerned by the disparity between the minimum age of marriage for boys (18 years) and girls (16 years). The National Council for Childhood and Motherhood has proposed changes to Egyptian law to address this concern. Furthermore, until recently children born of an Egyptian mother and a foreign father did not acquire Egyptian nationality, denying them access to public education and basic health services. Legislative reform in July 2004 granted women the right to pass nationality to their children.
- As another initiative in the Year of the Girl Child, the Government launched a national project to eliminate female genital mutilation.
- Egyptian laws still discriminate against **children born out of wedlock**. Islamic jurisprudence does not recognize the lineage of these children from their fathers. Following a high profile case, legislation has been proposed to identify fathers through paternity tests when a certificate of marriage is provided, thus giving some children legal status and the ability to obtain identification and birth certificates to access public services. However, even if paternity is established or the father “recognizes a child born out of wedlock, the child’s illegitimate birth is documented and the child is not eligible to inherit from the father.
- The Egyptian Constitution declares Islam as the State religion. Although Egypt has ratified the International Covenant on Civil and Political Rights, which guarantees religious freedom, Egyptian law discriminates against **religious minorities**, especially Copts, probably the largest Christian community in the Arab world. This discrimination is reported to be apparent in relation to marriage, parenting, education, inheritance and conversion. The Committee on the Rights of the Child recommended in its 2001 Concluding Observations that Egypt follows the good practice of other States in reconciling fundamental rights with principles of Islamic law.

In conclusion, Egypt needs further development in many areas of life. For example, improvement in the quality of education, the fight against the drop-out rates and elimination of corporal punishment in schools must be pursued. Discrimination against refugees continues to be a concern. The numbers of street children, substance abuse among teenagers and sexual exploitation of children are increasing and children in these situations are living in more extreme circumstances. Adolescents know far too little about reproductive health. Parents still need to be made aware of their

responsibilities to register their children and those in rural areas need more opportunities to do so. Overall, Egyptian society seems committed to addressing the many challenges its children face. The Egyptian Government should be encouraged to pursue these issues and to expand its activities to comply fully with the Convention. There is a need for action to follow words⁹².

F. Iraq:

According to the Constitution, the Republic of Iraq has a federal system of government. It consists of three branches, the legislative, executive, and judicial. The Legislative branch consists of the Council of Representatives and the Federation Council. The judicial authority is comprised of the Higher Judicial Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Department, the Judiciary Oversight Commission, and the other federal courts⁹³.

Iraqi Transitional Government has implemented Article 12 of the CRC with respect to a child's right to be heard in protective proceedings or that it did so before the overthrow of Saddam Hussein. Iraq acceded to the CRC on June 15, 1994. The first report was submitted to the Committee on the Rights of the Child on 6 August 1996 and the Committee issued its first Concluding Observations on 26 October 1998.

Iraq has recently adopted a new constitution, drafted by the Transitional National Assembly, which contains some general language regarding children and families that may serve as the basis for future legislation in compliance with the CRC. Section 6 of Article 112 of the new constitution states that the duty of “drawing up general education and childrearing policy will be shared by the federal and regional authorities in consultation with the regions.” Presumably,

⁹² Communication between International Bureau for Children's Rights and the National Council for Childhood and Motherhood, December 2006, International Bureau for Children's Rights, Making Children's Rights Work in North Africa, PP: 84, available at: <http://ibcr.org/>

⁹³ Iraq Council of Ministers, “Iraq Constitution of 2005”, pg72-73, available online at <http://www.parliament.iq/manshurat/dastorar.pdf> (last accessed 23 July 2011). Save the children, Country Profile of Iraq, PP:15,17, available at: <http://www.ibcr.org/>

the new government, under the authority of its new constitution, will at some point consider implementing Article 12⁹⁴.

On 24 June 2008, Iraq acceded to the Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflict and to the Optional Protocol to the Convention on Rights of Child on the sale of children, child prostitution and child pornography. However, it has not yet submitted any reports regarding these Optional Protocols.

In its initial report to the Committee on the Rights of Child, Iraq expressed concern about the “tragic circumstances brought about by the ongoing economic embargo that was imposed on it under the terms of Security Council Resolution 661 of 6 August 1991, the serious consequences of which have affected all aspects of life, particularly in the case of children.”⁹⁵

While the Government of Iraq had developed a substantive legislative framework, the provisions and principles of the Convention were not fully reflected in law.

The Committee recommended that the State party take all appropriate measures to engage a process of legal reform, for example, by enacting a children's code to ensure full compliance with the Convention. In addition, in light of Article 4 of the Convention, the Committee was concerned that insufficient attention had been paid to allocating budgetary resources in favour of children to the maximum extent available and, where needed, within the framework of international cooperation.

It recommended that the State party prioritize budgetary allocation to ensure the protection of the economic, social, and cultural rights of children, especially taking into account articles 2, 3, and 4 of the Convention.

The Committee also expressed its concern that the State party did not appear to have fully taken into account the provisions of the Convention in its legislation, its administrative and judicial decisions, or its policies and programmes relevant to children. It was recommended that further efforts be undertaken to ensure that the general principles of the Convention guide policy discussions, decision-

⁹⁴ Constitution of the Republic of Iraq, available http://www.usatoday.com/news/world/iraq/2005-08-24-iraqi-constitution-draft_x.htm, and also as pdf document, and also as word document Available at: <http://www.state.gov/>

⁹⁵ Committee on the Rights of the Child, Initial reports of States parties: Iraq, 9 /12/ 1996, CRC/C/41/Add., § 4. Save the children, Country Profile of Iraq, PP:19, available at: <http://www.ibcr.org/>

making, and are appropriately reflected in any legal revision or judicial and administrative decisions, as well as in the development and implementation of all projects and programmes impacting children⁹⁶.

G. Jordan:

The Hashemite Kingdom of Jordan is a constitutional monarchy ruled by King Abdullah II bin Hussein. The constitution concentrates executive and legislative authority in the king. The three most significant continuing human rights problems in Jordan were citizens' inability to peacefully change their government, abuses committed with impunity by security services, and violence against women. Other human rights problems were arbitrary deprivation of life, torture or mistreatment, poor prison conditions, arbitrary arrest and denial of due process through administrative detention, prolonged detention, and external interference in judicial decisions.

Jordan ratified the CRC on 21 May 1991 and has subsequently submitted three state reports to the Committee on the Rights of the Child (the Committee), beginning with its initial report submitted in 1993. Jordan has also ratified both optional protocols to the CRC. The Optional Protocol to the CRC on the sale of children, child prostitution and child pornography was ratified first, on 4 December 2006, while the Optional Protocol to the CRC on the involvement of children in armed conflict was ratified on 25 May the following year.

The Penal Law, the Juvenile Law, the Personal Status Law and the Nationality Law have all been reviewed; amendments and new laws were enacted. To bring together child-related provisions in various laws and improve consistency with CRC principles, an over-arching Child Rights Law was drafted initially in 1996 by the National Task Force for Children. Since Parliament was not in session for a number of years, some laws related to children during this period were adopted by Decree as temporary laws. They have been enforced, but Parliament still needs to adopt them as permanent laws. A law was issued for the endorsement of the CRC (law 50/2006) and was published in the Official Gazette on 16 October 2006. It should be noted also that MoSD, in cooperation

⁹⁶ Committee on the Rights of the Child, Concluding Observations: Iraq, 26/10/1998, CRC/C/15/Add.94, § 16.). Save the children, Country Profile of Jordan, August 2011, PP: 22, available at: <http://www.ibcr.org/>

with relevant experts, has developed a draft law on domestic violence, which is being considered by the Cabinet⁹⁷.

The Committee expressed concern regarding the adequacy of measures taken by Jordan to ensure the coordination of different levels of government in implementing the Convention. Importantly, the CRC was published in the Official Gazette in October 2006, rendering it domestically enforceable. Attempts to improve government coordination on cross sectoral issues have seen the formulation of a number of national strategies and action plans, including the National Strategy for the Elimination of the Worst Forms of Child Labour (2006), the National Strategy for People Living with Disabilities (2007), the National Strategy on Drugs (2009), the Early Childhood Development Plan of Action 2008-2012 (2010), the National Strategy to Combat Human Trafficking (2010) and the Juvenile Justice Strategic Action Plan (2011)⁹⁸.

Child rights provided by the Constitution of Jordan are the following⁹⁹:

- Birth Registration: Citizenship is derived only through the father. The government did not issue birth certificates to all children born in the country during the year. The government deemed some children--including children of unmarried women or of certain interfaith marriages, and converts from Islam to another religion illegitimate and denied them proper registration, making it difficult or impossible for them to attend school, access health services, or receive other documentation.
- Education: Education is compulsory from ages six through 16 and free until age 18. However, no legislation exists to enforce the law or to punish guardians for violating it. Children without legal residency do not have the right to attend public school. Children of female citizens and noncitizen fathers, for example, must apply for and pay 30 dinars (\$42) for residency permits every year, and permission is not guaranteed. Children with disabilities experienced extreme difficulty in accessing constitutionally guaranteed early and primary education
- Child Abuse: The law specifies punishment for abuse of children. For example conviction for rape of a child younger than 15 years potentially carries the death penalty. The penal code gives judges the ability to reduce a sentence when the victim's family does not press charges. In

⁹⁷ UNICEF, Children in Jordan, Situation Analysis, 2006/2007, PP:24, available at: <http://www.unicef.org/>

⁹⁸ Save the children, Country Profile of Jordan, August 2011, PP:19,22, available at: <http://www.ibcr.org/>

⁹⁹ US department of state, JORDAN , PP:1, 21, available at: <http://www.state.gov/>

child abuse cases, judges routinely accorded leniency per the wishes of the family. From January to August 31, authorities investigated 329 cases of child sexual abuse and 87 cases of child physical abuse; these cases were all referred to the courts. A 2009 UNICEF report stated that 71 percent of children were subjected to verbal abuse and 57 percent had experienced some form of physical abuse in school. According to the NCHR report, some juveniles in detention alleged torture and mistreatment. The government continued to fund a child protection centre that provided temporary shelter and medical care for abused children between the ages of six and 12. During the year the shelter housed 73 abused children. Observers noted that the shelter lacked qualified staff, psychosocial counsellors, and a comprehensive approach to deal with victims of abuse.

- Child Marriage: The minimum age for marriage is 18. However, with the consent of both a judge and a guardian, a child as young as 15, in most cases a girl, may be married. Judicial statistics indicated that in 2010 judges granted consent in 8,042 cases in which at least one person was between 15 and 18 years old.

H. Kuwait:

Kuwaiti Constitution states that “the religion of the state is Islam, and the Islamic Sharia shall be a main source of legislation”. Kuwaiti constitutional law is a distinctive and different because some of established convention bases existed alongside the written constitution. Because, the Kuwaiti Constitution was presented relatively recently, therefore the constitutional rule has to depend on sources such as the constitutional document and its complementary laws; constitutional conventions, which some ground rules were applicable to resolve the conflicts among the people and organizing their relationship with the state, such as principle of consensus, Islamic Sharia Rules, customary basis and principle of justice.¹⁰⁰

Principal human rights problems included limitations on citizens' right to change their government; trafficking in persons within the expatriate worker

¹⁰⁰ MAJID SALMAN HUSSAIN, A Critical Study of Constitutional and Judicial Development in Kuwait, June 2010, PP: 80, 100, 113, available at: theses.ncl.ac.uk

population, especially in the domestic and unskilled service sectors; and limitations on workers' rights.

Kuwait signed the CRC in June, 1990 and ratified the CRC in October, 1991. Some treaties upon ratification and publication have the force of law in Kuwait, whereas others, including those involving the public and private rights of citizens come into force only when made by a law. It is thus unclear what force in the law, if any, the CRC has. Kuwait submitted one state party report to the Committee on the Rights of the Child in 1996.

In this State Party report, although acknowledging the full scope of Article 12, Kuwait's statements about its own progress in the relevant areas pertained to freedom of opinion and did not speak about the child's right to be heard in judicial proceedings. The Committee encouraged Kuwait to codify the right of the child to be heard in accordance with Article 12.

Kuwait does have several laws calling for criminal penalties for those who mistreat children and has a provision in the Constitution giving the state the responsibility to protect children from moral, physical and spiritual neglect. In spite of these laws, though, the Committee feels that greater information needs to be gathered and more needs to be done to protect children who are victims of abuse¹⁰¹.

Child rights provided by the constitution of Kuwait are the following¹⁰²:

- Birth Registration: Citizenship is derived entirely from the father; children born to citizen mothers and non national fathers do not inherit citizenship unless the mother is divorced or widowed from the non-national father. The government automatically granted citizenship to orphaned or abandoned infants, including Bidoon (stateless) infants. Parents were sometimes unable to obtain birth certificates for their Bidoon children because of additional administrative requirements, creating an inability to access other public services such as education and health care.
- Education: By law education for citizens is free through the university level and compulsory through the secondary level. Education is neither free nor compulsory for noncitizens. On March 10, the Council of

¹⁰¹ Concluding Observations, supra note 5, at 22, Yale Law School, Kuwait, available at: <http://www.law.yale.edu/>

¹⁰² US department of state, Kuwait, PP: 17-18, available at: <http://www.state.gov/>

Ministers issued a decree extending education benefits to Bidoon; however, bureaucratic problems continued to hinder Bidoon children's access to free education.

- **Child Abuse:** Although there was no societal pattern of child abuse, most cases went unreported due to social stigmas associated with the disclosure of the practice.
- **Child Marriage:** The legal marriage age is 17 for men and 15 for women, but younger girls continued to marry earlier in some tribal groups. The Ministry of Justice estimated that underage marriages constituted 2 to 3 percent of total marriages.
- **Sexual Exploitation of Children:** There is no statutory rape law or minimum age for consensual sexual relations; however, premarital sexual relations are illegal. All pornography is illegal. There are no laws specific to child pornography.

Article 29 of the Criminal Code provides for the “right” of parents to discipline children and legal provisions against violence and assault are not interpreted as prohibiting all corporal punishment. The near universal acceptance of corporal punishment in “disciplining” children necessitates clarity in law that no degree or kind of such punishment is acceptable or lawful. Article 29 of the Criminal Code should be repealed, and explicit prohibition enacted of all corporal punishment, however light and whoever the perpetrator. Corporal punishment is lawful in the home.

Under examination by the Human Rights Committee, the Government indicated that corporal punishment is unlawful under the Criminal Code Act No. 16 1960. However, article 29 of the Criminal Code provides for the right of parents to discipline their children, and provisions against violence and abuse in the Criminal Code 1960, the Juveniles Act No. 3 1983, Law No. 413/2009 obliging all physicians to report physical and psychological violence against children, the Personal Status Act No. 51 1984 and the Constitution 1962 are not interpreted as prohibiting corporal punishment in childrearing.

In reporting to the Committee on the Rights of the Child, the Government stated that Law 9/2010 on the protection of children from violence and exploitation protects children from all types of abuse (5 August 2013). A draft Child Act is under discussion (2013). As at August 2013 it was being reviewed by the Ministry of Social Affairs and Employment and the Department of Legal

Advice and Legislation. It reportedly prohibits cruel, inhuman or degrading treatment by persons with authority over a child, including in the home, schools and institutions (5 August 2013)¹⁰³.

I. Lebanon:

Through its differentiated personal status laws, Lebanon's confessional system has brought differentiated, rather than shared and universal, rights to its citizens. It has also made access to political, economic, and administrative powers, depend on religious and factional representation.

Among other manifestations of weak rule of law are the lack of implementation of human rights principles, and the weak application and enforcement of the law. Their root causes are the lack of government commitment and the non-respect for human rights principles.

The Lebanese Constitution (as amended in 1990) incorporates the Universal Declaration of Human Rights and requires that the principles contained in the Covenants be embodied "in all fields and areas without exception." Thus, the Constitution requires that international human rights standards be reflected in the laws of the country, and be enjoyed in practice.

The preamble of the Lebanese constitution states that Lebanon abides by UN covenants and pledges to preserve human rights in accordance with the Universal Declaration of Human Rights. It guarantees public liberties and freedom of expression and religion; and clearly states that Lebanese are equal (though in practice this is not the case). Also according to the constitution, international law is paramount to national law and judges can invoke international treaties in their rulings but this rarely happens¹⁰⁴.

With respect to the ratification and implementation of international human rights instruments, there is particular concern about the existence and or application of relevant national laws with respect to vulnerable groups. Women continue to actively seek equal rights in various social arenas, but remain significantly under-protected on issues of personal status in particular, and as

¹⁰³ Global initiative to end corporal punishment, KUWAIT – COUNTRY REPORT, 2011, PP :2, available at: <http://www.endcorporalpunishment.org/>

¹⁰⁴ UN Universal Periodic review, Ninth session of the UPR Working Group of the Human Rights Council, LEBANON, December 2010, PP: 2-3, available at: <http://lib.ohchr.org/>

victims of many forms of violence. There is a lack of adequate mechanisms in Lebanon ensuring compliance with its obligations under human rights treaties.

The Government is committed to enhance the independence of the judiciary, which requires improvement in the administration of justice ensuring elimination of discrimination and exclusion irrespective of its origin, increasing the number of judges and enhancing their role and independence, providing the public with easy access to information. Moreover, prisons and correctional facilities need to be under the jurisdiction or management of the Ministry of Justice¹⁰⁵.

While the legal system generally provides for the protection of children's rights, implementation is inconsistent and often deficient. Legal protection against the abuse of children's rights and their exploitation is weak. Lebanon ratified the CRC and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. However, Lebanese national laws have not yet been adequately amended to be consistent with the provisions of the Child Convention. Amendment of the laws, a thorough review of implementation mechanisms and effective monitoring are crucial if the country is to put into practice its intention to protect children's rights in Lebanon. The main issues of concern are:

- The lack of a unified definition to the concept of the child consistent with Article 1 of the CRC that identifies the child as every human being below the age of eighteen years.
- Lack of thorough implementation of compulsory education for children until age twelve, which in any event needs to be raised to age fifteen. Lack of monitoring the enrolment and attendance of children in schools, especially girls, and insufficiently accurate data and statistics on drop-outs, and the need for effective action.
- Child labour of children under the age of twelve continues. There is a need to effectively implement Lebanon's domestic labour provisions and the ILO-IPEC programme to eradicate this phenomenon.
- Little attention is given to the increasing phenomenon of street children. Assistance remains inadequate in the areas of social reintegration services, including vocational and life-skills training, as well as

¹⁰⁵ UNITED NATIONS, COMMON COUNTRY ASSESSMENT, LEBANON, DECEMBER 2007, PP: 10-11, available at: <http://www.un.org.lb/>

protection and rehabilitation services in cases of physical, sexual and substance abuse. Rather, detention continues to be the main policy with few alternative forms of dealing with the root causes or with solutions, which need to be adequately studied and identified.

- There appears to be little regard for the principle of the best interests of the child in the cases of custody, guardianship and adoption, and in situations of armed conflict.

There is weak legal protection against child physical, sexual and mental violence and other forms of child abuse and exploitation. Article 2 of the CRC entails an obligation on States Parties to “ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind...” In Lebanon, however, many children, including the rural poor and non-citizens, do not enjoy the protection of the State equally with other children, and many issues emerge. This includes the following:

- Discrimination continues against children with disabilities, foreign children, refugees and asylum-seekers, Palestinian children, children living in poverty, children in conflict with the law and children living in rural areas. Access to education and health and social services is not facilitated for non-Lebanese children, mostly due to lack of proper documentation, resulting in an increase in child labour among the very young. This is particularly the case for refugee and asylum-seeking children.
- Gaps in proper/official registration of children at birth – especially among non-Lebanese children and children of non-ID Palestinians, and children born out of wedlock.
- No established mechanism for unaccompanied and separated asylum-seeking children.
- No established and unified law regarding the adoption and Kafala of children.
- Lack of correctional justice with regard to juveniles.
- A rise of statelessness among children born to Lebanese mothers and non-Lebanese fathers (refugees, asylum-seekers, Palestinians and migrant workers) - which goes against the right to a nationality inherent in the 1948 Universal Declaration, and the concept of equality enshrined in CEDAW.

- Recently, refugee children have become increasingly subject to arbitrary detention for prolonged periods on grounds of illegal entry, given the heightened security measures in the country. Separated from their parents and families, children are detained alongside adult common criminals, and even confined in mental institutions.

Ministers and politicians have recently been vocal concerning the need to protect all resident children, Lebanese and foreign, against domestic violence in particular. These are welcome developments that need follow-up in terms of a better implementation of existing laws and the development of more protective legislation, which condition the full achievement of the MDGs related to education and, more generally, other social indicators¹⁰⁶.

J. Mauritania:

Mauritania is a highly centralized Islamic republic with a president as head of State governing under a constitution based on a combination of French civil and Sharia law; the Senate and National Assembly exercise legislative functions.

The constitution states that “Islamic precepts are the only source of law,” but they are “open to the exigencies of the modern world.” The criminal code combines elements of both Sharia law and of the French penal code. The code of personal status (family code) is mostly inspired by the Islamic law.

The judiciary, like any other branch of the administration (minus key security agencies) is understaffed and underfinanced and can hardly accomplish its tasks.¹⁰⁷ The legislative bodies were weak relative to the executive. Abusive treatment, arbitrary arrests, lengthy pre-trial detention; government influence over the judiciary; limits on freedom of the press and assembly; restrictions on religious freedom for non-Muslims; corruption; discrimination against women; female genital mutilation/cutting (FGM/C); child marriage; political marginalization of southern-based ethnic groups; racial and ethnic discrimination; child labour; and inadequate enforcement of labour laws.

¹⁰⁶ UNITED NATIONS, COMMON COUNTRY ASSESSMENT, LEBANON, DECEMBER 2007, PP: 11-12, available at: <http://www.un.org.lb/>

¹⁰⁷ Transformation index BTI 2014, BTI 2012, Mauritania Country Report, PP :7, available at : <http://www.bti-project.org/>

Throughout the period 1990-2003, Mauritania has undergone a true mutation in the area of the promotion and protection of women's rights.¹⁰⁸ The government took some steps to punish officials who committed abuses and prosecuted a number of officials; however, authorities frequently acted with impunity.¹⁰⁹

Child rights provided by the Mauritanian constitution can be summarized as follows:

Birth Registration: By law citizenship is derived from one's father. Citizenship can be derived from one's mother under the following two conditions: if the mother is a citizen and the father's nationality is unknown or is stateless, or if the child was born in the country to a citizen mother and repudiates the father's nationality a year before reaching majority. Children born abroad to citizens can acquire citizenship one year before reaching majority age of 18. Minor children of parents who have become naturalized citizens are also eligible for citizenship.

Education: The law mandates six years of school attendance for all children, but the law was not effectively enforced. Many children, particularly girls, did not attend school for six years. Children of slave-caste families often did not receive any education. Public education was tuition free through university level. Classes were fully integrated, including both boys and girls and students from all social and ethnic groups. In addition to public schools, almost all children, regardless of gender or ethnic group, attended Quranic school between the ages of five and seven and gained at least rudimentary skills in reading and writing Arabic.

Child Marriage: The legal marriage age is 18, but the law was rarely enforced, and child marriage was widespread. According to UNICEF, 15 percent of children were married before age 15 and 35 percent before age 18. Harmful Traditional Practices: FGM/C was practiced by all ethnic groups and performed on young girls, often on the seventh day after birth and almost always before the age of six months. UNICEF estimated that in 2007, FGM/C was perpetrated on 72 percent of women 15 to 49 years of age and that 66 percent of women had at least one daughter who had been mutilated.

¹⁰⁸ United nations, Islamic Republic of Mauritania ,Secretary of State for the Condition of Women ,Evaluation of the institution of the Recommendations of the Plan of Action Of Beijing by the government of Mauritania, April 2004 , PP:6, available at: <http://www.un.org/>

¹⁰⁹ US department of state, MAURITANIA 2012 HUMAN RIGHTS REPORT, PP: 1, available at: <http://www.state.gov/>

From 2007 to 2011, FGM/C among women 15 to 49 years of age declined by nearly 3 percent, mainly due to a decline in the practice among urban dwellers and to greater sensitization efforts.

Displaced Children: Although the Ministry of Social Affairs, Children, and the Family monitored approximately 900 of the estimated 1,200 street children in Nouakchott through its youth integration centres in Dar Naim and El Mina, government assistance to street children was limited.¹¹⁰

A considerable evolution in Mauritania's legislation and law enforcement practices has taken place in the last few years, but as a general principle very young children can still be held criminally liable, which is disturbing and makes them particularly vulnerable, especially in situations of commercial sexual exploitation. There is no legal provision saying that a person prostituting themselves can be held liable, including children.

The general Penal Code of Mauritania criminalizes procuring and all the acts surrounding prostitution (living on the avails of prostitution, inducing someone into prostitution, etc.), as well as penalizes the clients of prostitutes, but does not specifically refer to a person prostituting themselves. Extraterritorial law concerning crimes against children, especially commercial sexual exploitation, must be urgently adopted. Mauritania needs to adopt legal provisions stipulating the type of assistance that has to be provided by children victimized in sexual exploitation. With support from the Government, programmes tailored to rehabilitate and reintegrate CSEC victims into society must be created, together with a referral system to ensure their access to such support services¹¹¹.

K. Morocco:

Since the ratification of the CRC in 1993, Morocco has demonstrated keen interest in addressing problems related to the promotion and the protection of children's rights.

¹¹⁰ US department of state, MAURITANIA 2012 HUMAN RIGHTS REPORT, PP: 23-24, available at: <http://www.state.gov/>

¹¹¹ Penal Code. Section 311. Accessed from: <http://www.droit-afrique.com/images/textes/Mauritanie/Mauritanie%20-%20Code%20penal.pdf>. ECPAT global network, global monitoring network on the status of action against commercial sexual exploitation of children, Mauritania, PP:18-19,25 available at: <http://www.ecpat.net/>

Legislative reform to enhance the rights of children is being considered, including a bill to set a minimum age for domestic workers and penalize the use of children for this purpose, a bill to provide Moroccan nationality to children born of a Moroccan mother and a foreign father and a bill to improve and harmonize infrastructure and services in institutions for abandoned children. The Government has shown the will to start addressing violations of children's rights.

In 2003, the Ministry of State in charge of Social Care and Family and Child Affairs, with the cooperation with UNICEF, began drafting a Code for Children. In 2005, the Secretariat of State in charge of Family, Children and the Disabled, in partnership with UNICEF, undertook a study of legislation concerning children which led to recommendations for further legal and institutional reforms for the protection of children. A guide for establishing norms concerning the quality of care is being prepared. Respect for the rights of girls has improved in Morocco in the past decade but efforts are still needed to eliminate gender-based discrimination.

Discrimination based on sex is now prohibited by the Penal Code. Principles of gender equality have been incorporated into the Labour Code and Code of Personal Status. A new Family Law of 2004, which applies solely to Muslims, has introduced significant changes in relation to family, divorce, inheritance and custody to reflect international standards and the rights of women and children. The Plan, for the years 2006-2015, was adopted in 2005. It lists all the actions deemed necessary to address the deficiencies pointed out by the Committee on the Rights of the Child in its Concluding Observations, including the development of an integrated protection system, the protection and integration of children from underprivileged environments, the development of more systematic statistical collection and of a database and the establishment of a monitoring authority for children's rights.

Respect for the rights of girls has improved in Morocco in the past decade but efforts are still needed to eliminate gender-based discrimination. Discrimination based on sex is now prohibited by the Penal Code. Principles of gender equality have been incorporated into the Labour Code and Code of Personal Status. A new Family Law of 2004, which applies solely to Muslims, has introduced significant changes in relation to family, divorce, inheritance and custody to reflect international standards and the rights of women and children. It provides

for shared parental responsibility and raised the legal age for marriage for girls from 15 years to 18 years, making the new provisions of the Family Code, discrimination remains a serious concern for children born out of wedlock, abandoned children and children of unknown parentage. Unmarried pregnant women are often excluded from their family and from society generally.

Children have the right to an identity and a nationality according to the *kafalah* law, which obliges the parents to declare the birth of a child and choose a name for the child. Local NGOs and governmental organizations have set up programmes to help single mothers. The Moroccan Constitution protects the rights of children of a minority or indigenous group but some groups of children face discrimination.

The new Family Code contains important provisions that take into account children's rights and general principles of the Convention on the Rights of the Child, including the best interests of the child. It places corresponding responsibilities on parents in relation to protecting the child's life, health, identity, name and nationality, affiliation, guardianship, financial support and education. The new Code of Personal Status refers to child custody as a way to protect the child "from harmful effects, to give the child proper education and to maintain his or her interests".

The prescribed conditions for custody, or *Hadana*, give express priority to the interests of the child. However, as the Committee on the Rights of the Child noted in its Concluding Observations of 2003, the best interests of the child is not always a primary consideration, especially in matters relating to family law where legal custody is determined according to the child's age. Efforts are still needed to integrate the best interests Principle into social and family attitudes and practices. The Government of Morocco recognizes that improving education is a matter of "national priority".

Further reforms to emphasize quality training and the elimination of illiteracy are at the centre of the 2005 National Charter on Education. The Charter seeks to generalize and improve the quality of education, decentralize the system and improve its administration by 2020. Morocco ratified the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict in 2002 but has not yet submitted to the Committee its initial report due in June 2004. The minimum age of voluntary recruitment in the armed forces is 18 years and the

minimum age for conscription is 20 years. Many children in Morocco are victims of armed conflict.

The Committee on the Rights of the Child expressed concern about the lack of protection and care for children affected by the armed conflict in Western Sahara. As of 25 May 2006, 38 survivors of antipersonnel landmines were reported in Morocco; including 28. The Penal Code was amended in November 2003 to define and criminalize the sale and purchase of child, forced child labour and child pornography, and to raise the age of consent from 12 to 15 years.

Aggravated circumstances are now considered in cases of sexual violence involving anyone under 18 and penalties for procurement for prostitution have been increased. In 2006 in its Concluding Observations on the examination of Morocco's initial report under the Optional Protocol, the Committee on the Rights of the Child recommended that Morocco "ensure that child victims of exploitation and abuse are neither criminalized nor penalized and that all possible measures be taken to avoid the stigmatization and social marginalization of these children."

In 2001, a joint programme to eliminate child labour was launched by the Moroccan Government and the ILO. The program seeks the cooperation of parents, employers, local communities, governmental authorities, journalists and teachers. It includes assistance to families to enable them to manage their finances better and awareness campaigns on the negative impacts of child labour.

There have been considerable developments in Morocco for children's freedom of expression and right to be heard. One significant law reform is to give children the right to be heard and to have their views taken into account in decisions on guardianship following divorce but this right is restricted to children who have reached the age of 15.

Other initiatives in children's participation have related more to children's forums than to substantive legal change¹¹².

¹¹² Meeting between IBCR and the Secretary of State for the Family, Children and People with Disabilities, Rabat, Morocco, November 2006. International Bureau for Children's Rights, Making Children's Rights Work in North Africa, PP:118-145, available at: <http://ibcr.org/>

L. Oman:

The Basic Law of Oman considered being the constitution of the Sultanate was promulgated in 1996 by the Sultan. The judiciary system and administration of justice is well structured in Oman, with clear delineation of roles and responsibilities. At the helm of the judiciary system is the Supreme Court.

The Sultanate of Oman acceded to and ratified a number of the human rights instruments related women and children. In 1996, the Government of Oman (GoO) ratified the CRC, followed in 2004 by accession to the two optional protocols to the convention; the Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC), and the Optional Protocol to the CRC on the Sale of Children, child prostitution and child pornography (OPSC). The GoO acceded to CEDAW in 2006. Early in 2009, the GoO ratified the Convention on the rights of persons with disabilities.

Oman has also ratified a number of ILO conventions, including: C29 Forced Labour, (1998); C105 Abolition of forced labour Convention (2005), C138 Minimum age Convention (2005), C182 Worst forms of child labour (2001). Various elements of the CRC and its optional protocols are incorporated in national legislation. A national Child Law has been drafted in Oman, but it is yet to be revised prior to submission to the cabinet for approval.

There is a concern that the draft of the Child Law has some elements that do not uphold the best interest of the Child. Earlier drafts of the proposed Child Law maintained the provisions of the Juvenile Law issued in 2008, which established minimum age of criminal responsibility at nine years of age.

Furthermore, it is recommended that the Child Law clearly define mechanisms to ensure establishment of a protective environment for children, particularly children who are victims of violence, inclusive outlining mechanisms for receiving complaints¹¹³.

M. Palestine:

Given the complex political identity and historic evolution of the West Bank and Gaza Strip since the time of the Ottoman Empire, the legal context applying

¹¹³ United nations, UNIVERSAL PERIODIC REVIEW – HUMAN RIGHTS COUNCIL UNICEF INPUTS – Oman, PP:1, available at: <http://lib.ohchr.org/>

to the OPT is consequently very complicated and at times ambiguous. As a result, to understand who the legal duty-bearers of the rights of Palestinian children living in the OPT are, it is important to bear in mind the following points: First of all, the OPT is an occupied territory, not a sovereign State.

According to the Fourth Geneva Convention, this means that the State of Israel, as Occupying Power, is the primary duty-bearer of the basic rights of all Palestinians, including children, living within the occupied territory. As such, it is legally accountable for those rights.

Furthermore, as well as its obligation to implement international customary human rights law, UN treaty bodies and independent experts have all repeatedly reaffirmed that Israel is considered legally responsible to provide and ensure in the OPT the provisions of human rights treaties which it has signed and ratified, such as the CRC, the Convention against Torture and the International Covenant of Economic Social and Cultural Rights.

Israel has continued over time to apply policies and practices that do not ensure Palestinian children all the guarantees provided by these conventions, although it does generally ensure these guarantees to Jewish Israeli children, thus infringing the principle of non-discrimination, a cornerstone of human rights discourse.

However, despite this fact, it still represents the de facto government in the OPT and therefore is considered a primary duty-bearer of the rights of Palestinian children living in the OPT *Prima facie*; it seems that the government is not bound by any official commitments towards the international community. However, Article 10 of the Palestinian Basic Law of 1993 places a legal responsibility upon the PA towards the incorporation of international standards within the national legal framework. In turn, it appears that despite the lack of an international legal status, autonomously the Palestinian government has declared its willingness to adhere to the standards of basic rights provided by the international legal framework as well as to carry out the necessary efforts to enforce these standards.

Beside the general commitments towards human rights stated by the Basic Law, the PA seems to consider children's rights, as they are provided by the CRC, a priority issue. In 1995, PA President Yasser Arafat declared the PA's endorsement of the CRC and, at the UN General Assembly Special Session on

Children in May 2002, the PA representative reiterated the commitment of the interim government in the OPT to respect and ensure implementation of the provisions of the CRC¹¹⁴. Consequently, the most common child rights principles are reflected in the Palestinian Child Law, enacted in 2004.

Unfortunately, the aforementioned explicit pledges have not found an easy soil to grow internally. With the exception of a few unified laws and policies enacted recently by the PA and in force in both the West Bank and the Gaza Strip, the domestic legal system applicable in the occupied Palestinian territory is far from unified; rather it is a patchwork of different laws and legal traditions - the combined legacy of a number of authorities that have ruled the area throughout history.

Palestinian law recently developed and enacted by the PLC (including the Child Law, the Disability Law, the Labour Law and draft legislations such as the Penal Code and the Juvenile Justice Bill), and Israeli military orders. Given the aforementioned fact that East Jerusalem is under complete Israeli administration with the PA denied access, the legal system applying to Palestinian children residing in East Jerusalem represents yet another set of regulations different to those applying in the rest of the OPT.

In addition, since June 2007, yet another layer of complexity regarding legal accountability of the rights of Palestinian children living in the OPT must be taken into consideration: the PA exists as two separate interim governments in the West Bank and the Gaza Strip, respectively -A Hamas-led PA in the latter and a Fatah-led PA in the former. This has created two de facto jurisdictions and confusion regarding non-state duty-bearers in the OPT.

The PA has acknowledged the right of children to protection from violence, abuse, neglect and exploitation within the family and community as stipulated in Art. 19 of the CRC by adopting the Palestinian Child Law (hereinafter Child Law) enacted in 2004. This law represents a first step towards establishing a culture that condemns violence against children in accordance with international standards, which in essence dictate that all State signatories (national governments) must ensure the protection of all children under their jurisdiction.

¹¹⁴ Save the Children Sweden (2006), Children's rights in MENA Regional CRP/RBA Situation Analysis WB/Gaza office. Save the children Child, Rights , Defense for Children International/ Palestine Section, Situation Analysis, Right to Protection in the occupied Palestinian territory – 2008, PP: 19-20, available at: <http://www.dci-palestine.org/>

In legal terms, this means ensuring that, at all levels of the law, legislation, by-laws and mechanisms exist to guarantee that children are effectively protected from violence, abuse, neglect and exploitation.

The Child Law requires the establishment of a reporting mechanism to ensure that children are not exposed to violence in the public and private domains and to oversee the care of children who have been exposed to violence. Key to the creation of this mechanism is the establishment within the Ministry of Social Affairs (hereinafter MoSA) of the "Childhood Protection Department," which employs "several" social workers, called protection officers, responsible for the protection of any Palestinian child.

The Child Law states that protection officers have the power to take a number of measures to ensure the protection of children. For instance, a protection officer has the authority to investigate a suspected case of child domestic violence and separate the child from his/her family, should the protection officer determine that the child is at-risk. The Child Law also imposes a duty on MOSA to establish institutions, called protection centres, where protection officers can refer children to in case of emergency. The centres are to be established in order to provide these children with the necessary protection and social support.

The Child Law does not state any further legal obligation for other governmental stakeholders such as the Ministry of Interior (hereinafter MoI), the Ministry of Education and Higher Education (hereinafter MoEHE) or the Ministry of Health (hereinafter MoH). The Child Law also states that it is the responsibility of all adults to assist children when they would like to inform the authorities (i.e. the protection officer) of any act of violence, abuse, neglect or exploitation suffered by them. In addition, other domestic legal provisions prohibit the use of force and/or cruel treatment towards children by relatives and identify penalties for relatives, caregivers and guardians for sex crimes against children¹¹⁵.

The Child Law is similar to a constitution on the rights of the child, in that it does not identify precise legal accountability, nor does it provide adequate detail

¹¹⁵ Art. 292-298 of the Jordanian Penal Code, Save the children Child, Rights , Defense for Children International/ Palestine Section, Situation Analysis, Right to Protection in the occupied Palestinian territory – 2008, PP: 19-2-, available at: <http://www.dci-palestine.org/>

in assigning responsibilities among duty-bearers, including primary caregivers. Moreover, and perhaps more crucially, it neither provides penalties for cases of in compliance by governmental duty-bearers and non-governmental stakeholders, nor penalties for the perpetrators of crimes of violence against children. In the absence of explicit legal responsibility, and in a society that is accustomed to associating authority with security forces and not with MOSA employees, the protection mechanism is weakened. Consequently, many cases of violence and abuse are not adequately addressed.

Palestinian children are experiencing detention. There are several legal instruments on the international level that apply to children in detention. However, the legal framework for child detainees is primarily covered by the CRC.

The Convention strongly condemns the arrest and detention “of minors. In addition, the “Best-interest principle – e.g. decisions that are being taken that could have an effect on children’s lives – has to have the child’s welfare as a paramount consideration – the CRC states in article 37b. The CRC was made available to signatories in 1989.

Up to this date, the CRC is the most widely acknowledged UN treaty, with only the USA and Somalia failing to ratify the convention. Although Israel ratified the CRC in 1991, the realization of its content is fundamentally inconsistent with the reality regarding Israel’s treatment of detained Palestinian children. Whereas the CRC considers all, humans under the age of 18 to be children the Israeli Military Law that was applied to Palestinian children until October 2011, defined a “child” as a “person below 12 years of age, “youth from 12 to 14 years, from 14 to 16 young adults” and the age for the” consideration of an “adult” was over 16. As mentioned before, this law has recently been amended to define an adult” as a person over 18 years of” age.

However, the detention of children in the West Bank remains a systemized procedure An average of 200-300 children is held in .detention on a monthly basis Another legal instrument applicable to the context of child detention is the

UN Convention Against Torture (CAT), as torture or ill-treatment during detention are reported in a huge number of cases¹¹⁶.

Palestinian governmental authorities are not required to develop policies or bylaws that translate into practice the protection of the rights and duties provided by the Child Law.

While laws and policies list governmental institutions as the actors accountable by law to ensure the achievement of children's rights in the OPT, their obligations are actually being partly fulfilled by the civil society sector¹¹⁷.

N. Qatar:

Qatar's constitution has passed through transitional stages starting in 1970 when the first provisional system of governance was enacted. A constitutional committee was formed, namely, The Drafting Committee of the Permanent Constitution, headed by a chairman and a deputy chairman with the membership of thirty other members. In the second of July, 2002, HH the Emir received the manuscript of the permanent constitution enterprise which lays the basic foundations of the society, regulates the State's authorities, embodies the public participation in governance and ensures the rights and freedom of Qatari citizens¹¹⁸.

The constitution of Qatar protects child rights through the following¹¹⁹:

Birth registration: Citizenship is derived from one's father. The government generally registered all births immediately.

Education: The government provides more for the welfare of citizen than noncitizen children. Education was free and compulsory for all citizens through

¹¹⁶ Save the children, THE IMPACT OF CHILD DETENTION OCCUPIED PALESTINIAN TERRITORY, PP: 19-20, available at: <http://mena.savethechildren.se/>

¹¹⁷ Interview with Iman Salameh, Bethlehem police officer and social worker, member of the Child and Family Unit in the Bethlehem main police station, 12 April 2008. During the interview, Ms. Salameh reported how the relationship between the police and MoSA was further degraded due to the police not being used to accepting orders from MoSA. Save the children Child, Rights, Defense for Children International/ Palestine Section, Situation Analysis, Right to Protection in the occupied Palestinian territory – 2008, PP: 30, available at: <http://www.dci-palestine.org/>

¹¹⁸ International labour organization, Permanent Constitution of the State of Qatar, February 2010, PP: 25-26, available at: <http://www.ilo.org/>

¹¹⁹ IIP digital, US embassy, QATAR 2012 HUMAN RIGHTS REPORT, PP:17-18, available at: <http://iipdigital.usembassy.gov/>

the age of 18 or nine years of education, whichever comes first. Education is compulsory for noncitizen children, but they pay a nominal fee.

Child Abuse: There were limited cases of child abuse, family violence, and sexual abuse. The QFPWC reported that, during the year, it received 242 cases involving abuse of children.

Child Marriage: By law the minimum age for marriage is 18 for boys and 16 for girls. Marriage of persons below these ages is not permitted except in conformity with religious and cultural norms. These norms include the need to obtain consent from the legal guardian to ensure that both prospective partners consent to the union and apply for permission from a competent court.

Sexual Exploitation of Children: There is no specific law establishing a minimum age for consensual sex. By law sex is prohibited outside of marriage (see Child Marriage). In the criminal law, the penalty for sexual relations with a person younger than 16 is life imprisonment. If the individual is the relative, guardian, caretaker, or servant of the victim, the penalty is death; there were no reports this sentence was ever implemented. There is no specific law prohibiting child pornography as all pornography is prohibited, but the ant trafficking law passed in October 2011 specifically criminalizes the commercial sexual exploitation of children. The QFPWC conducted awareness campaigns on the rights of the child and maintained a special hotline that allowed both citizen and noncitizen children to call with questions and concerns ranging from school, health, and psychological problems to sexual harassment. International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

O. Saudi Arabia:

The formal constitution has been declared to be the Koran. However, the 1992 Basic Law is often taken as the supreme law and its provisions are alike to those of constitutions. The Saudi Constitution is comprised of the Koran, Sharia law, and the Basic Law. "Islamic law forms the basis for the country's legal code." Strict Islamic law governs, and as such, the Saudi Constitution does not permit religious freedom.¹²⁰

¹²⁰ Library of Congress, supra note 4. European center for law and justice, UNIVERSAL PERIODIC REVIEW 2009, SAUDI ARABIA, PP:1, available at: <http://eclj.org/>

According to its constitution, Saudi Arabia is a monarchy with a limited Consultative Council and Council of Ministers. Comprising a portion of the Saudi Constitution, the Basic Law broadly outlines “the government’s rights and responsibilities,” as well as the general structure of government and the general source of law (the Qoran).

The Basic Law consists of 83 articles defining the strict, Saudi Islamic state. By declaring that Saudi Arabia is an Islamic state and by failing to make any provision for non-Islamic religious liberties, the Basic Law necessarily prohibits the practice of any religion other than Islam¹²¹.

The constitution is governed according to Islamic law- Sharia. The Basic Law that articulates the government’s rights and responsibilities was propagated by a Royal Decree in 1992. In Saudi Arabia, the establishment of laws and regulations related to domestic violence are in progress; the Child Protection Act was released recently in May 2011 from Al Shura Council and is awaiting the final approval and distribution from the Cabinet. Below are the established regulations:

1. Child Protection Regulations: The implementation of this regulation for the time being depends on the overall criminal justice law. This will change once the Child Protection Act is approved.
2. Regulation of Children in Need of Care: This regulation protects children in need of care, meaning children of unknown parents and children who have been deprived of parental/guardian care due to death, divorce, imprisonment, mental illness, physical incapability or any other similar reason to the discretion of the judge. The regulation also includes children with disabilities or children with incurable disease whose parents are unable to provide treatment or care for them.
3. The Regulation on Protection from Abuse: This regulation aims to ensure protection from abuse in various forms through assistance and treatment, providing shelter and social welfare, psychological, health and regulatory requirements, and taking the necessary legal procedures to question and punish

¹²¹ Saudi Arabian Market Information Resource and Directory Web Site, The Basic Law-Saudi Arabia Information, <http://www.saudinf.com/main/c541.htm> (last visited July 24, 2008); see also CIA Fact Book, *supra* note 6; Background Note, *supra* note 2. European center for law and justice, UNIVERSAL PERIODIC REVIEW 2009, SAUDI ARABIA, PP:1, available at: <http://eclj.org/>

the offending. It is important to note that in Sharia, there are laws that take into account the child's best interest in terms of welfare, respect and rights. Such rights include: the child's right to life, breast feeding, custody, guardianship, appropriate name choice, education, etc. A committee in the Kingdom's Human Rights Commission has been formed to examine the extent to which Saudi legislation is compatible with human rights instruments as a first step towards harmonization of the Kingdom's existing laws with its obligations under international treaties and conventions according to Sharia laws¹²².

P. Somalia:

Somalia is a federal, sovereign, and democratic republic founded on inclusive representation of the people and a multiparty system and social justice. After Allah the Almighty, all power is vested in the public and can only be exercised in accordance with the Constitution and the law and through the relevant institutions¹²³.

The government is the primary duty bearers as far as the rights of children are concerned. The government efforts are supplemented by local and international organizations, private sector and business community including United Nation Agencies working in Somaliland. For example, some of the services provided by the government to vulnerable children who may include street children are medical care, psychosocial support, maternal and child health care services, nutritional support for malnourished children, and rehabilitation of street children.

The government has also raised extra funds through partnership with UNICEF, UNDP, UNHCR and International NGOs such as Norwegian Refugee Council (NRC), Danish Refugee Council (DRC), and Save the Children International to enhance services for vulnerable children and women in Somaliland. The government has also established a few Child Protection Units in a few police stations, has a functioning court system, has enacted the Juvenile Justice Law, developed Youth Policy and is working on a Child Labour Policy, the National Child Protection Policy and discussing the development of the Children Act

¹²² Maha A Almuneef MD, Child Maltreatment Prevention Readiness Assessment ,Country Report: Saudi Arabia January 2012, PP:6-7, available at: <http://www.who.int/>

¹²³ The constitute project, Somalia's Constitution of 2012, PP: 2, available at: www.constituteproject.org

including codifying its Family and Personal laws to facilitate the development of its family protection policy.

This notwithstanding the government has had some challenges such as¹²⁴:

- Lack of sufficient funds to implement its own national development plans.
- Most of the Ministries are poorly staffed and sometime lack resources to pay attractive salaries to attract and retain qualified staff.
- There is a shortage of trained men and women power,
- There government is continuously suffering from the exodus of qualified staff to work outside the country.

Somaliland is not recognized as a sovereign state and this hampers its ability to access development loans from partners like the World Bank.

Q. Sudan:

The constitutional protection of human rights has been extremely weak in Sudan, both in terms of the recognition of rights and the availability of mechanisms for their effective implementation. In the context of broader concerns over respect for the rule of law, these combined factors have contributed to a situation of systemic and serious human rights violations.

A series of cases at the domestic level and before the African Commission on Human and Peoples' Rights demonstrate that victims of such violations have no effective remedies in Sudan. There is also an almost complete absence of accountability for human rights violations.

The Constitution recognizes a series of rights, stipulates that all treaties to which Sudan is a party are automatically part of the Bill of Rights, and vests the newly established Constitutional Court with the power to hear complaints concerning the violation of constitutional rights. In addition, it envisages a series of institutional reforms, including of the security sector. Since 2011, a constitutional review has been underway in Sudan; this review has not been participatory or inclusive.

¹²⁴ Save the children, NATIONAL STUDY ON STREET CHILDREN IN SOMALILAND, PP:40,41, available at: <https://somalia.humanitarianresponse.info>

Children's rights were invisible in the Sudanese Constitutions before 1973 and subsequently only recognized to the extent that they formed part of general provisions on rights and liberties.

The 1973 Permanent Constitution of Sudan included some provisions that directly or indirectly addressed the rights of children and the rights of parents in relation to children. Article 15 for instance, under the heading "General and Social Fundamentals", provides that the family is the foundation of the society and that it shall be protected by the State against the causes of weakness and disintegration.

Other general provisions that make indirect reference to children include article 38, which provides that all people in the Democratic Republic of the Sudan are equal and article 53, which specifies that education is a right of every citizen and that the State shall endeavour to spread and provide it for free in all stages. Other articles of the 1973 Constitution that have more specific reference to children include article 45, which excludes children under the age of eighteen years from the right to vote and article 55, which states that mother and children should be accorded care and attention and that the State should ensure adequate guarantees for mothers and for working women.

Moreover, article 75 provides that no person under eighteen years of age shall be sentenced to death and such sentence shall not be executed on women who are pregnant or suckling their babies unless two years of suckling have lapsed. Article 77 stipulates that juveniles accused of offences shall be kept separate from adults and be brought for trial as soon as possible.

Further, article 78 provides that rehabilitation and reform of the prisoners shall be the underlying principle of their treatment. In addition, juveniles detained in reformatories or prisons shall be kept separate from adult prisoners and shall be accorded treatment compatible with their legal status and age. While this was the first time the word "children" appeared in any of the modern Sudanese constitutions, the approach taken emphasizes protection and welfare rather than children as right holders.

The 1998 Constitution of the Republic of Sudan also included some direct and indirect provisions on children's rights. Article 14, for example, provides that the State should care for children and youth, should protect them from physical

and spiritual exploitation and neglect, and shall implement policies for moral care, national education and religious values to ensure good future generations.

Article 15 on family and women provides that the State shall care for the family, facilitate marriages, develop population policies, and provide child care and care for pregnant women. Article 33(2) on the death penalty largely replicates article 75 of the 1973 Constitution, though it introduces an exception for the Sharia crimes of Qisas or Hudud. Indirect provisions on children's rights that are applicable to everyone include article 21 on the equality of all people before the law, article 22 which provides that everyone born of a Sudanese mother or father has the inalienable right to Sudanese nationality, article 24 that everyone has the right to freedom of conscience and religion, and article 105(2) on constitutional remedies.

According to Tobin's classifications, the 1998 constitution could be regarded as a "special protection constitution", in which children are given special recognition because of their vulnerability and need for care and special protection. It does not reflect the fact that in 1998 Sudan was already a member of the CRC, and therefore failed to reflect the spirit of the Convention.

The 2005 Interim National Constitution of Sudan (INC) sets out general policies in relation to children and youth welfare in articles 14(1) and (2). The Bill of Rights is included in part two of the constitution. Article 27(1) defines the bill of rights as a covenant among the Sudanese people, between them and their government.

Paragraph 2 of the same article sets out the responsibility of the State so as to protect, promote, guarantee and implement the bill of rights. Article 27(4) is concerned with the relationship between the State legislation and the bill of rights. It emphasizes that the legislation shall regulate the rights and freedoms enshrined in the bill of rights and that it shall not detract from or derogate from any of the rights.

This indicates that according to article 27(4), State legislation should not detract from the CRC. Of great significance, however, is article 27(3), which reads: "All rights and freedoms enshrined in international human rights treaties, covenants and instruments ratified by the Republic of the Sudan shall be an integral part of this Bill."

This indicates that the CRC, the African Charter on the Rights and Welfare of the Child (ACRWC) and other relevant human rights instruments pertaining to children's rights, to which Sudan is a member, are part of the bill of rights.

This has been confirmed by the Constitutional Court of Sudan in *Nagmeld in Gasmalla, Government of Sudan and the relatives of Abdel rahman Ali* when it ruled that the CRC is part of the INC by virtue of its article 27(3).¹⁷ The 2005 constitution enumerates various general rights, referring to "every human being" or "every person". In addition article 44(2) provides that primary education is compulsory and the State shall provide it for free. Arguably, children are included in such terms. Furthermore, article 36(3) provides that the death penalty shall not be executed upon pregnant or lactating women, save after two years of lactation. This implies the protection of the unborn child as well.

Chapter II of the 2005 Interim National Constitution contains numerous rights provisions that explicitly set out children's rights. When compared to previous Sudanese constitutions, it is probably fair to emphasize that the 2005 constitution has moved a step forward towards the enhancement and realization of children's rights.

In this regard article 32(5) is of great significance as it is solely designated to children's rights. It reads: "The State shall protect the rights of the child as provided in the international and regional conventions ratified by the Sudan." The text is wide enough to include all international and regional children's rights instruments ratified by Sudan such as the CRC and the ACRWC, though it lacks detail of how this is to be done.

Moreover, the paragraph is part of the overall article on women and children's rights. Arguably, this does not fit with the overall general understanding of children's rights that views children as individuals who are capable of holding rights separate from any other category such as women's rights or parental rights. The inclusion of one article within women's rights undermines both women's and children's rights. Article 32(4), for instance, reads: "The State shall provide maternity and child care and medical care for pregnant women". This provision is viewed from the perspective of women's rights only, while the children's rights perspective has been totally overlooked.

When applying Tobin's three methods of constitutional integration of children's rights, it is possible to argue that the 2005 constitution fits within the "the 'special protection' constitution in which children are given special recognition within the text because of their vulnerability and need for care and special protection" rather than "the 'children's rights' constitution in which the special recognition of children is addressed in terms of children's rights. Nevertheless, articles 27(3) and 32(5) could fit within the category of a "'children's rights' constitution". However, to this end, article 32(5) in particular would need to be turned into a separate article on children's rights and complemented with a set of detailed rights of the child, or at least reference to key guiding principles¹²⁵.

In its 2010 concluding observations on Sudan's State party report under the CRC the Committee on the Rights of the Child, while welcoming measures such as the adoption of a new Child Act, expressed a number of concerns, both regarding the lack of an effective framework for implementation and a series of specific issues.

These include the lack of consistency concerning the definition of the child, pronounced inequalities and discrimination, insufficient consideration given to the views of children, the retention of the death penalty that may be imposed on persons under the age of 18 for certain crimes, the continued use of corporal punishment, shortcomings in the administration of juvenile justice, and harmful traditional practices, such as female genital mutilation.

The Committee also highlighted poor health services, particularly in areas such as Darfur, poor standards of living, the adverse impact of armed conflict on children, the high number of street children, as well as economic and sexual exploitation and abuse. When a State becomes a party to an international treaty it is obliged to bring its national laws into conformity with the treaty under question.

Since Sudan's ratification of the CRC in 1990, Sudan has undertaken numerous legislative changes in order to incorporate some of the international standards on children's rights though, as highlighted by the Committee on the Rights of the Child, a number of shortcomings still remain.

¹²⁵ REDRESS, Arrested Development: Sudan's Constitutional Court, Access to Justice and the Effective Protection of Human. Faculty of law, The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives, January 2014, PP: 66-67 available at: <http://reliefweb.int/Rights> (REDRESS, London, August 2012), p. 21, available at: <http://www.refworld.org/docid/50641ad82.html>.

After the secession of South Sudan, a new constitution is expected to be adopted in Sudan. International children's rights in the Sudanese context have often been discussed with reference to Islamic Sharia. In case of any assumed conflicts between the two bodies of law, the government has refrained from implementing international norms.¹²⁶

The constitution should reflect the general principles of non-discrimination, the best interests of the child, children's participation, life survival and development and the evolving capacity of the child. Taking such principles into consideration provides for specific recognition of children's rights within a constitution, which results in the provision of a strong claim for justice that cannot be easily ignored. As mentioned in article 4 of the CRC, States must take "all appropriate legislative, administrative, and other measures".

The adoption of children's rights in the constitution could fit within this category. For many countries treaty norms form the basis of constitutional human rights provisions, included in the bills and charters of rights. This method of internalizing treaty norms into the domestic legal system, especially when the constitutional human rights provisions are justifiable, constitutes one of the most powerful ways in which treaty norms could be enforced on the local level.

Tobin has identified three broad categories of methods or approaches with regards to the inclusion, treatment and status of children within States' national constitutions, which will be considered further below in the Sudanese context: the 'invisible child' constitution in which children are neither seen nor heard and are accorded no special treatment or recognition... the 'special protection' constitution' in which children are given special recognition within the text because of their vulnerability and need for care and special protection, and ... the 'children's rights' constitution in which the special recognition of children is addressed in terms of children's rights rather than the welfare approach that characterizes their treatment under 'special protection' constitutions¹²⁷.

¹²⁶ Faculty of law, The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives, January 2014, PP:4,63, available at: <http://reliefweb.int/>

¹²⁷ Philip Alston and Ryan Goodman, International Human Rights (Oxford University Press, 2013), p.1051. Faculty of law, The Constitutional Protection of Human Rights in Sudan: Challenges and Future Perspectives, January 2014, PP: 64, available at: <http://reliefweb.int/>

R. Syria:

Syria is formally a republic. On 13 March 1971, the Constitution of Syria was adopted. It defines Syria as a secular socialist state with Islam recognized as the majority religion.

The completion of this Constitution crowns our people's struggle on the road of the principle of popular democracy, is a clear guide for the people's march toward the future and a regulator of the movement of the state and its various institutions, and is a source of its legislation.

The Constitution is based on the following major principles¹²⁸:

- 1) The comprehensive Arab revolution is an existing and continuing necessity to achieve the Arab nation's aspirations for unity, freedom, and socialism. The revolution in the Syrian Arab region is part of the comprehensive Arab revolution. Its policy in all areas stems from the general strategy of the Arab revolution.
- 2) Under the reality of division, all the achievements by any Arab country will fail to fully achieve their scope and will remain subject to distortion and setback unless these achievements are buttressed and preserved by Arab unity. Likewise, any danger to which any Arab country may be exposed on the part of imperialism and Zionism is at the same time a danger threatening the whole Arab nation.
- 3) The march toward the establishment of a socialist order besides being a necessity stemming from the Arab society's needs is also a fundamental necessity for mobilizing the potentialities of the Arab masses in their battle with Zionism and imperialism.
- 4) Freedom is a sacred right and popular democracy is the ideal formulation which insures for the citizen the exercise of his freedom which makes him a dignified human being capable of giving and building, defending the homeland in which he lives, and making sacrifices for the sake of the nation to which he belongs. The homeland's freedom can only be preserved by its free citizens. The citizen's freedom can be completed only by his economic and social liberation.

¹²⁸ Yale school of law, Syria, constitution, PP:1,2, available at: <http://www.law.yale.edu/>

5) The Arab revolution movement is a fundamental part of the world liberation movement. Our Arab people's struggle forms a part of the struggle of the peoples for their freedom, independence, and progress.

The Syrian human rights situation remained poor in 2001, and the Government continues to restrict or deny fundamental rights, although there were improvements in a few areas. The Government uses its vast powers so effectively that there is no organized political opposition, and there have been very few antigovernment manifestations. Continuing serious abuses include the use of torture in detention; poor prison conditions; arbitrary arrest and detention; prolonged detention without trial; fundamentally unfair trials in the security courts; an inefficient judiciary that suffers from corruption and, at times, political influence; and infringement on privacy rights¹²⁹.

The law emphasizes the need to protect children, and the Government organized seminars regarding the subject of child welfare. During the year, some of these seminars were organized in cooperation with the local UNICEF office. The Government provided free, public education to citizen children from primary school through university. Education is compulsory for all children, male and female, between the ages of 6 and 12.

According to the Syrian Women's Union, in 2001 approximately 46 percent of students through the secondary level were female. Nevertheless, societal pressure for early marriage and childbearing interfered with girls' educational progress, particularly in rural areas where the dropout rates for female students remained high. Palestinians and other noncitizens can send their children to school. Legal age for marriage is 18 unless parents consent to marriage for children below 18.

The Government provides free medical care for citizen children until the age of 18. There was no legal discrimination between boys and girls in education or in health care. The law provides for severe penalties for those found guilty of the most serious abuses against children.

¹²⁹ Jurist law, Constitution, Government & Legislation, available at: <http://jurist.law.pitt.edu/>

Although there were cases of child abuse, there was no societal pattern of abuse against children. Child prostitution and trafficking in children were rare; incidents that arose mainly involved destitute orphans¹³⁰.

S. Tunisia:

Tunisia ratified the CRC on 30 January 1992. It submitted its initial report on 16 May 1994 and its second periodic report on 16 March 1999. The first Concluding Observations of the Committee on the Rights of the Child were issued on 21 June 1995. In its latest Concluding Observations issued on 13 June 2002, the Committee welcomed the numerous legal measures undertaken by Tunisia to align domestic legislation with the CRC. It has also ratified the two Optional Protocols to the Convention on the Rights of the Child. It has not yet submitted its initial reports to the Committee under the two Optional Protocols.

The Constitution of 1 June 1959 provides explicitly that “all citizens have the same rights and the same duties. They are equal before the law.” However, in its 2002 Concluding Observations, the Committee on the Rights of the Child expressed its concern that the right to non-discrimination was not being fully implemented into practice for certain groups. The Committee criticized the new Child Protection Code for not placing enough emphasis on the right to non discrimination.

Tunisia has been able to continue investing in the social sector including the promotion and protection of children's rights. A national system of Delegates for the Protection of Children was established by Decree in 1996 and a Delegate has been appointed in each of the 24 governorates in the country. These Delegates work under the Ministry for Women, Family, Children and Elders to coordinate both specific and strategic actions for the protection of children and the prevention of harm, exploitation, abuse and neglect.

The Delegate is the first person responsible for the support and follow-up of vulnerable children. However, with only one Delegate in each governorate their number is considered insufficient.

Further these Delegates are not sufficiently independent, a matter that received comment and recommendations from the Committee on the Rights of the Child

¹³⁰ US department of state, Bureau of Democracy, Human Rights, and Labor 2004, February 28, 2005, available at: <http://www.state.gov/>

in 2002. Despite significant efforts, the Government recognizes that discrimination against women continues to deserve more attention. Discrimination against and marginalization of girls makes them more vulnerable to all forms of abuse. One of the greatest challenges for children born out of wedlock arises from the social discrimination and stigmatization faced by their single mothers. These children do not have the right to inherit from their fathers even when paternity has been legally established. In recent years children born out of wedlock, those who have been abandoned and those of unknown parentage have been granted greater legal protection, including the right to take paternity suits and to require DNA testing. Once paternity has been established, a child will have the right to have a patronymic name and to a living allowance.

The child also has the right to take the name of his or her mother, if preferred. This ensures the right to a name and an identity. The Personal Status Code abolished polygamy and informal marriages in 1956. However, the minimum age for marriage remains different for boys (20 years) and girls (17 years, formerly 15 years). The Government justifies this difference on cultural grounds but says that marriage legislation is “proceeding by stages”.

It is currently considering setting the minimum age for marriage for both boys and girls at 18. Discrimination against girls is also seen in the application of a principle from Sharia law entitling a daughter to only half the share of her brother in inheritance matters. Tunisia enacted specific legislation in 1981 to protect children with physical and intellectual disabilities. The law was amended in 1989 and revised in 2005 to strengthen the principle of equality of opportunity and the protection of rights. Children with moderate disabilities are now integrated into the regular education system with necessary support.

The Tunisian Government has made education a priority. A reform of the education sector was initiated between 2000 and 2004, and the rights of children as students were introduced for the first time in the law. As a result school education is free for everyone and compulsory from 6 to 16 years of age.

The State has introduced various measures to ensure equally accessible education for girls and boys¹³¹. These measures seem to have been effective,

¹³¹“Education”, Tunisia Online, available on-line at <http://www.tunisiaonline.com/society> (last accessed 16 October 2006). International Bureau for Children's Rights, *Making Children's Rights Work in North Africa*, PP: 150-174, available at: <http://ibcr.org/>

since girls make up more than half the enrolments for both primary and secondary schools but their attendance rates are significantly lower than boys' rates.

The government has also introduced measures to ensure equal access to education for children living in rural and urban areas, again with some success: of the 4486 schools in Tunisia, 2721 are located in rural areas. The right of child refugees to education is guaranteed in public schools as long as they are able to provide relevant previous school documents issued in the country of origin.

In cases where documentation is not available, some difficulties arise, leading in a few instances in the past to UNHCR resorting to private schools to ensure respect of this right. The Code of Child Protection does not make any specific reference to children living on the streets but rather refers to "children who are exposed to neglect and homelessness.

Tunisia has solid experience in developing laws, programmes and strategies for the rights of children but its practice and implementation remain weak. It is proud of its commitment to promoting and protecting children's rights and has manifested the political will to make the CRC a reality. Certainly the rights of children with disabilities, children in conflict with the law and abandoned children are recognized better than previously.

Education has benefited from sustained investment and long-term strategies with important achievements. Longer life expectancy, reduced child mortality rates and nearly universal vaccination coverage testify to the quality of the health system, although there are concerns about the impact on children of increased costs and limitations on access to health services.

A variety of programmes supports easy access to birth registration, reduce discrepancies between rural and urban children, protect and promote the rights of girls and raise awareness on reproductive health. Tunisia sees itself as a leader in the region and world on how to respect children's rights in a holistic manner. However, there is still a gap between words and action. Tunisia faces many challenges where the response is still to be defined.

Many issues like sexual exploitation, corporal punishment, child sex tourism, children living on the street and trafficking of children, are not well researched or discussed publicly. Since the enactment of the Children's Code in 1995, law

reforms have extended the legal framework to protect children but challenges remain in ensuring their effective implementation.

T. United Arab Emirates:

The United Arab Emirates (UAE) is a federation of seven semiautonomous emirates. The emirates are ruled by political allegiance defined by loyalty to tribal leaders, to leaders of the individual emirates, and to leaders of the federation. The Civil Service Law (Articles 55, 56) allows for extensive maternity leave, and in 2005, civil service rules governing additional payments for children and housing were amended to eliminate any gender-based discrimination against employees. E

Employers in the UAE are prohibited from firing or threatening to fire a female employee on the basis of pregnancy, delivery, or parenting. Maternity leave in the public sector is two to six months.

Family in the United Arab Emirates is sustained by religion, morality and patriotism, shall constitute the cornerstone of society. The law shall guarantee the integrity of the family and shall safeguard and protect it against corruption. "Society shall be responsible for protecting childhood and motherhood and shall protect minors and others unable to look after themselves for any reason, such as illness or incapacity or old age or forced unemployment. It shall be responsible for assisting them and enabling them to help themselves for their own benefit and that of the community¹³².

Article 25 of the constitution provides for equality before the law without regard to race, nationality, or social status; however, there was institutional and cultural discrimination based on sex and nationality. For example, all male citizens can pass citizenship to their children at birth whereas female citizens married to non citizens do not automatically pass citizenship to their children. Article 350 of the Criminal Code states that anyone who places a child in danger in a public place, either acting directly or through other persons, shall be liable to imprisonment and a fine.

There are no provisions in the law for the opportunity for children to be heard in proceedings affecting them, whether criminal or civil. More generally, however,

¹³² Women in the United Arab Emirates: A portrait of progress, pages 2-3, Fatma Hassan Beshir Gomaa, Children's Rights in United Arab Emirates (UAE), PP:4, available at: <http://www.enmcr.net/>

some infrastructure does exist to deal with the issue of child abuse. The United Arab Emirates "Women's Da'waa Administration" recently established a telephone hotline for women and children, which has direct access to the Dubai Police if necessary and is open to requests for assistance from women. The government registered Bidoon births, without granting citizenship to the children.

Education is compulsory through the ninth grade; however, compulsory education was not enforced, and some children did not attend school, especially children of non-citizens. Noncitizen children could enrol in public schools only if they scored at least 90 percent on entrance examinations. Public schools were not coeducational after kindergarten. Statistically, girls and women in every age group were more academically successful and continued to higher levels of education than their male peers.

Child abuse was limited, and there was some evidence that societal influences prevented cases from being reported. The law protects children from abuse and trafficking, and the government provides some shelter and help for victims. The law does not address female genital mutilation, which does not appear to be a problem in the UAE. The United Arab Emirates is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.¹³³

U. Yemen:

The political system is a republic and the Yemeni constitution views the Islamic Sharia as the main source of laws. The constitution separates legislative, executive and judicial authorities. Yemen is a republic with a constitution that provides for a president, a parliament, and an independent judiciary.

The most significant human rights problems were arbitrary killings and acts of violence committed by the government and various entities and groups; disappearances and kidnappings; and a weak and corrupt judicial system that did not ensure the rule of law. Other human rights problems included; violence against children; reported use of child soldiers by security forces, tribal groups, and other informal militias; discrimination against persons with disabilities; discrimination based on race and gender; restrictions on worker rights; forced

¹³³ US department of state, United Arab Emirates, PP: 18 available at: <http://www.state.gov/>

labour, including forced child labour; and extremist threats and violence. Impunity was persistent and pervasive.

The transitional government planned to undertake investigations and prosecutions of government and security officials for human rights abuses, but political pressures and limited government capacity precluded significant action. Authorities removed some officials implicated in serious human rights violations from their positions¹³⁴.

Even though the country has adopted laws to protect children's rights and signed the optional protocols on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography, it has not taken any action to solve the inconsistency between present laws and the main principles of the convention. This can be seen in the following¹³⁵:

A. Although article (6) of the constitution states that Yemen is committed to follow any agreement or convention it signs, it does not enforce the principles of these conventions/agreements as laws by naming them clearly in straightforward articles. The Islamic Sharia requires Yemen to honour all articles included in any convention/agreement it signs and to enforce all articles as if they were part of the Shariait self. This is not taken into consideration by the government which only enforces the parts of the Sharia that are in their interest.

B. The constitution also states in article (30) that it is the country's duty to protect and foster mothers, children and youth.

C. Children's rights law number (45) for the year 2002: Although the children's rights law does contain many aspects of the convention it sets the juvenile age at 7-15 which does not follow the age set by the convention itself or by civil law.

D. Criminal prosecution law (13) for the year 1994: This law treats children age 7-15 as juveniles and prosecutes them accordingly. Under this law the maximum penalty that can be imposed upon children of this age it one third (1/3) of the maximum penalty stated in the criminal prosecution law. Children between the ages of 15-18 are considered to hold partial responsibility for their actions and the maximum penalty that can be imposed upon them is half (1/2)

¹³⁴ IIP digital, US embassy, Yemen, PP: 1-2, available at: <http://iipdigital.usembassy.gov/>

¹³⁵ Civil Society Organizations in Yemen, Children's Rights in Yemen, PP: 3-6, available at: <http://www.refworld.org/>

the maximum penalty stated in the criminal prosecution law. If the penalty is the death sentence the child is instead sentenced to 3-10 years jail time. This is a clear violation of article (1) of the convention which states that a child means every human being below the age of eighteen. It is also inconsistent with the article (50) of the civil law which states that maturity begins at the age of fifteen.

E. Labour Law Number (5) for the year 1995: Articles 49-53 of the labour law are in violation of articles (26:1.2) and (36) of the Convention which state that social security and welfare are the right of every child. The case is the same with the civil services law which states that the legal age to apply for a job is 18 but an exception may be made at the age of 16 which disagrees with article (1.2:26) concerning the right to social security. The law also fails to agree with article (28) which states that financial support should be given to children to ensure that they remain in schools and to decrease the number of dropouts.

F. Amended social status law number (24) for the year 1999: Article (1) of this law is against the Convention because it gives the guardian of a child the right to marry her off. The law does not state a legal age for marriage which leads to the spread of early age marriages especially in rural areas among females 10-11 years old. This leads to many physical, psychological and social problems.

G. Juvenile Justice Law number (24) for the year 1992: Article (11:B) of this law makes it legal for children at the age of twelve to be arrested and kept in custody in any police department which clearly disagrees with article (37:C) of the Convention.

H. Citizenship law number (6) for the year 1990: This law prohibits the transfer of Yemeni citizenship from mother to child if the mother is married to a foreigner. Also, the law prohibits the transfer of Yemeni citizenship to the father (from his wife). The law also states that for the children to acquire citizenship the parents must be divorced or the father must be deceased, mentally ill, missing or unknown. This law was amended in January 2002 and it was clearly stated that citizenship may not be transferred from mother to child. The law also prevents them from requesting citizenship at any stage of their childhood and sets 18 as a legal age to request citizenship. At the age of 18 years old, citizenship may be acquired if the unreasonable conditions set by the law are followed. Such conditions are deprivation of parental authority of the father in court or accusing the father of being mentally unstable. This disagrees with

articles (11,12) of the children's rights law which states that every child has the right to a citizenship. It also states that every child has the right to a known parentage and the right to a relationship with both his/her parents. It also disagrees with the essence of the Convention which was stated in articles (7, 8, 9, and 18).

Articles (41, 43) of the constitution state that all citizens are equal in all rights and responsibilities but this does not mean that all citizens have those rights and freedoms. The death sentence, as a punishment for conversion, is a controversial issue that has not been legitimized. The only remaining law that is followed is the social law (culture, habits and traditions) which make children citizens of the third degree by classifying them as blind followers to their families (especially older males such as the father and brothers). The child's ability to think and express, which is built by the family, school, mosque, cultural clubs and the media, is negatively affected because a child's right to self consciousness is targeted and his/her rights and freedoms are not made clear.

The result of this is the child's willingness to have his/her rights and freedoms taken and to take the rights and freedoms of others. Even though the constitution guarantees children's rights by building cultural and social clubs and providing gathering opportunities, in reality any children's gathering is usually for exercise purposes with very limited resources and is basically a way to waste time. Yemen has good experience in forming a children's parliament elected by school children. This experience gave children a chance to express their opinions freely, practice democracy, and discuss public issues.

Conclusion

The following conclusions and lessons may be drawn from the above, in association with the analysis of Part I of the thesis:

1. Constitutions are potent tools for the enforcement of human rights in favour of children. They set the tone, direction and priorities of government policy, statutory reform and budgeting required for CRC and CEDAW implementation. They serve as sustainable frameworks for the continuation of policies and programmes in favour of children, regardless of which party is in power. Short of military interventions and political expediency, civilian governments are generally bound to continue with the policies and programmes of previous

regimes. In other words, constitutions do not change with change of governments unless accompanied by a legitimate constitutional review process. This allows for continuity and sustainability of major interventions and investments that have been made in favour of children.

2. Supremacy clauses in most constitutions create an opportunity to test the constitutionality of various acts and omissions spanning across political and civil rights, on the one hand, to economic, social and cultural rights on the other. States are to review clauses and policy directives on the non-justiciability of the second category of rights in line with Recommendation No. 609 of the UN Committee on the Covenant on Economic, Social and Cultural Rights.

3. Opportunities are presented by global human rights frameworks to make children the central subjects of both general human rights law and specific norms affecting children. This is to be done with the objective of locating the rights of the children within the context of human rights and ensuring that they are guaranteed holistic protection.

4. Best practices could be learned across jurisdictions. Examples are in relation to:

- Recognising children as subjects of rights (for example, Venezuela);
- Expanding the definition of the child to include orphans and children born out of wedlock (for example, Nigeria);
- Protecting the family and keeping it sacrosanct in favour of children (for example, Ireland);
- Providing for an array of basic services (for example, Brazil);
- Recognising pre-school as a constitutional right (for example, Ukraine);
- Protecting children from slavery and institutions similar to slavery (for example, The Gambia);
- Protecting children born out of wedlock (for example, East Timor);
- Protecting children from participation in armed conflict and those affected by it (for example, South Africa);
- Ensuring birth registration (Brazil);
- Protecting children in conflict with the law (for example, Ethiopia); and

- Protecting orphans (for example, Uganda).

5. States are to invest in constitutional bodies which have been set up to protect the rights of children, with a view to making them effective tools of change in favour of children. This is to be done by enhancing their financial, technical and human resource capacities.

6. The existence of a national constitution in any country will require a pragmatic programme of social mobilization and sensitisation as would ensure widespread appreciation and understanding of its contents. A national intervention of this kind creates a window of opportunity for children, as citizens, to appreciate their rights and responsibilities under their respective constitutions. In some countries, for example Ghana, this has worked through existing in-school constitution clubs, the creation of constitutional games, the publication and dissemination of abridged versions of the constitution and the celebration of national constitutional week.

7. Constitutional review initiatives serve as opportunities for child participation in the law reform process through existing child participation structures or the creation of Child Constitution Review Commissions. The experience of Timor-Leste has shown that child participation can make a difference in ensuring that child-specific concerns are addressed during the review process. Experience in Kenya has demonstrated that constitutional reviews also serve as opportunities to affect change in the content of previous frameworks for the purpose of giving effect to international treaty obligations through broad participation. The constitutional review of that country witnessed the consideration of more elaborate provisions on human rights (Bill of Rights), citizenship and the creation of a Commission on Human Rights and Administrative Justice to monitor implementation of human rights treaties.

Section II: Children's Protection Rights in the Arab World

Section II covers three areas, under three Paragraphs. Paragraph I will deal with the definition of the Child in the Arab countries. This first paragraph will show that the national legislations have not been harmonized with the CRC, in particular with its first Article. Needless to say that defining the child is a question of utmost important because it determines the scope of Rights and the obligations of stakeholders and right holders.

Paragraph II under Section II covers Child Custody in the Arab world, which is addressed in this thesis as a case study to show the distortion and the non-conformity in one of the most critical and important issues for children.

Paragraph III (the last paragraph) covers the issue of early marriage in the Arab world, which is a problem closely linked to religion, tradition and culture.

Paragraph I: Definition of the Child in the Arab World

This Paragraph covers the various definitions of the Child in the Arab countries.

Algeria: Algerian law conforms to the provisions of article 1 of the Convention, where the child is generically defined as a, “human being below the age of 18 years.”¹³⁶

Algerian legislation conforms to the provisions of article 1 of the Convention, where the child is generically defined as a “human being below the age of 18 years”. The definition of the child in Algerian law can be inferred from various provisions: This includes the Civil Code which fixes the age of civil majority at 19 years; the Code of Criminal Procedure that lays down that “the age of criminal majority is 18 years”¹³⁷.

Bahrain: Article 1 of the Convention clearly states that: “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”¹³⁸ The legislation in force in the State of Bahrain is in conformity with the provisions of article 1 of the Convention on the Rights of the Child, which defines the child as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”¹³⁹.

¹³⁶ The African child policy forum, DEFINITION OF THE CHILD: THE INTERNATIONAL/REGIONAL LEGAL FRAMEWORK, December 2013, pp: 1, available at: <http://www.africanchildforum.org>

¹³⁷ Refworld, COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION Second periodic reports of States parties due in 2000, Algeria, PP: 19, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=43f3052d0&skip=0&query=definition%20of%20a%20child%20in%20algeria>.

¹³⁸ Bahrain monitor, The Child Bill and Bahrain's International Obligations, available at: <http://www.bahrainmonitor.org/>

¹³⁹ Refworld, COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION ,Initial reports of States parties due in 1994, BAHRAIN, PP: 15, available at: <http://www.refworld.org/cgi->

Egypt: For the purpose of this Law, the term “child” within the context of care and welfare, shall mean all individuals who have not reached the age of eighteen (18) complete calendar years. The age of a child shall be verified by means of a birth certificate, an identification card or any other official document¹⁴⁰.

Jordan: Jordan defines early childhood as a stage that covers different levels that starts from pregnancy till the age of 9. This stage can be divided into five main sub stages, according to the following¹⁴¹:

- a. Pregnancy
- b. Birth to age one
- c. From age one to age four
- d. From age four to age six
- e. From age six to age nine

The definition of the child in Jordan's national legislation conforms to the definition and minimum age requirements contained in the Convention. Under article 2 of the draft Children's Rights Act of 2004, a child is defined as “any person, male or female, under 18 years of age”.

This, in turn, is consistent with the provisions of other Jordanian legislation, such as the Civil Code, the Juveniles Act and other statutes as discussed in greater detail in paragraph 1 of Jordan's first periodic report to the Committee¹⁴².

Kuwait: paragraph 13 of the initial report of Kuwait indicated that, according to the legislative texts, a child was defined as a person between the ages of 7 and 18.¹⁴³ Kuwaiti legislation is consistent with the provisions of article 1 of the Convention concerning the definition of the child. The Private Sector

bin/texis/vtx/rwmain?page=search&docid=3df5a4bc4&skip=0&query=definition%20of%20a%20child%20in%20Bahrain

¹⁴⁰ The African child policy forum, DEFINITION OF THE CHILD: THE INTERNATIONAL/REGIONAL LEGAL FRAMEWORK, Child Law, 2008, December 2013, pp: 5, available at: <http://www.africanchildforum.org>

¹⁴¹ National Strategy for ECD, National Task Force for ECD, p. 4, available at <http://www.ncfa.org.jo/>

¹⁴² Refworld, COMMITTEE ON THE RIGHTS OF THE CHILD, CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION Third periodic report of States parties due in 2003 JORDAN, PP: 18, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=46305b172&skip=0&query=definition%20of%20a%20child%20in%20Iraq>

¹⁴³ MASON, COMMITTEE ON THE RIGHTS OF THE CHILD, Nineteenth session, Summary record of the 488th meeting : Kuwait. 04/14/1999, CRC/C/SR.488. (Summary Record), pp1: available at: <http://www.unhchr.ch/>

Employment Act, for example, sets the minimum age for admission to employment in a chapter devoted to the employment of young persons. The Juveniles Act No. 3 of 1983 also provides that a juvenile is any male or female under 18 years of age. Article 18 of the Kuwaiti Penal Code stipulates that anyone who was under seven years of age at the time of committing an offence cannot be held criminally responsible. Article 208 of the Personal Status Act No. 51 of 1984 stipulates that: "A child shall be subject to guardianship of his or her person until attaining legal majority or reaching the age of 15 years". Article 26 of the same Act prohibits the notarization or certification of a contract of marriage for a young girl who is under 15 years of age or a young man who is under 17 years of age at the time of notarization. The Family Fostering Act No. 82 of 1977 defines a juvenile as any human being under 18 years of age who has not attained legal majority. In short, the definitions contained in all Kuwaiti laws are consistent with the definition set forth in article 1 of the Convention, as childhood is defined as the period from 7 to 18 years of age¹⁴⁴.

Lebanon: The Lebanese law adopts the same definition of child adopted by the Convention on the Rights of the Child (CRC). For the purpose of civil obligations and contracts, a child is any person who has not yet reached the age of eighteen.¹⁴⁵ Article 1 of the Convention of the Rights of the Child defines the child as follows: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier." This general definition raises more than one issue relating to the particular nature of the child which causes it to be the subject of a special convention and to the criteria used to define the child on the basis of age, recognized legislation or psychological, social and other criteria. The definition contained in article 1 does not cover these aspects, which, in a sense, is only natural. It is consequently necessary, however, to infer such aspects from the provisions of the Convention as a whole and from the overall de facto and conceptual framework within which the articles of the Convention were formulated¹⁴⁶.

¹⁴⁴ Refworld, Consideration of reports submitted by States parties under article 44 of the Convention Second periodic reports of States parties due in 1998 , Kuwait, PP: 17, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=528230084&skip=0&query=definition%20of%20a%20child%20in%20Kuwait>

¹⁴⁵ The law Library of congress, Children's Rights: Lebanon, Civil Code, issued Mar. 9, 1932, art. 4 available at: <http://www.loc.gov/>

¹⁴⁶ COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES

Libya: In Libya, a child is a person under 16 years.¹⁴⁷ Article 1 of the Convention defines the child as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”. Article 9 of Act No. 17 of 1992 regulating the situation of minors and those of equivalent status stipulates that: “The age of majority is 18 years¹⁴⁸. Concerning the amendment of domestic laws to bring them into line with the provisions of the Convention, a bill has been drafted to amend the Mobilization Act by raising to 18 years the age of persons called up for deployment in a transition from a state of peace to a state of war, as well as the Child Protection Act, article 1 of which defines a child as “A male or female child under 18 years of age”. The bill also contains several new provisions derived largely from international conventions and has been submitted to the people's congresses for consideration¹⁴⁹.”

Mauritania: According to the Convention a child means “every human being below the age of eighteen years unless, under the law applicable to the child majority is attained earlier”. In this regard Mauritanian legislation is in perfect accord with the Convention and the precepts of Muslim law. Article 15 of the Code of Obligations and Contracts stipulates that: “Any person in possession of his mental faculties and not having been forbidden so to do is fully capable of exercising his civil rights. The age of majority is set at eighteen years.” In accordance with the principles of Malekite Muslim law applicable in Mauritania, the prohibition on grounds of youth is applicable to individuals who have not attained the age of majority. Absolute incapacity is the attribute of individuals lacking the faculty of discernment because they have not reached the

UNDER ARTICLE 44 OF THE CONVENTION, second PERIODIC REPORTS OF STATES PARTIES DUE IN 1998

Addendum, LEBANON, PP: 16, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=3df5a7db4&skip=0&query=definition%20of%20a%20child%20in%20Kuwait>

¹⁴⁷ The African child policy forum, DEFINITION OF THE CHILD: THE INTERNATIONAL/REGIONAL LEGAL FRAMEWORK, Children's Protection Act, 1997, December 2013, pp: 8, available at: <http://www.africanchildforum.org>

¹⁴⁸ COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES

UNDER ARTICLE 44 OF THE CONVENTION ,Second periodic reports of States parties due in 2000

LIBYAN ARAB JAMAHIRIYA, PP: 17, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=45377e6d0&skip=0&query=definition%20of%20a%20child%20in%20Libya>

¹⁴⁹ Refworld, Consideration of reports submitted by States parties under article 44 of the Convention

Third and fourth periodic reports of States parties due in 2005 , Libyan Arab Jamahiriya, PP: 16, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=51efa45d4&skip=0&query=definition%20of%20a%20child%20in%20Libya>

age of 12 years. They do not have the right to dispose of their property and all their acts are considered legally null and void. Limited capacity is the attribute of children over 12 and up to 18 years of age. Such children are considered to possess the faculty of discernment. The acts of a person who has reached the age of discernment are valid only with the authorization of a legal guardian (art. 25 of the Code of Obligations and Contracts)¹⁵⁰.

The first paragraph of article 1 of Order No. 2005-015 of 5 December 2005 on the judicial protection of children defines the child as "any person aged between 0 and 18 years". Act No. 2001-054 of 19 July 2001 on compulsory basic education made it compulsory for children to attend school between the ages of six and 14 years. Pursuant to article 6 of Act No. 2001-052 of 19 July 2001 on the Personal Status Code, "the legal capacity to marry is possessed by all persons of sound mind aged at least 18 years"¹⁵¹.

Morocco: Article 209 defines the age of legal majority as eighteen complete Gregorian years.¹⁵² Reforms carried out over recent years have made it possible to align legal age for children with the conditions set by the Convention in other connections. The definition of the child stems from his or her legal position and, in terms of Moroccan law, that definition can be set out as follows: (a) The age of legal majority is fixed at 18 years (article 209 of the Family Code); (b) The act on compulsory education stipulates that it ends at 15 years of age; (c) The minimum age for admission to employment has been raised by the new Labour Code from 12 to 15 years, the age at which compulsory education ends; (d) The minimum age for criminal responsibility has been set at 18 years both by the Code of Criminal Procedure and by the 2003 act amending the Criminal Code (article 140 of the Criminal Code). As a general rule, minors below the age of 12 years are considered not criminally responsible, as they have not attained discretion (art. 138). However, minors who have reached the age of 12 but are

¹⁵⁰ Refworld, COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES, UNDER ARTICLE 44 OF THE CONVENTION Initial reports of States parties due in 1993, MAURITANIA PP: 9-10, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=3df5a8884&skip=0&query=The%20definition%20of%20a%20child%20in%20Mauritania>

¹⁵¹ Refworld, COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES, UNDER ARTICLE 44 OF THE CONVENTION, Second periodic reports of States parties due in 1998, PP: 10, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=49ad100d0&skip=0&query=The%20definition%20of%20a%20child%20in%20Mauritania>

¹⁵² The African child policy forum, DEFINITION OF THE CHILD: THE INTERNATIONAL/REGIONAL LEGAL FRAMEWORK, Family Code, 2004, December 2013, pp: 9, available at: <http://www.africanchildforum.org>

under 18 can be considered partially criminally responsible. Between the ages of 12 and 15 years, their status as minors is regarded as a mitigating factor and they can be held to be only partially responsible (art. 139); (e) The age from which children can testify in court has been set by legislation at 16 years in the case of civil proceedings. In criminal proceedings, the new Code of Criminal Procedure deals with testimony by minors by setting at 18 the age below which minors may not take the oath, at both the investigation stage (art. 123) and at the trial (art. 332). When minors are interviewed by the criminal investigation department, this takes place in the presence of their guardian; (f) The statutory minimum age from which children are able to bring a complaint and seek redress before a court or any other authority, without parental consent, is fixed by law at 18 in civil cases. In criminal cases, there is no minimum age for bringing a complaint, as the public prosecutor's office and officers of the criminal investigation department are legally bound to receive all complaints and accusations. According to the Code of Criminal Procedure, when an offence is committed on a minor, the judge may take up the case *ex officio* on being informed of it, or the case may be referred to him by the public prosecutor; (g) The limitation period for criminal proceedings is set at 20 years from the date a serious crime was committed, 5 years in the case of lesser offences and 2 years in the case of minor offences; (h) As regards the age at which children are able to participate in administrative or legal procedures affecting their interests, child complainants can in principle act as such only through their official guardian (article 231 of the Civil Code). Children are nevertheless able to take part in certain procedures affecting them by being heard or expressing their opinion (in relation to custody or *kafalah*); (i) The minimum legal age from which children can enjoy the legal capacity to inherit, carry out property transactions and set up or join associations is 18 years; (j) Under the provisions of the Family Code, a child has the capacity to inherit from the moment he or she is conceived; (k) The Labour Code provides that children in work and aged 16 or over have the right to vote in elections for staff representatives in accordance with the electoral procedures in place; (l) Voting age has been reduced to 18 years by the Electoral Code (from 20 years previously¹⁵³.

¹⁵³ Refworld, Consideration of the reports submitted by States parties under article 44 of the Convention, Third and fourth periodic reports of States parties due in 2009, Morocco, PP: 17, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=540053ea4&skip=0&query=definition%20of%20a%20child%20in%20Morocco>

Oman: Depending on the circumstances, Omani legislation uses various terms to describe children, such as minor, young person, juvenile, infant, ward and so on. These terms all refer to the child, namely a person who has not yet attained 18 years of age. We should also like to point out that the minimum age for admission to basic education is five years and six months for private schools and between six and eight years for State schools. Basic education ends at 16 years and general education ends in the eleventh and twelfth grades (18 years)¹⁵⁴.

Palestine: Palestine applies the definition of a child as a person under 18 also in the Palestinian territories, in line with article 1 of the Convention on the Rights of the Child.¹⁵⁵ While under international law the generally accepted definition of the child is “every human being below the age of eighteen years” and under Israeli law majority is attained at the age of 18, Military Order No. 132 defines a minor as someone under the age of 16. Furthermore, it provides that children between 12 and 14 years can be arrested and imprisoned¹⁵⁶.

Qatar: The delegation set that under the article 49 of the Civil Code and more recently under the article 88 of the Family Act, the child was everyone below 18 years of age. It further explained that in some areas, there were minimum age differences between boys and girls. The Committee asked whether it was discrimination, but the delegation simply stated it was part customs and traditions of Qatari society and that nothing prevented further changes in the future¹⁵⁷.

The applicable legislation defines a child as “any person below the age of 18 years”, a definition that is consistent with the one adopted by the Convention. Article 49 of the Civil Code defines the age of majority as 18 full years and

¹⁵⁴ Refworld, COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION ,Second periodic report of States parties due in 2004

OMAN, PP: 25, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=45377ede0&skip=0&query=definition%20of%20a%20child%20in%20united%20Arab%20emirates>

¹⁵⁵ Children's rights in the Occupied Palestinian Territory , Key issues and concerns, pp: 1, <http://www.upr-info.org/>

¹⁵⁶ In April 1999, Military Order No. 132, which was implemented during the first Intifada (1987-1993) and cancelled after the signing of the Declaration of Principles in 1993, was reinstated in the West Bank. Refworld, The Treatment of Detained Palestinian Children by the Israeli Authorities, November 2001, PP: 11, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=46c190460&skip=0&query=definition%20of%20a%20child%20in%20palestine>

¹⁵⁷ Skeptics in Qatar, Qatari Marriage Statistics, Saturday, April 14, 2012, available at: <http://qatarskeptic.blogspot.com/>

article 1 of the Trusteeship of Minors' Assets Act defines a minor as a child who has not reached his or her majority - majority being reached at the age of 18 full years. Article 189 of the Family Act defines a person with full capacity as "any person who has reached the age of majority of 18 full years and does not have a mental impairment. It should be noted that the Children's Bill, will contain a single definition of the child based on the age criterion. This will make it necessary to bring other domestic legislation on children into line with the age definition set out in article 1 of the Convention¹⁵⁸.

Sudan: Child" means every person, who is not above the age of eighteen years.¹⁵⁹ Sudanese legislative acts employ a variety of words to refer to children, depending on the rights to be safeguarded. This discussion of the definition of the child will begin with an overview of the concept of the child and then proceed to highlight the substance of Sudanese laws on the subject. The word "infant" or "child" applies to any young being from the time of emergence from the mother's womb until the age of puberty. The word appears in the Quran: "It was He who created you from dust, making you a little germ, and then a clot of blood. He brings you infants into the world; you reach full maturity, then decline into old age." It is therefore a term that is clearly used to refer to an individual from the time of birth until puberty or full maturity is attained. Childhood is thus the period between birth and puberty. The maturity which signals the end of childhood is attained when an individual becomes fully rational and discerning (mumayyaz) and acquires intellectual, mental and physical maturity. In the view of jurists, maturity is marked in two ways: the first is the appearance of the usual outward "signs of maturity", such as puberty, the growth of pubic hair and, in the case of young girls, menstruation and the ability to conceive. The second is the attainment of full legal age, a subject on which jurists hold differing views and on which other positive laws are also at variance¹⁶⁰.

¹⁵⁸ Refworld, COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORT SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION ,Second periodic report of States parties, due in 2002 QATAR, PP: 17, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=49f6c2b22&skip=0&query=definition%20of%20a%20child%20in%20qatar>

¹⁵⁹ The African child policy forum, DEFINITION OF THE CHILD: THE INTERNATIONAL/REGIONAL LEGAL FRAMEWORK, The Child Act, 2010, December 2013, pp: 13, available at: <http://www.africanchildforum.org>

¹⁶⁰ Refworld, CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION ,Periodic reports of States parties due in 1997, SUDAN, available at: <http://www.refworld.org/cgi->

As for the concept of the child in Sudanese law, an examination of the child-related laws reveals that they employ different terms, such as “infant”, “minor”, “young person” or “juvenile”, “delinquent”, “sexually immature youth” and “pupil”. The absence of a specific definition or term for the child is clearly attributable to the fact that the types of protection developed by the legislature vary according to the age of the child and the rights and obligations involved. This is consistent with article 1 of the Convention on the Rights of the Child, which defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, maturity is attained earlier.” This provision provides scope for national legislations to determine the age of a child as being no higher than 18 years. Clearly, there is no difference between Sudanese legislative acts and the above article 1 of the Convention on the Rights of the Child.

Saudi Arabia: Article 1 of the Convention on the Rights of the Child is totally in harmony with Islamic law with regard to the definition of the child:

“A child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.”

The legislation applicable in the Kingdom in respect of the definition of the child is as follows:

- (i) From birth to 7 years of age, no responsibility or duty of any kind is imposed on the child. At this age, the parents or legal guardians have the primary responsibility for the upbringing and guidance of the child, whom they accustom to good morals and teach some essential principles, which prepare him or her for the coming stage;
- (ii) From 7 to 10 years of age, the child is considered a rational person and starts to learn and be trained in religious observances, dealing with others and bearing some duties and responsibilities without any liability;
- (iii) From 10 to 15 years of age, the child shoulders some responsibility and the legal guardian provides guidance and discipline without harming the child. He is answerable, in an appropriate manner and in the presence of his legal guardian, for offences that he commits and his legal guardian is liable to make

amends for his wrongdoing and has an obligation to take care of him. If punishment is required it takes the form of guidance, reprimand or placement in a social surveillance centre. The child is disciplined only in such a way as to ensure his or her proper conduct, without harming the child;

(iv) From 15 to 18 years of age, the child is answerable, in respect of any wrongdoing, in an appropriate place and manner, in order to protect the child and safeguard his or her interests as an extension of the child's care and upbringing. In order to protect the child and others, any punishment that may be required takes the form of discipline, guidance, and admonishment. If necessary, the child is placed in a social rehabilitation centre, as an alternative environment, for an appropriate period of time in order to ensure an improvement in his or her conduct and behaviour¹⁶¹.

Syria: According to international law, a child is a human being below the age of 18 years as indicated in the first Article of the Convention of the Rights of the Child: "For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier"¹⁶².

The Committee on the Rights of the Child recommended that the Syrian Arab Republic should amend legislation to raise the minimum age for marriage for girls to that for boys and undertake greater efforts to enforce it, particularly in rural areas. Syrian legislation uses various terms to describe children, such as "minor", "young person", "juvenile", "infant" and "ward". These terms all refer to the child, namely, a person who has not reached 18 years of age. A child, as defined under article 1 of the Convention, means "every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". The corresponding text in Syrian legislation is found in the Juveniles Act No. 18 of 1974, which defines a child as any male or female below the age of 18 years. Prime Ministerial Decision No. 903 of 28 February 2005 reaffirms that a child is any person below 18 years of age. Moreover, the

¹⁶¹ Refworld, CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION, Initial report of Saudi Arabia due in 1998, PP: 18-19, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=3ae6afc90&skip=0&query=definition%20of%20a%20child%20in%20Iraq>

¹⁶² ILO Regional Office for Arab States and UNICEF (Syria), March 2012, National Study on Worst Forms of Child Labour in Syria, pp: 50, available at: <http://www.ilo.org/>

law distinguishes between a child who has not reached the age of discretion and one who has¹⁶³.

Tunisia: According to article 3, a child is every human being below the age of eighteen years and who has not attained the age of majority by special provisions.¹⁶⁴

A child of 13 years of age is considered as being lacking entirely in discrimination and all his or her acts are null and void (Personal Status Code, article 156, paragraph 1). In contrast, a child between 13 and 20 years of age does have restricted powers to act and may consult a lawyer. His or her acts will not be null and void provided they only procure advantages (article 156 of the Personal Status Code and article 9 of the Obligations and Contracts Code). 131. With regard to protection of the delinquent child, article 77 of the Child Protection Code obliges the State Prosecutor "to provide a lawyer to assist the child, if the latter has not designated one," in cases where "the charges levelled against the child are of major gravity". The same article adds "In all cases, a child aged under 15 years cannot be examined by the judicial police except in the presence of his guarantor, parents, legal guardian, or close adult relative"¹⁶⁵.

Yemen: A precise legal definition of a child is essential to ensure a coherent application of laws protecting children. In Yemeni law, there is no single legal definition of a child. Article 2 of the Law on the Rights of the Child defines a child as "every human being below the age of 18 years unless majority is attained earlier." According to Yemen's Personal Status Law, the age of maturity (sin al rushud) for boys is set at ten, or the attainment of puberty, whichever is earlier, and for girls, at nine years, or the attainment of puberty, and in all cases, any person over 15 years is considered to have reached age of maturity. However, Yemen's civil law (Qanun al-Madani) sets the age of maturity at the age of 15 years, with no exceptions. Without a coherent

¹⁶³ Refworld, Consideration of reports submitted by States parties under article 44 of the Convention Third and fourth periodic reports of States parties due in 2009, Syrian Arab Republic, PP: 15, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4ef339272&skip=0&query=definition%20of%20a%20child%20in%20Iraq>

¹⁶⁴ The African child policy forum, DEFINITION OF THE CHILD: THE INTERNATIONAL/REGIONAL LEGAL FRAMEWORK, Code On Child Protection, 1995, December 2013, pp: 14, available at:

¹⁶⁵ Refworld, COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION ,Periodic reports of States parties due in 1999, TUNISIA, PP:34, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=3df5aede7&skip=0&query=definition%20of%20a%20child%20in%20Tunisia>

definition of a child throughout Yemeni law, children may not fully enjoy the protection of their rights under international law¹⁶⁶. The Rights of the Child Act No. 45 of 2002: Under article 2 of the Act, the child is defined as “every human being below the age of 18 years unless majority is attained earlier”, a definition which is fully consistent with the definition of the child set forth in the Convention. In the same article, a juvenile is defined as “every child over the age of seven years who has not attained majority¹⁶⁷”.

Paragraph II: Child Custody in the Arab World

A. Definition of Child Custody at international level

Child custody is a term that refers to rights and responsibilities for each parent and child. Custody is not a term used to indicate ownership, but rather a determination of the time a child is going to be with each parent and each parent's responsibility to make decisions on behalf of the child¹⁶⁸. Custody can be modified to accommodate significant changes in the lives of the children or the parents involved. The judge attempts to structure custody to promote a strong relationship between children and their parents. The only time this is not true is when the judge determines that custody with a particular individual would endanger the child's physical, mental, or emotional health. Physical custody involves the right and obligation to provide a home for the child and to make the day-to-day decisions required during the time the child is actually with the parent having such custody¹⁶⁹.

In custody matters judges are asked to decide who will make decisions for a child and when a child is going to be with each parent. If parents in custody cases have not reached an agreement, the judge is asked to determine when a child is going to be with each parent. However, parents in custody cases who decide to work together can decide the custody agreement with the help of their

¹⁶⁶ Human rights watch, “How Come You Allow Little Girls to Get Married?” Child Marriage in Yemen , PP: 23, available at: <http://www.hrw.org/>

¹⁶⁷ COMMITTEE ON THE RIGHTS OF THE CHILD CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION ,Third periodic report of States parties due in 2003 , YEMEN, PP: 13, available at: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=42d283ee4&skip=0&query=definition%20of%20a%20child%20in%20Yemen>

¹⁶⁸ Monroe County, available at http://www.co.monroe.mi.us/government/courts/circuit_court/friend_of_the_court/custody.html

¹⁶⁹ Law Office of John S. Weaver, available at <http://maryland-familylaw.com/childcustodyvisitation.html>

attorneys, the help of the friend of the court office, and/or the process of mediation. Parents can on their own, also work through the court system to obtain or modify custody by filing the proper paperwork¹⁷⁰.

Legal custody involves the right and obligation to make long range decisions about education, religious training, discipline, medical care, and other matters of major significance concerning the child's life and welfare. "Joint" legal custody means that both parents have an equal voice in making those decisions, and neither parent's rights are superior to the other parent's rights¹⁷¹.

"Joint" physical custody is in reality "shared" or "divided" custody, whereby the physical custody of a child is allocated between the parties. There is no difference between the rights and obligations of a parent having temporary custody of a child pursuant to either a visitation award or an order of shared physical custody¹⁷².

However, it is appropriate for the Court to provide for a "tie-breaker" authority in anticipation of post-divorce parental disputes¹⁷³.

B. Best Interest of the Child

Traditionally, at common law, the father had absolute power over his offspring. Gradually this gave way to the notion that the mother should have custody of her children during their "tender years," commonly seven and under.

This "tender years" doctrine prevailed in early twentieth century United States law. Most state courts now rule out the sex of the parent as the determinative factor. Instead of leaning towards a gender-based presumption, the courts now analyze each family's situation individually¹⁷⁴.

¹⁷⁰ State Court Administrative Office, Michigan Custody Guideline, PP:4, available at: <http://courts.mi.gov/>

¹⁷¹ *Law Office of John S. Weaver*, Ibid

¹⁷² The term "split custody" is generally used to describe the situation in which one parent is given sole custody of some of the children of the parties, with sole custody of the remaining children going to the other parent, and cross rights of visitation. Generally, Maryland law frowns upon the division of siblings and, ordinarily, the best interests and welfare of the children of the same parents are best served by keeping them together to grow up as brothers and sisters under the same roof. John S. Weaver, Esquire Rockville, Maryland, CHILD CUSTODY, PP: 3, available at: <http://maryland-familylaw.com/>

¹⁷³ *Shenk v. Shenk*, 159 Md. App. 548, 860 A.2d 408, 415 (2004). The Court of Special Appeals said that the inclusion of a "tie-breaker" does no transform the award into something other than joint custody; it is an example of one of the "multiple forms" of joint custody inherent in the powers of an equity court when dealing with the issue of custody. John S. Weaver, Esquire Rockville, Maryland, CHILD CUSTODY, PP: 3, available at: <http://maryland-familylaw.com/>

¹⁷⁴ Janet A. W. Dray, *International Conflicts in Child Custody*: United

Today, almost every state court determines custody based upon the "best interests" of the child. The "best interests" analysis takes into account the family's entire situation, and therefore the trial court has a great deal of discretion in deciding which factors to examine in a custody case. The way a court determines the detriments or best interests of a specific child is highly individualized. Proponents of judicial discretion believe that this individualized standard allows judges to express changing values within the society. Others contend that this flexibility necessarily involves a moral judgment by the judge, based upon his/her own values and biases¹⁷⁵.

Some of these factors include the relationship between the parent, child and siblings; the stability of the environment; the time a parent has available to spend with the child; abuse and neglect; religious training; a move out of the state or out of the country; and the parents' and child's wishes. Courts are also steadily becoming more sensitive to the child's emotional needs as well as to the traditionally recognized physical needs.' As a result, courts have increased the emphasis on the psychological parent-child relationship as opposed to the biological relationship. Continuity of environment and of the primary caretaker can dominate a suit where one parent has had temporary custody¹⁷⁶.

Courts have granted custody to a parent when a child has adjusted to living with that parent and feels secure. Even if this factor does not appear in the final decision, the judge may have considered the disruption of the child's life potentially caused by awarding permanent custody to the parent who did not have temporary custody. Courts have also expressed a preference for the primary caretaker, regardless of gender. The totality of the child's situation always determines the child's best interests. Factors such as religion, education and medical care may cause the bitterest disputes since the custodial parent has the right to control these aspects of the child's upbringing absent a modification by the court¹⁷⁷.

Article 3.1 of the CRC states 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law administrative authorities or legislative bodies, the best interests of the child

States v. Saudi Arabia, available at <http://digitalcommons.lmu.edu/cgi/viewcontent.cgi?article=1115&context=ilr>

¹⁷⁵ Janet A. Dray, *Ibid*

¹⁷⁶ *Ibid*

¹⁷⁷ See Atkinson, *Criteria for Deciding Child Custody in the Trial and Appellate Courts*, 18 FAM. L.Q. 1 (1984), Janet A. W. Dray, *digital commons, International Conflicts in Child Custody: United States v. Saudi Arabia*, PP: 18-20, available at: <http://digitalcommons.lmu.edu/>

shall be a primary consideration.' The Convention does not say explicitly what the 'best interests' entail, but the key concept and goal can be understood from other articles. These include the right to life and development (Article 6) the right to know and be cared for by his or her parents (Article 7), the right to identity and to family relations (Article 8) and the right to participation (Article 12).

Within this context, Article 18.1 is crucial for the assessment of family relations: 'States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child.' Article 14.1 states: 'States Parties shall respect the right of the child to freedom of thought, conscience and religion.' Article 5 states: 'States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.'

The child should preferably develop into an individual who makes conscious life choices, among which are choices in 'thought, conscience and religion. The 'best interests of the child' principle is further and more concretely developed in the pedagogical sciences. In a recent update to research on the meaning of the 'best interests' principle in Dutch law, Kalverboer and Zijlstra state that 'continuity and stability' are considered to be of primary importance, as is a biological parent who provides for a situation in which the child can develop emotional attachments. A child should be encouraged, within boundaries that are explicitly stated and that can be argued, to experiment in order to develop a positive self image. It should be given responsibilities and also be encouraged to negotiate over the set boundaries in order to develop an autonomous self. The dominant modern liberal interpretation of the open legal concept of the 'best interests of the child' in short consists of the following aspects: preferably both biological parents raise the child affectively in a consistent way and in a stable environment. The goal is an autonomous self with a positive and curious attitude toward continuous development¹⁷⁸.

¹⁷⁸ Wibo van Rossum*, The clash of legal cultures over the 'best interests of the child' principle in cases of international parental child abduction, PP:4-5, available at: www.utrechtlawreview.org

C. Child custody in Islamic Law and the CRC

The Qur'an describes children as 'the comfort of our eyes'. Multiple verses and traditions (of the Prophet) remind parents and guardians of their responsibilities towards their children.

In Islam and under the Sharia Legal System the family and the child are venerated objects of careful protection. It is surprising therefore that out of much misunderstanding and dogma, contents of the Child Rights Act passed into law by the National Assembly have come under severe criticism for an assumed incompatibility with Sharia and Islamic principles. It is critically necessary that the Sharia legal system should not by this misunderstanding suffer reproach and prejudice. Islam recognizes the need for special protection to be accorded to children due to their vulnerability. Childhood in Islam is characterized by the lack of formed reasoning ability, and Islamic theory depends on both mental maturity and physical development in determining the various stages of childhood. Below a certain age the child is considered incapable. Thereafter, when of 'perfect understanding', he or she can assume responsibility and participate in legal acts. The age for the attainment of majority differs with the varying schools of theology, and while there is doubt over the physical signs of puberty (which under Islamic formulations represents the end of childhood) Imam Hanifa, some scholars of Imam Malik prefer the threshold of eighteen years. Some later scholars agree on fifteen years, while others prescribe the ages of fifteen, sixteen or seventeen for female, and eighteen for male, as signalling the arrival of sexual maturity¹⁷⁹.

Although all Muslim States have ratified the CRC (except Somalia which has only signed the CRC) many of them have entered reservations in respect of a few matters. Childhood in Islam is characterized by the lack of formed reasoning ability, and Islamic theory depends on both mental maturity and physical development in determining the various stages of childhood¹⁸⁰.

Indeed, several rights have been identified as belonging to the child in the context of the Qur'an and the Hadith, by Omran A R, in 'Family Planning in the Legacy of Islam, 1992,' which include: 'The rights to genetic purity, to life, to legitimacy and a good name, to breastfeeding, shelter, maintenance and support

¹⁷⁹ Maryam Uwais, July 19, 2013, Compatibility of the Child Rights Act with Islamic legal principles, available at: <http://telegraphng.com/>

¹⁸⁰ Maryam Uwais, Isa wall empowerment initiative, 14th April, 2009, The Compatibility of the Child Rights Act with Islamic Legal Principles, PP:1-3, available at: <http://www.iwei-ng.org/>

(including healthcare and nutrition), to future security, religious training and good upbringing, education (irrespective of gender and other factors), training in sports and self defence, to equitable treatment, and to the fact that all funds utilized in their support derive only from legitimate sources. Inherently, Islamic system balances between multitude levels of children's need¹⁸¹.

In recognition of an infant's need for female care, all the juristic schools give first preference to a mother's claim to physical custody of her young child provided that she satisfies all the requirements for a female custodian. After divorce during the period of the mother's custody, she is generally entitled to receive custody wages from the father to help her maintain the child. Islamic Jurisprudential inferences Islamic law on custody of children after divorce is based on several Hadith relating to how the Prophet dealt with cases brought before him¹⁸².

Conditions of custody: Whoever has custody of a child has to abide by conditions concerning residence and Islamic upbringing, to ensure that the child's welfare is properly cared for. The court may, if necessary, enforce these conditions or direct that the child be given to the next eligible custodian. The father should have access to his children, and he remains financially responsible for their maintenance and education even though they may be under the care of their divorced mother or one of her relations. Duration of custody and Transfers The duration of custody varies between the Four Schools of Islamic Jurisprudence¹⁸³.

Although all Muslim States have ratified the CRC many of them have entered reservations in respect of a few matters, the primary issue being adoption, since Islamic Law provides for its own guardianship system of 'kafalah' to provide care for children deprived of natural parental care. Muslim States generally opine that:

- Provisions set forth in the child Convention are in conformity with the teachings of Islamic Law concerning the need to fully respect the human rights of a child; Article 7 (a) of the OIC Declaration of Human Rights in Islam provides that:

¹⁸¹ Please refer to <http://turntoislam.com/community/threads/child-custody-after-divorce-in-islam.46157/>

¹⁸² Kristine Uhlman, Overview Of Shari'a and Prevalent Customs In Islamic Societies - Divorce and Child Custody, available at http://www.expertlaw.com/library/family_law/islamic_custody-3.html

¹⁸³ Zaman Khan VARDAG, Child Custody after Divorce... Islamic Perspective, available at: <http://pakistanilaws.wordpress.com/>

“As of the moment of birth, every child has rights due from the parents, society and the State to be accorded proper nursing, education and material, hygienic and moral care. Both the foetus and the mother must be accorded special care.’ Hence, Islamic teachings on the subject focus on the proper upbringing and training of children; and it is on record that the Prophet exonerated immature persons completely from responsibility by stating that, ‘three (categories of) people are free from responsibility, the insane until he is sane, the sleeping until he wakes and the child until his reaching maturity¹⁸⁴.”

Custody under traditional Islamic law is composed of three types of guardianship, *hathana* (rearing), ‘*al-wilaya ‘la al-nafs* (guardianship of child’s person), and *al-wilaya ‘al-mal* (guardianship over child’s money/property).

Hathana tends to be awarded to the mother for boys until age 7-9, and for girls until the age of 12 under Sunni law, and until age 2 for a boy and 7 for a girl under Shia law. The mother’s eligibility for rearing includes having an ethical and trustworthy character, the ability to protect the child’s health and ensure a moral upbringing, and choosing to reside close to the father’s residence. Generally, remarriage deems the mother ineligible to maintain guardianship. If the mother is not eligible or available, most legal scholars agree that the right of *hathana* transfers to the maternal grandmother, then to the paternal grandmother. Under Shia law, guardianship passes to the father rather than the maternal line if the mother is ineligible or passes away. For both Sunnis and Shias, from birth to adulthood, the father is responsible for guardianship over the child’s person and property, including their place of residence, education, religious upbringing, employment, legal representation, and marriage. When the father is not available, guardianship of the child (including the child’s property and assets) is transferred to the paternal line¹⁸⁵.

A wife who has been divorced without just cause has the right of *Mut’ah*. She can apply to the court for *Mut’ah* and the court will order the husband to pay certain amount of money to his wife after hearing appeals from both sides under section 56. Besides, the Act also has given the rights of “mahar” to any married woman. These are not being affected even after the dissolution of her marriage under section 58. Any married woman who has been divorced is entitled to

¹⁸⁴ Maryam Uwais, *Isa wall empowerment initiative*, 14th April, 2009, *The Compatibility of the Child Rights Act with Islamic Legal Principles*, PP:1-3, available at: <http://www.iwei-ng.org/>

¹⁸⁵ Maha Alkhateeb, *Islamic marriage contracts*, PP: 19, available at: <http://www.peacefulfamilies.org/>

receive maintenance from her former husband within period of iddah. The court's order will cease on the expiry of the period of iddah.

The right also expires if the wife is adulterous or remarries under section 65 (1) and (2). Arrears of maintenance can be recovered as debt. A husband will be asked by the court to pay arrears to his former wife. If the husband died before paying the debt, then, it must be paid from his property under section 69 (1). If the arrears of maintenance have not been paid before the death of the former wife, then, a representative can claim it under section 69(2).

During the process of appealing for payment of maintenance, a wife can appeal for a temporary interim maintenance. It will be in effect until the court passes the order for maintenance under section 70. A divorced woman is entitled to stay in the home where she used to live if the husband is not able to get another suitable accommodation for her. The right to accommodation provided will cease if the period of iddah expires; if the period of guardianship of the children expires; or if the woman remarries. After any of the said periods expire, the husband may apply to the court for the return of the accommodation under section 71(1) and (2). The mother is entitled to have the right to hadhanah during the marriage as well as after its dissolution. When the mother is disqualified from having the right of hadhanah or custody of her children, the court then will pass the right to the following order of preference; that is the maternal grandmother, how-high-so ever; the father, the paternal grandmother, how-high-so ever; the full sister, the uterine sister, the sanguine sister, the full sister's daughter; the maternal aunt; the paternal aunt; the male relatives who could be their heirs as asabah or residuary under section 81(1) and (2). The court may penalize whoever fails to comply with the order for maintenance. The court may sentence a month imprisonment of each unpaid monthly payment under section 132¹⁸⁶.

Rights of a man after marriage are guardianship of the children and their property and hadhanah. Rights of a woman after marriage are mut'ah or consolatory gift, mahar or obligatory marriage payment, iddah or post marital waiting period, arrears of maintenance, interim maintenance, accommodation, hadhanah or custody of children and order of maintenance. After marriage the guardianship of the children and their property will more favour to the father

¹⁸⁶ Law teacher, Rights between Men and Women in Islamic Family Laws (IFL), available at: <http://www.lawteacher.net/>

which is the primary legal guardian to the children. When he died, the legal guardianship will be passed to the father's father, the executor appointed by the father's will, the father's executor's executor on certain conditions¹⁸⁷.

Cases of child custody fall under muamlat in compendiums of Islamic Fiqh. Muamlat unlike Ibadat are subject to change with respect to time and place. Islam lays down general principles as a directive for deciding child custody cases. These principles are still upheld by the contemporary courts and legislative authorities of the modern Muslim world. In the light of hadith literature available and the decisions of Prophet Mohammad on the cases brought before him on child custody, three principles have been laid down while deciding the custody of a child. Firstly, the mother possesses priority right of child custody so long as she does not remarry¹⁸⁸.

Some Muslim countries often restrict the rights of mothers to raise or even to have the right to visit their own children in the event of a divorce. Instead, these countries cite a "natural right" of fathers to have guardianship over their children; custody defaults to the father after a child reaches a particular (often very young) age. Paternal grandfathers or other male relatives of the father have preference in the event of his death, irrespective of the wishes or needs of the child. Loss of their children is a powerful threat, keeping women in otherwise unendurable marriages. Following divorce, Muslim women are typically given only limited custody over their children. The age at which that custodial arrangement ends differs among countries but is almost uniformly higher for girls than for boys. A range of Islamic countries, such as Egypt, Lebanon, and Pakistan, apply the same sort of formulaic model. Some countries, such as Algeria and Iran, render it yet more unfavourable to the mother by having custody revert to the father if the mother remarries. In some cases, even if the father is not deemed suitable for guardianship and custody, family members of the father are given priority over the mother and her relatives. Following divorce, Muslim women are typically given only limited custody over their children. The age at which that custodial arrangement ends differs among countries but is almost uniformly higher for girls than for boys¹⁸⁹.

¹⁸⁷ Ibid

¹⁸⁸ Al Bahaiqi, Sunan al Kubra, Dakkan, Vol8, p.4, Aayesha Rafiq, Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World, PP:3, available at: <http://www.ijhssnet.com/>

¹⁸⁹ Woodrow Wilson international center for scholars, Progressive Family Laws in Muslim Countries, August 2005, PP:24, available at: <http://www.wilsoncenter.org/>

Secondly in a situation where both parents profess different religions, custody of the child should go to that parent who follows the religion of Islam¹⁹⁰ and lastly when the child has gone past the years of minority (7 years) he will be given an option to choose between both parents. An analysis of the opinions/decisions of the Companions of the Prophet seem to be in complete harmony with the decisions of Prophet Mohammad. Decisions of the companions of the Prophet show that priority right of the child custody in the years of infancy goes to the mother¹⁹¹.

When the child reaches the age when he is in a position to decide right from wrong, his wish is taken into consideration and mother has a superior right of custody as long as she does not remarry¹⁹².

In addition when the child is in mother's custody, the father is responsible for his nafaqah. According to Shafi'i and Imam Hanbal, mother has the right of custody or upbringing till 7 years of age for both son and daughter. After this age the option will be granted to the children to choose with whom they wish to live. In Shi'a fiqh, mother has the right to keep her son in her custody till he is two years old and daughter till she is seven. After this, the right of custody is transferred to the father. According to the principles of established Muslim Jurisprudence, father is considered to be the child's natural and legal guardian because upon him is the responsibility of nafaqa of his child. Mothers are the custodians till a particular age after which the custody either reverts to the father or the child is given option by the court to choose between both parents, though no such age limit is stated in the texts. An interesting case has been recorded in Nail al Autar which was brought before Ibn e Taiymiya¹⁹³.

In this case, child custody was contested by both parents. Court gave the option to the child for choosing the custodian. He opted for the custody of the father.

¹⁹⁰ Al Bahaiqi, op. cit., vol 8, p.3 ; Sunan Abu Dawood (Karachi: Karkhana e Tijarat) vol 1, p. 305, Aayesha Rafiq, Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World, PP:3, available at: <http://www.ijhssnet.com/>

¹⁹¹ Zaid bin Ishaq bin Jariya narrated that once a child custody case was brought to Abu Bakr who decided in favor of the mother and then said I have heard from Holy Prophet (pbuh) that 'Do not separate the mother from her child. Aayesha Rafiq, Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World, PP:3, available at: <http://www.ijhssnet.com/>

¹⁹² Ibn Qayyam, Za'ad al Ma'ad, Translated by Syed Rrais Ahmad Jafri (Karachi:Nafees Academy) vol. 4, p.289. In another narration of the above mentioned case it is written that Abu Bakr told Umar that mother is more caring and gentle towards her children so she has a superior right of custody till she does not marry. Aayesha Rafiq, Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World, PP:3, available at: <http://www.ijhssnet.com/>

¹⁹³ Taqi ad din Ahmad ibn Taymiyya (1263-1328 CE), born in Harran what is Turkey today near Syrian border, was a Hanbali theologian of 7th century AH.

On it the mother asked the court to inquire from the child why he has preferred the father.

On court's inquiry the child said, mother compels me to go to the school where the teacher punishes me every day while the father allows me to play with the children and do whatever I like. On hearing this court gave the custody to the mother¹⁹⁴.

This clearly shows that wishes of the minor while deciding his or her custody has always been subject to the principle of welfare of the minor even in classical Muslim legal tradition. Classical scholars have added that when it is detrimental for the child to live with his or her mother due to her remarriage, profession or religion then the custody will transfer to the father. This further reinforces the principle of welfare of the child. In *Nayl al Autar* it is stated that, "It is essential to look into the interest of the children before they are given the option to choose between the parents for their custody. If it becomes clear about any one of them that he or she would be more beneficial to the children from the point of view of their education and training then there is no need of *qur'a* or choice of the children¹⁹⁵."

The mother has a right of custody for a male child until the child is capable of taking care of his own basic bodily functions and needs, such as eating, dressing and cleaning himself. This has been recognized at seven years of age. The custody of a male child is the right of the mother until the child is capable of taking care of his own self. This has been approximated at seven years of age, and the Fatwa (legal verdict) has been issued on this age, as normally children are able to take care of themselves at this age." (See: *Radd al-Muhtar*, 3/566) in the case of a female, the mother has this right of custody until she reaches puberty.

This has been declared at nine years of age. (*al-Mawsili, al-Ikhtiyar li ta'lil al-mukhtar*), The right of custody will be taken away from the mother if she:

1. Leaves Islam;
2. Openly indulges in sins such as adultery and there is a fear of the child being affected;
3. She does not attend to the child due to her leaving the house very often;

¹⁹⁴ Aayesha Rafiq, *Child Custody in Classical Islamic Law and Laws of Contemporary Muslim World*, PP:3, available at: <http://www.ijhssnet.com/>

¹⁹⁵ Ibid

4. She marries a non-relative (stranger) to the child by which the child may be affected;
5. She demands payment for the upbringing of the child if there is another woman to raise the child without remuneration.

It should also be remembered that after the transferral of custody from the mother to the father, the boy remains in the custody of the father until puberty, at which point, if he is mature and wise, he is free to choose with whom to live, or to live on his own.

As for the girl, custody remains with the father until she marries. (See: Qadri pasha, Hanafi articles, 498 & 499) irrespective of who (mother/father) has the right of custody, the other party has visitation rights according to mutual understanding and consent.

At all times, the father of the child is responsible for maintaining the child; in the case of a female, until she marries; while in the case of a healthy male, until he reaches maturity. In the case of a disabled child (male or female) the father is permanently responsible. When the mother has the rights of custody but does not have a shelter to stay in with the child, the father must provide shelter for both. (See: Radd al-Muhtar of Ibn Abidin)¹⁹⁶.

Other stipulations may reflect individual concerns and situations, including agreeing that his wife's child from another marriage live with them. Child custody after divorce is not usually considered within the marriage contract; however some modern contracts are reported to specify custodial arrangements to favour the mother. Although not tested in application, custodial agreements that contradict Islamically proscribed automatic transfer of custody to the father are believed to be enforceable¹⁹⁷.

Islam strongly encourages the Muslim community to find guardians for children without parental care.

According to Islam, a mother has been created with characteristics of love, mercy and care that are required for the sound development and rearing of children. "A mother, in 43 other words, has all the qualities to provide full

¹⁹⁶ Shaykh (Mufti) Muhammad Ibn Adam, Child Custody after Divorce, PP: 2,4, available at: <http://central-mosque.com/>

¹⁹⁷ Personal Communication, M. Radwan, Assistant Director for Political and Congressional Affairs, The Royal Embassy of Saudi Arabia, Washington DC. May 2005. Kristine Uhlman and Elisa Kisselburg, Esq. Islamic ShariaContracts: Pre-Nuptial and Custody Protections, PP: 9, available at: <http://www.umhani.com/>

custody to children. This is why the mother has primacy in the right of custody over the father.” in accordance with Islam, especially the Prophet’s teachings, when a mother meets all the conditions for custody, no one can take this right from her. In Islam, maturity, freedom and proper mentality are essential for child custody. Anyone who takes custody rights for children must have good morals, intelligence and all other capacities required to rear a sound, healthy child for society. No one who has bad morals and is a negative model for the child has the right to take custody of a Muslim child¹⁹⁸.

In Islamic law, the Hanafis acknowledge a deficient capacity for execution for purposes of some transactions for a person who has attained a degree of discretion, even if his mental faculties are not yet fully developed. Thus, a minor (*sabī*) who possesses discretion, or exhibits “mental maturity” may be assigned such a capacity, for the *khitab* of *muamalat*¹⁹⁹.

Types of custodies: Physical Custody: Regarding physical custody, Koranic verses provide that mothers have custody of children during nursing and up to the age of two or two and a half. The verses also provide that fathers and mothers should consult each other in raising their children. Islamic jurisprudence differentiates between custody of male and female children. Under Shi’a law, custody typically reverts to father when boys reach the age of two, while for Sunnis the age limit is seven, at which time a boy may choose to remain with his mother or live with his father²⁰⁰.

With girls, Shi’a custody reverts to the father at the age of sexual maturity, while Sunni rules vary. They include leaving the decision to the girl, continuing custody with the mother or reverting custody to the father. Sunnis and Shi’as also differ as to the age of termination of custody. Most traditions agree that upon sexual maturity, children should be given freedom of choice. Mothers are often awarded custody of children - up to age seven for boys and nine for girls. Exceptions include age two for boys under Jafari jurisprudence and mother’s continuation of custody of girls to the date of marriage in Maliki jurisprudence²⁰¹.

¹⁹⁸ Rights and democracy, June 2010, “Family Law Reform and Perspectives and Lessons Learned” Seminar Report 3rd International Conference Family Law Reform and Women’s Rights in Muslim Countries: Perspectives and Lessons Learned”, PP: 42,43

¹⁹⁹ Imran Ahsan Nyazee, chief Editor, Faculty of Sharia and Law, International Islamic University, Islamic law and the CRC, 2002, PP: 117, 118, 119 available at: <http://www.scribd.com/>

²⁰⁰ Abbas Hadjian, The Children of Shari’a, available at <http://www.lacba.org/Files/LAL/Vol36No2/3034.pdf>

²⁰¹ Ibid.

Prior to the age at which custody transfers from the mother to the father several factors could disrupt a mother's custody right such as the physical or financial inability of a mother to provide for children, or a finding of her insanity or remarriage; such factors may award custody to the mother's qualified next of kin, starting with the child's father. Whether paternal custody begins at two, seven, or nine, it may end at the age of puberty for boys or the first menstrual period for girls, when what is known as the age of discretion begins. At that age, children may decide with whom they would like to stay - the choice is not limited to a child's parents; grandparents, aunts, or uncles may also be chosen. A religious judge makes the final decisions on custody disputes. This judge has broad discretion and may consider physical, mental, emotional, religious, financial, or any other relevant factors, including a child's²⁰².

Legal Custody: Under Sharia, the father is the head of the family and in charge of the children until termination of custody. The preference for granting physical custody to mothers during a child's tender years does not change this general rule. In addition, because mothers and fathers are mandated to raise their children as Muslims, a non-Muslim (or a Muslim mother who converts to another religion) is not permitted to keep custody of a Muslim child. Fathers must approve of their children's education, including the places, types of schools attended and the type of education received. Although custodial mothers are restricted from remarrying, in some jurisdictions, a father's petition for custody based on a mother's remarriage may be waived if the petition is not raised in a timely manner. Employment of custodial mothers may be substantially curbed if the father disapproves. The father's obligation to provide a suitable residence for his children limits the freedom of custodial mothers to change their residence or their children's residence. Only the fathers can apply for their children's passports. In the majority of jurisdictions, children cannot leave a country without their father's permission or a court order. In some jurisdictions, un-permitted foreign travel by a custodial mother is a crime. Financial guardianship is vested in fathers and grandfathers unless transferred by agreement or assigned by the court to mothers or third parties. Fathers are the recipients of a child's earnings after divorce and are authorized to purchase, sell, encumber, and manage a child's properties. This right is especially significant if children receive inheritances or gifts during the marriage. This rule

²⁰² Ibid.

also is relevant when children receive public assistance or private insurance benefits²⁰³.

Sole Custody: One parent can have either sole legal custody or sole physical custody of a child. Courts generally won't hesitate to award sole physical custody to one parent if the other parent is deemed unfit. However, in most states, courts are moving away from awarding sole custody to one parent and toward enlarging the role both parents play in their children's lives. Even where courts do award sole physical custody, the parties often still share joint legal custody, and the noncustodial parent enjoys a generous visitation schedule. In these situations, the parents would make joint decisions about the child's upbringing, but one parent would be deemed the primary physical caretaker, while the other parent would have visitation rights under a parenting agreement or schedule. But it's best not to seek sole custody unless the other parent truly causes direct harm to the children. Even then, courts may still allow the other parent supervised visitation²⁰⁴.

Joint Custody: Parents who don't live together have joint custody (also called shared custody) when they share the decision-making responsibilities for, and/or physical control and custody of, their children. Joint custody can exist if the parents are divorced, separated, or no longer cohabiting, or even if they never lived together. Joint custody may be:

- A. Joint legal custody;
- B. Joint physical custody (where the children spend a significant portion of time with each parent); or
- C. Joint legal and physical custody.

Joint Custody Arrangements: When parents share joint custody, they usually work out a schedule according to their work requirements, housing arrangements and the children's needs. If the parents cannot agree on a schedule, the court will impose an arrangement. A common pattern is for children to split weeks between each parent's house or apartment. Other joint physical custody arrangements include:

²⁰³ Abbas Hadjian, THE CHILDREN OF SHARIA, PP:2, available at: <http://www.iaml.org/>

²⁰⁴ Nolo, Law for All, Types of Child Custody, available at <http://www.nolo.com/legal-encyclopedia/types-of-child-custody-29667.html>

- Alternating months, years, or six-month periods, or
- Spending weekends and holidays with one parent, while spending weekdays with the other.

There is even a joint custody arrangement where the children remain in the family home and the parents take turns moving in and out, spending their out time in separate housing of their own. This is commonly called "bird's nest custody" or "nesting."²⁰⁵

Pros and Cons of Joint Custody :Joint custody has the advantages of assuring the children continuing contact and involvement with both parents. And it alleviates some of the burdens of parenting for each parent.

There are, of course, disadvantages:

- Children must be shuttled around.
- Parental noncooperation or ill will can have seriously negative effects on children.
- Maintaining two homes for the children can be expensive²⁰⁶.

Qualifications for Custody: The scholars concur regarding the qualifications required for a female custodian, which are: her being sane, chaste and trustworthy, her not being an adulterous, a dancer, an imbibor of wine, or oblivious to child care. The purpose of these requirements is to ensure the proper care of the child from the viewpoint of physical and mental health. These conditions also apply if the custodian is a man. The schools differ as to whether being Muslim is a condition for custodianship. The Imamiyyah and the Shafi'i schools say: A non-Muslim has no right to the custody of a Muslim²⁰⁷.

The other schools do not consider Islam as a requirement for a custodian, except that the Hanafis say: The apostasy of a custodian, male or female, terminates his/her right to custody. The Imamiyyah state: It is compulsory that the female custodian be free from any contagious disease. The Hanbali school says: It is compulsory that she should not suffer from leprosy and leucoderma, and that

²⁰⁵ The Law Offices of Susannah Brown, available at <http://www.attorneysbrown.com/faqs.html>

²⁰⁶ Lina Guillen, Types of Child Custody, available at: <http://www.nolo.com/>

²⁰⁷ Huquq, Comparative Islamic law, available at <http://fiqh.huquq.com/2012/02/custody-al-hadanah.html#.VBoqv5SSz0c>

which is important is that the child should not face any harm. The four schools have said: If the mother is divorced and marries a person who is unrelated to the child, her right to custody shall terminate. But if the husband is of the child's kin, the right to custody remains with the mother. The Imamiyyah observe: The right to custody terminates with her marriage irrespective of whether the husband is related to the child or not²⁰⁸.

The Hanafī, the Shāfi`zi, the Imāmī and the anbalī schools say: According to the Malikī school, her right to custody does not revert. Is the right to custody specifically the right of a female custodian that terminates on her forgoing It -- similar to the right of pre-emption which can be surrendered. The Imami, the Shafi'i and the Hanhali schools say: Custody is the specific right of a female custodian, and she can surrender it whenever she pleases and she shall not be compelled to act as a custodian on her refusing to do so. There is a tradition from Malik regarding this, and the author of al-Jawāhir has argued on its authority that the jursts have not concurred that a female custodian can be compelled to act as a custodian, and the Shari'ah does not expressly mention such compulsion; on the contrary, the texts of the Shari'ah apparently consider custody similar to breast-feeding, and, consequently, she has the right to surrender her custody at will²⁰⁹.

The same principle applies where a child's mother seeks a divorce from her husband by surrendering in his favour her right to custody of the child, or when the husband surrenders to her his right to take away the child after the expiry of her period of custody.

This form of divorce is valid and neither of the two can refrain from rectifying their agreement after it is concluded, except by mutual consent. Similarly, if she surrenders her right to custody or he surrenders his right to take away the child, the compromise is binding and its fulfilment is mandatory²¹⁰.

Period of custody: The different schools of law identified either set ages (two, seven, nine, eleven) or stages of life (puberty, marriage) as marking the end of a woman's custody over her children, while the guardianship of the father might continue in certain aspects When the period of custody is over, the guardian is entitled to seek the physical removal of the ward to his household, assuming

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ HUQUQ, comparative Islamic law, Custody (Al-Hadanah), available at: <http://fiqh.huquq.com/>

that the ward has not married and moved away from the custodian; the ward may by then be of an age to choose with whom to live, according to the views of some of the schools. The fiqh rules did not allow the removal of a child from his or her mother's custody in the event that the child 'would not accept anyone other than her'²¹¹.

These patterns have continued in the more recent laws and also in amendments to the older laws such as those in Syria (where the 2003 amendments followed a focused advocacy campaign), Jordan, Iraq, Tunisia and Morocco. The 2004 Moroccan law subjects almost every substantive rule on custody to the child's interest. In the draft UAE codification approved by cabinet in 2005, a provision ending the mother's custody over girls at thirteen and boys at eleven provoked public condemnation by lawyers who had consulted on previous drafts and held these ages to be a curtailment of existing custody rights²¹².

The text of the law as passed maintained this position, while allowing the court to extend a woman's custody until the male ward reaches puberty and the female marries. It also provides that the woman's custody continues indefinitely if the ward is mentally or physically disabled, presumably on the assumption that this ward will remain in need of the functions of care normatively assigned to the mother. Both of these clauses are subject to the best interest of the child.

Paralleling the general developments in the period of women's custody, there has been a tendency in some laws to legislate for an overlap in the guardian/custodian roles. They may for example require the mother to financially provide for her children where the father is unable to and she has means, rather than leaving this responsibility (at least in the theory of the law) with the extended agnatic family through the order of male guardians, notably the paternal grandfather. While on one level this could be seen as reinforcing practice in the law, on another level it is not matched in the text by the transfer of the authorities of guardianship from the indigent father to the providing mother²¹³.

The 1984 Algerian law passed full guardianship to the mother where the father of minor children died; in 2005, more unusually, the amendments provided that in the event of a divorce, guardianship is to be conferred upon the parent to

²¹¹ Lynn Welchman, *Women and Muslim Family Laws*, p. 134, available at <http://books.google.tn/books?id=DiVmjTyZekEC&pg=>

²¹² Ibid.

²¹³ Ibid.

whom custody has been assigned by the court. In theory, this means that if a woman is assigned custody of her minor children after a divorce, she will be empowered to take all decisions and act in all their affairs on their behalf, rather than their father²¹⁴.

D. Child custody in Arab countries versus the CRC

Algeria: According to Article 62 custody is the education of the child in the religion of the father, schooling and the maintenance of moral and physical health. In the event of divorce custody is granted to the mother by the court unless this is not considered to be in the best interests of the child. If she is unable exercise this right, through incapacity, remarriage or death, then custody is transferred to the mother's mother, then the maternal aunt, then the father, then his mother and then the person next related to the child to the closest degree will be awarded custody, providing that the best interests of the child are so fulfilled (Article 64).

The judge has discretion to determine what is in the best interests of the child and usually will evaluate daily care, health, religious upbringing and academic education, before making a decision.

Article 65 states that the period of custody continues until a male child is ten, or up to his sixteenth year, by court order, if the mother has not remarried. A female child remains with the custodian until the legal age of marriage, which is 18 for females in Algeria. Custody will cease if a female custodian marries outside the prohibited degree of relationship to the child or prevents the father from carrying out his guardianship duties by moving the child away from his place of residence. In addition the maternal grandmother or aunt will lose custody if she resides with the mother who has lost custody due to remarriage to a man outside the prohibited degree of relationship to the child²¹⁵.

Bahrain: In May 2009, Bahrain approved a family law code for the first time (Law No. 19) which applies only to its Sunni citizens. In Bahraini Shia Sharia courts, personal status matters are still decided on a case-by-case basis by judges, who use their own discretion to interpret the Islamic tradition, drawing on Islamic sources. The Family Law organizes the marriage relationship and all

²¹⁴ Lynn Welchman, WOMEN AND MUSLIM FAMILY LAWS IN ARAB STATES, PP:134-137, available at: <http://eprints.soas.ac.uk/>

²¹⁵ Reunite international, ALGERIA, PP: 2, available at: <http://www.reunite.org/>

matters arising in connection with marriage, such as engagement, dowry, maintenance, parentage, separation, and custody. However, it is un-codified and governed by all-male religious Sharia courts. Influential sections of the religious establishment oppose a codified family law, while the government has recently demonstrated a lack of interest in pursuing the matter.

A Bahraini man can divorce his wife for any reason, while women can only request divorce only under certain specific circumstances. It is possible for a woman to seek divorce without the burden of evidence which a lengthy and arduous process. Even if a woman provides evidence in support of her bid for divorce, still is still required to return her dowry. A judicial divorce may take years, during which time women may not be financially supported, and the process is not guaranteed to end in a divorce. Divorced Shia women retain physical custody of their sons until they are seven and their daughters until they are nine. The new personal status law allows Sunni mothers to retain custody of their daughters until they are 17 years of age or married (whichever comes first) and sons until they are 15 Even if the mother has custody, the father remains as the children's legal guardian.

In determining issues of custody, Bahraini courts consider the parents' religion, place of permanent residence, income, and the mother's subsequent marital status. Priority is generally given to a Muslim father or his nationality.²¹⁶

In classical Jaafari law the mother has the most right to the physical care of her children if she is Muslim and if her female children are under the age of seven and her male children are under the age of two. According to Malaki principles the mother has custody of female children until they marry and male children until they reach puberty, the maximum age for puberty in males being set at fifteen.

If Shaafi principles are applied the mother would have custody until her children reach the age of discretion, the minimum age for this normally being set at seven.

The children then have to choice to remain with the mother or to go to live with the father. A non-Muslim mother may be denied her right to the custody of her Muslim children as she may be deemed unfit to raise her children in accordance

²¹⁶ Bahrain Center for Human Rights (BCHR), Family Law In Bahrain, 2014, PP:5-6, available at: <http://tbinternet.ohchr.org/>

with Islam²¹⁷. To decide on custody disputes, the Bahrain courts will take into consideration the religion, residence, income, marital status, health, and all surrounding circumstances of each of the parents. Pursuant to Article (129) of the Family Law, the wife will normally have custody of the son under 15 years and the daughter until she is 17 or she marries. Once the child has attained the age of discretion, he/she will be allowed to choose the parent or the legal custodian he/she wishes to live with, within the limitations of the Family Law.

It is worth mentioning that the Kingdom of Bahrain has faced some controversy in relation to parental child abduction. The Kingdom of Bahrain deems parental child abduction a criminal offence only if a parent removes the child from the person awarded custody or who is otherwise entitled to custody (i.e. after the act is done). If there is an ongoing custody dispute or if there is a real risk that a parent may abduct the child, either parent may apply to the Bahraini court to impose a travel ban on the child but it is not guaranteed that the court will make such an order²¹⁸.

Egypt: Family Law in Egypt is governed by various laws including the Personal Status Law 25 of 1929 as amended by Laws 100 of 1985 and 1 of 2000. These amendments were introduced in order to reform some aspects of Family Law using the practice of *talfiq* or patching. This allows legislators to incorporate parts of the doctrines from the different schools of Islamic Law into one code. Article 20 of the law number 25 issued in 1999 regarding child custody has been amended in the interest of the minor and the whole family as the cell for society. In the past, the age of a minor was up to seven years for boys and ten years for girls. But in 1979 this law was amended to be ten years for boys and twelve years for girls.

This was recently amended again and now the age of both (boy and girl) has been set to fifteen years. Among other amendments, it has been added that after the age of fifteen, the minor will have the right to choose who he/she wants to live with. However, this amendment has been criticized by many. The mother can claim a fee for guardianship she is giving to the minor in the court as long as she is divorced.

²¹⁷ Reunite international, Bahrain, PP: 2, available at: <http://www.reunite.org/>

²¹⁸ Reem Al Rayes, FAMILY LAW IN THE KINGDOM OF BAHRAIN, PP:3, available at: <http://www.zeenatalmansoori.com/>

This cannot be called a salary or wage, but it is a monthly fee that a mother can ask to receive for the child²¹⁹. Egyptian family law has also gone some way to adapt to the changing social realities of contemporary Egypt. Law No. 4 of 2005 amends Article 20 of Law 25/1929 and reads that the woman's right to custody of her children shall terminate at the age of 15 for both male and female children. The judge shall then give the child the choice whether or not to remain with the custodian without maintenance until the male reaches legal age or the female marries.

This is a significant departure from the principles of the traditional Hanafi position that has shaped Egyptian family law. However, there are conditions attached to the right of the mother to custody. She will lose custody if she remarries or is shown to be an "unfit" mother. If the father is Muslim but the mother is not, she must raise the child as a Muslim in order to retain custody. Often the court will not grant custody to a non-Muslim mother since this could harm the child's religious upbringing.

In some cases foreign Muslim mothers have been allowed to exercise custody outside Egypt if an agreement is made to ensure regular contact between the child and the father. If the parents are not married the courts may rule that there is only a legal relationship between mother and child and therefore the court would permit the child to leave Egypt with the mother.

If the mother is not able to exercise custody of her children then custody is awarded to relatives in the following order; the mother's mother and maternal grandmothers, the father's mother and his maternal grandmothers, full sisters, uterine sisters, consanguine sisters, the daughter of a full sister, the daughter of a uterine sister, maternal aunts, the daughter of a consanguine sister, the daughter of a brother, maternal aunts of the mother, maternal aunts of the father, paternal aunts of the mother, paternal aunts of the father. If no female custodian can be found or the period of female custody has expired then custody is given to the father. If the father is unable to exercise custody then custody is awarded to his male agnatic relatives and then the non-agnatic relatives. Article 284 and 292 of the Penal Code mention that it is a crime to take away a child from the person who has the guardianship; there is a punishment and imprisonment on such violations. The conditions for female guardianship are:

²¹⁹ Onenewsnow, Custody battles in Egypt bring Islamic law into question, available at: <http://onenewsnow.com/>

- A woman must be mature;
- A woman should be Muslim. However, a child can be given to a Jew or Christian mother until the time that the child has reached an awareness level to understand religion. When he/she reaches that age, his/her guardianship should be transferred to a Muslim woman, since a mother's religion can affect the child as well;
- A woman must be healthy and capable enough for taking care of the minor;
- A woman must be honest, with good reputation in society and without criminal background. If a woman is married with a person who is a stranger for the child (meaning as long as she is not married with the child's uncle, brother etc.) she is only a good guardian as long as the child does;
- Not have a step mother. As a rule it is not preferable for a child to stay with a step father. In this case the judge can question whether it is good for the child to live with a mother and step father or not;
- Any party (mother or father) trying to snatch the minor against his/her will or his/her guardian's will, will be punished, imprisoned or fined duly.

The guardianship house as an issue: Before 1979 there was no guardianship. The female guardian will take the children inside her private house and the house of her family. But this was not the responsibility and obligation of the father at all. Under article 100 which was added in 1979 and amended in 1985, the divorced father is obliged to prepare a separate house for his children and their guardian and this separate house should be suitable for them and should fit them. On this issue of suitable house, there has been a tough discussion in the parliament. If the father does not prepare a suitable house, the guardian has the right to choose a house or pay amount of money as rent and get this rent money from the father of the child/children²²⁰.

Islamist judges typically resort to Article 2 of the Egyptian Constitution, which states that "principles of Islamic law are the principal source of legislation." Sharia-based decisions that rule contrary to Egyptian statutory law have led the Egyptian Initiative for Personal Rights (EIPR), an independent human rights organization, to protest before the African Commission on Human and Peoples

²²⁰ Orzala Ashraf Nemat, August 15-17, 2006, "Comparative Analysis of Family Law in the Context of Islam, PP: 48, available at: <http://af.boell.org/>

Rights (ACHPR). The ACHPR was formed by the African Union to oversee the implementation of its Charter on Human and People's Rights. An investigation, decision and recommendation by the African Commission to the Egyptian government would lend considerable weight to the EIPR's efforts to enforce Egyptian Personal Status Law, which states explicitly the mother's right to custody of her children until they reach age 15.. "The case also charges that the government violated the two boys' right to freedom of religion and contravened the state's legal obligation to protect child rights."²²¹

Iraq: Iraqi Private Status laws will apply if one or both spouses are Muslim, and custody disputes will be decided in the Family Court. If the parents are of another faith then the rules set by their own religious authorities will apply. Under Iraqi Private Status law, the mother has the right to custody of both male and female children until the age of eighteen. If the mother remarries or if the father proves to a Family Court that the mother is negligent the court can then decide not to give custody to the mother. It typically takes three to six months for custody to be decided through the Iraqi courts. Appeals are possible and usually take approximately three months. The parent who does not have custody is entitled to contact with the child²²².

Jordan: The Jordanian Law of Personal Status was promulgated in 1976. The following is a description of the provisions contained in the 1976 law: In the event of divorce the mother normally has the most right to custody of the minor child. Article 155 of the Personal Status Code states that the custodian must be adult, sane, trustworthy and able to raise the child. She must not be an apostate, remarried to someone who is not a mahram of the child or live in a place where the child is unwanted. A new provisional law was introduced in 2001 during parliamentary recess but it was rejected in June 2003 by a new parliament. The provisional law was returned to parliament with minor amendments for consideration and a vote in June 2004 but was rejected.

Although custody is lost if a Muslim custodian converts from Islam, there is no prohibition against a woman being a custodian if she was born into a religion other than Islam. Leaving the child unattended can also result in the right of custody being lost. However, it should be noted that there have been several judgments issued by the Sharia Court of Appeal that hold that a woman may

²²¹ Onenewsnow, Custody battles in Egypt bring Islamic law into question, available at: <http://onenewsnow.com/>

²²² Gov.Uk, child abduction in Iraq, available at: www.gov.uk

retain custody even if she leaves her ward to go out to work, as long as she provides suitable alternative care. In some circumstances the father may take custody if it can be shown that the mother does not meet the necessary criteria. These decisions are usually taken by the court on the basis of the child's welfare, which is judged by religious standards. If the mother is unable to fulfil the duty of custodianship the right passes along the female line according to traditional Hanafi rules.

The period of the mother's custody ends when the child reaches puberty if she has devoted herself to the raising of her children (Article 162). If the custodian is not the mother then custody ends at nine for a male child and eleven for a female²²³.

Kuwait: In the matter concerning custody issues of young child/children generally resulting from divorce, both Sunni and Shia laws issues custody in favour of the mother. Sunni law allows boy child who has reached puberty to choose which parent he wants to live with. Girl child stays with her mother until she gets married. Sunni law does not allow the divorced Kuwaiti or non-Kuwaiti parents from travelling with their children out of the country without the consent of the other parent. Under Shia law, mother can have the custody of the boy child until the age of 7 after which he stays with his father.

In case of a girl child, she stays with her mother until attaining puberty when she can choose which parent she wants to live with. It is up to the judge to review the case and decide which parent ought to receive the custody of the boy or girl child once the matter becomes related to the security of the child²²⁴.

According to Article 189 of the KPSL, the mother has the most right to custody of her children in the event of divorce. After the mother the right passes in the first instance to the mother's mother, followed by the maternal aunt, the mother's maternal aunt, the mother's paternal aunt, the paternal grandmother, the father, the sister, the paternal aunt, the father's paternal aunt, the father's maternal aunt, the daughter of the brother and the daughter of the sister.

If there are two persons with equal rights to custody of a child a judge has the power to decide who is most suitable for the role of custodian. Article 191 states

²²³ Reunite international, Jordan, PP: 3, available at: <http://www.reunite.org/>

²²⁴ Helpline law, FAMILY LAW IN KUWAIT, available at: <http://www.helplinlaw.com/>

that if the person with the right of custody remains silent about that right for a year without good reason they will lose their claim to custody. Article 190 stipulates that the custodian must be adult, sane, honest and able to raise the child and safeguard his or her health and moral upbringing.

If a male is awarded custody of a female he must be among those prohibited from marrying her. He must also be able to provide a female carer who is able to oversee the nurturing of young children in his care.

For Sunni Muslims of the Maliki School the period of custody continues until a male child reaches puberty. In Islamic law the maximum age recognized for puberty in males is fifteen. The mother retains custody of a female child until she marries, as established in Article 194 of the personal status code. The mother may lose custody before this if she is incapable of raising the child according to religious standards or if she remarries someone who is not a mahram to the child. If the mother is non-Kuwaiti the court may judge that she is unable to meet the requirements to raise the child and will award custody to the Kuwaiti father.

Article 192 states that a non-Muslim may exercise custody over a Muslim child until he or she is able to discern in matters of religion. The non-Muslim will lose custody of a Muslim child if he or she begins to grow accustomed to a religion other than Islam even if the child is not considered able to discern in matters of religion. In all cases the longest that a Muslim child may stay in the custody of a non-Muslim is until he or she has reached the age of seven²²⁵.

Lebanon: The Sunni Sharī'ah courts in Lebanon consider a divorce of this kind as valid, but consider as invalid the condition that she would surrender her right to custody; any compromise which includes the surrendering of her right to custody is considered void. But the Ja'fari Sharī'ah courts consider the divorce, the condition, and the compromise as valid²²⁶. The period of custody for Sunni Muslims is guided by traditional Hanafī law and therefore lasts until a male child reaches the age of seven and a female child reaches the age of nine.

This is also the period of custody established in the Druze code. Whereas in Shia Jaafari law the period of custody ends when a male child reaches the age of two and a female child reaches the age of seven.

²²⁵ Reunite international, kuwait, PP: 3, available at: <http://www.reunite.org/>

²²⁶ HUQUQ, comparative Islamic law, Custody (Al-Hadanah), available at: <http://fiqh.huquq.com/>

For Sunnis and Druze the person with the most right to custody is the mother, however she, and any other custodian, must fulfil certain conditions. She must be an adult, of good character, have the ability to raise and care for the child, she must not be an apostate and must not remarry outside the prohibited degree of relationship to the child. If the mother cannot be the custodian the duty is passed down the maternal line to the maternal grandmother, paternal grandmother, full sisters, uterine sisters, and consanguine sisters, nieces in the same order of priority as sisters and aunts again in the same order. According to the code applied to Sunnis if the mother is Christian or Jewish then the period of custody ends when the child reaches an age at which he or she can discern in matters of religion²²⁷.

Libya: The provisions relating to child custody are contained in the Personal Status Law, Chapter 6 Articles 62-70. According to Article 62(a) Hadana or custody is the protection and raising of a child and the looking after his or her affairs. During the subsistence of a marriage Article 62(b) accords the right of custody to both parents. In the event of divorce the right to custody is the mother's. The period of custody follows normal Maliki rules and lasts until a male child reaches puberty and until a female child marries, but this should not interfere with the authority of the guardian over the upbringing of the children.

If the mother is unable to exercise this right to custody it is then accorded to her mother, then the father, then the father's mother, then females within the prohibited degree of relationship to the child and then males within the prohibited degree.

Article 62(c) states that the court must follow this order as regards the mother, her mother, the father and his mother but then has discretion to award custody to any of the relatives mentioned in the previous paragraph in accordance with the child's best interest. The custodian is entitled to wages for caring for the child. If the custodian is the mother she will receive this only after being divorced. If the custodian is also the divorced wife she should be provided with living accommodation for as long as she exercises custody.

In order to be eligible to exercise custody, Article 65 states that the person, male or female, must be sane, trustworthy, free of terminal illness and capable of raising the child.

²²⁷ Reunite international, Lebanon, PP: 2-3, available at: <http://www.reunite.org/>

A woman may not marry someone who is not within the prohibited degree of relationship to the child. A man must be able to show that there is a female who would be able to assist him in raising the child. If the mother is kitabiyya, a follower of Judaism or Christianity, she will still be awarded custody of a Muslim child as long as she raises the child in the religion of the father. Although the current legislation favours granting custody to mothers, discretionary judicial practice on the other hand, tends to pass custody to the father upon divorce, particularly if the mother is not Libyan²²⁸.

Morocco: A. The Personal Status Law was amended in 1992, 1993, and 2004 in order to increase gender equality. In the event of divorce, children up to the age of 15 stay with their mother, and thereafter may choose to stay with the mother or father. A custodian must be an adult of good character who is able to safeguard the health and moral education of the children and who is free from contagious diseases.

Subject to conditions, children remain in the custody of their mother even if she remarries. The children always spend the night at the custodian's house unless a judge decides otherwise. The court may resort to the assistance of a social worker to prepare a report on the custodian's home and the extent to which it meets the material and moral needs of the children²²⁹. The Moroccan family code in its revised form contains language guaranteeing a women's right to custodianship regardless of her proximity to the father or marital status. It also makes a distinction between money paid as restitution or compensation to the mother and the sum required to maintain the same quality of life of the child, ensuring that one alimony payment will not take the place of parental obligation of continued support.

In the aftermath of reform of Morocco's Moudawwana in 2004, a woman not only has equal (and frequently primary) standing in judicial dispensation of children, her proximity to the father, choice of employment, or future marital status do not disqualify this standing. She also has the right to appeal when custody is awarded to the father and can regain custody herself by showing that the reason that caused her to lose this right has disappeared. "Child custody is now to be granted to the mother, then the father, then the grandmother on the mother's side. Should this prove to be impossible, the judge will entrust custody

²²⁸ Reunite international, Libya, PP: 3-4, available at: <http://www.reunite.org/>

²²⁹ Abbas Hadjian, THE CHILDREN OF SHARIA, PP:4, available at: <http://www.iaml.org/>

to the best qualified relative in the child's family, keeping in mind the child's interest."

Additionally, biological functions, and hence expectations of familial duties, do not have a bearing on the age at which a girl is not subject to the care of a guardian. Both male and female children gain majority at 18²³⁰.

Oman: When child custody disputes arise between parents of any religion, the custody decisions by Omani courts are based on Islamic (Shari'a) law; Oman follows in fact the Abadhi confession and school. Custody cases can be very complex and are usually determined on a case-by-case basis. When making decisions regarding child custody matters, Omani courts consider the parents' religion(s), place(s) of permanent residence, income, and the parents' marital status. (Note: Omani law differentiates between custodianship and guardianship. Generally speaking, a custodian is awarded custody of the child and is responsible for his/her upbringing including education and care. A guardian is responsible for the child's financial support).

Omani courts do not, as a general rule, award custody of "dual national" (U.S./Omani) children to an American mother or father, even one who is Muslim. A fundamental consideration of awarding custody is the parent's place(s) of permanent residence and degree of access to the children. Custody of very young children is generally granted to the mother as long as certain restrictive conditions are met²³¹.

Once the children come of age (for males completion of their seventh year of age, for females the onset of puberty), the father can appeal for, and will usually be awarded, full custody provided certain restrictive conditions are met. If a father were unable or unfit to be custodian of his children, the court may give custody to another family member. Shari's court judges have broad discretion in custody cases and often make exceptions to these general guidelines, particularly in cases in which a parent is from an influential family or has powerful connections in Oman. Even when a mother is granted custody, the

²³⁰ Woodrow Wilson international center for scholars, *Progressive Family Laws in Muslim Countries*, August 2005, PP: 27, available at: <http://www.wilsoncenter.org/>

²³¹ Passports USA, *International Parental Child Abduction*, available at http://www.passportsusa.com/family/abduction/country/country_516.html

non-custodial father maintains a great deal of influence on the rearing of the children²³².

In many cases, the father has been able to acquire legal custody of children against the wishes of the mother when she is unable or unwilling to meet certain conditions set by law for her to maintain her custodial rights. For example, if a mother refuses to give the father access to his child or attempts to leave Oman with the children without the court's permission, a mother's custody rights can be severed. The Omani court can sever a mother's custody if it determines that the mother is incapable of safeguarding the child or of bringing the child up in accordance with the appropriate religious standards. Either parent can lose custody by re-marrying a party considered "unmarriageable," or by residing in a home with people that might be "strangers." However, the final decision is left to the discretion of the Shari'a court. Shari'a law forbids the removal of children from Oman without first obtaining permission from the court.

The U.S. Embassy cannot prevent the Omani government from arresting and either deporting or prosecuting an American citizen who violates Omani law. Persons who wish to pursue a child custody claim in an Omani court should retain an attorney in Oman²³³.

Palestine: According to the GLFR the period of hadana, or the mother's custody, lasts until a male child is seven and a female child is nine. When a male child reaches the age of fifteen he may choose whom he resides with.

A female child does not have this choice. The court has the authority to extend the custody period in the interests of the child to nine for a male child and eleven for a female. If the mother is absent or unable to meet the criteria for custody, then custody will pass to the maternal grandmother and then the paternal grandmother. A female custodian will lose custody if she remarries and both the custodian and the guardian must be sane, adult, and trustworthy and must not be an apostate from Islam or be an atheist. They must also not live with a child in a place where the child is disliked²³⁴.

Sharia courts in Palestine are extending the period of a mother's custody in advance of the promulgation of a Palestinian law of personal status, to the disgruntlement of at least parts of their constituency. Towards the end of 2005,

²³² Ibid.

²³³ U.S. Department of State, international Parental Child Abduction, available at: <http://www.passportsusa.com/>

²³⁴ Reunite international, Palestine, PP: 2, available at: <http://www.reunite.org/>

the press reported the Legal Committee of the Palestinian Legislative Council criticizing recent action of the Sharia courts in 'raising the age of custody to fifteen' in advance of any legislative change. Institutional sensitivities were evident in comments reported from the Committee, to the effect that the Sharia courts should not act on a draft text, and should await decisions from the Legislative Council to unify Muslim family law in the West Bank and Gaza Strip²³⁵.

However, there was also evidence in the report of objections springing from cultural practice and expectations, rather than institutional caution the report noted that the Committee had examined this matter as a result of the complaints it had received to the effect that raising the age of custody to fifteen will lead to many problems, especially as it gives the girl the right to live in the house of her maternal uncles, away from her father and her paternal uncles, who are closer to her in lineage (Nasab), for fifteen years; and she may marry directly afterwards, so her father will have no role in her upbringing. Such comment illustrates a number of the assumptions that may have supported the more traditional fiqh rules, including the primacy of lineage through the father and the prospect of marriage for the female ward at a relatively young age.

It also illustrates the internal connection and inter-reliance of different areas of family law currently targeted for reform: here, for example, efforts to increase the age of marriage, particularly marriage by girls under the age of eighteen, with the extension of the period of women's custody over minor children²³⁶.

Qatar: Qatar's law as to child custody is Sharia law and is codified in the Qatari Law of the Family, Law no. 22 of 2006. Qatar applies the Maliki school. All child custody disputes are decided by Qatari courts based on Islamic Sharia law, regardless of the religion of the parents. The precepts of the statutory law are completely subordinated to the religious precepts of Islam. The Qatari courts are required to apply Sharia law even if the parents are not adherents to that religion. Qatari law applies the Sharia law concept of a sharp division between the physical custody of a child and the legal guardianship of a child. The mother is given an express statutory preference for physical custody,

²³⁵ Lynn Welchman, Women and Muslim Family Laws in Arab States, available at <https://openaccess.leidenuniv.nl/bitstream/handle/1887/13374/Women+>

²³⁶ - Lynn Welchman, WOMEN AND MUSLIM FAMILY LAWS IN ARAB STATES, PP:136, available at: <http://eprints.soas.ac.uk/>

up to a certain age of the children. The father is given an express statutory preference for guardianship.

It is extremely rare for that right to be taken away from him. It is deemed the “natural right” of the father to assert such rights to the exclusion of the mother. Guardianship is akin to legal custody. It provides the father with the exclusive right to make decisions concerning the child. Qatari law expressly states that the mother shall have custody of children up to certain defined ages.

It lists 18 individuals or categories of relatives successively entitled to claim custody of a minor child, starting with the mother, as being entitled to custody, so that if the mother loses her primary right to custody – whether by reason of her remarriage, her denial of Islam or otherwise -- the next relative on the list has the primary right to custody. Qatari law provides for enormous limitations on a mother's right to custody if she is non-Muslim²³⁷.

Qatari law provides that if a mother remarries she is automatically subject to the loss of her rights to custody of the child (unless she marries the father's brother or another close relative of the child). (Qatar Family Law, Article 168). Qatari law provides that a women's testimony is equal to half of a man's. It expressly provides that a mother who is Muslim has far greater custodial rights than a mother who is not a Muslim. The Qatari family law allows a Muslim mother to have custody of a child until the child is 13 (if a boy) or 15 (if a girl) (Qatar Law, Article 173) but it permits a non-Muslim mother to have custody only until the child is 7 (Qatar Law, Article 175) and even then she must raise the children as Muslims in order to retain custody. Qatari law expressly provides for a mother who renounces Islam to lose all rights of custody over her children. (Qatar Family Law, Article 175). It expressly provides for a mother to lose all rights of custody over her children if her conduct creates a “fear that the ward is acquiring a different religion.” (Qatar Family Law, Article 175). It provides that the Hanbali school of Islam is the residual source of all governing rules, “unless the court decides to apply a different opinion for reasons set out in its ruling.” In the absence of Hanbali text, the court is directed to “another of the four schools” and failing this to the “general principles of the Islamic shari'a.” (Qatar Family Law, Article 3)²³⁸. The Shafii; and the Hanbali; schools state: A female custodian has the right to claim a fee for her services irrespective of whether she

²³⁷ The Law Office of Jeremy D. Morley, International Family Law, available at http://www.international-divorce.com/qatar_child_custody

²³⁸ Jeremy D. Morley, Qatar's Child Custody Law, available at: <http://www.international-divorce>

is the mother or someone else. The Shafi' s clarify that this fee shall be paid from the child assets if any; otherwise it is incumbent upon the father, or upon whoever is responsible for the child's maintenance²³⁹.

The Malik's and the Imamiyyah observe: The female custodian is not entitled to any fee for her services. But the Imamiyyah add: She is entitled to be paid for breast-feeding. Therefore, if the child has any assets she shall be paid out of that; otherwise, the father shall pay it if he is capable of doing so (al-Fiqh 'ala al-madhahib al-'arba'ah, vol.4; al-Masalik; vol.2). The Hanaf; school has said: The payment of fee for custody is wajib if: there does not exist any marital relationship between the female custodian and the child's father; if she is not in the course of observing the 'iddah of a revocable divorce given by the child's father; if she is observing the 'iddah of an irrevocable divorce of an invalid marriage, in which case she is entitled to receive maintenance from the child's father. If the child has any property, the payment shall be made from it; otherwise the payment shall be made by the one responsible for the child's maintenance (al-'Ahwal al-shakhsiyyah by Abu Zuhrah)²⁴⁰.

Sudan: In Sudan, there are several areas of concern on civil rights and freedoms which are in conflict with the principle of non-discrimination and the best interest of the child in the CRC. But they also contradict sections of the Child Act (2010) which provides a child's right to protection against all forms of discrimination and the best interest of the child in the CRC. Custody of children is also gendered and differences exist between northern and southern laws and customs. According to the Muslim Personal Law of 1991, the mother has custody (hadana) of her daughters until they are nine years old and of her sons until they are seven years old when she divorces the father. Although it is based on classical Hanafi principles there is some scope for judicial discretion²⁴¹.

Article 115 establishes the period of the mother's custody as until the age of seven for a male child and until the age of nine for a female child. The judge may extend this until puberty for the male child and marriage for the female child, if it is considered to be in the best interests of the child to do so. The mother has the primary right to custody but conditions are placed upon that

²³⁹ Huquq, Comparati Islamic Law, available at <http://fiqh.huquq.com/2012/02/custody-al-hadanah.html#.VBovlZSSz0c>

²⁴⁰ HUQUQ, comparative Islamic law, Custody (Al-Hadanah), available at: <http://fiqh.huquq.com/>

²⁴¹ Samia al-Nagar, Sudan Country Case Study: Child Rights, NORAD and SIDA, available at http://www.sida.se/contentassets/e3a7b0cb84274558afc2720451885d62/20113-sudan-country-case-study-child-rights_3127.pdf

right. The custodian must be an adult, of sound mind, trustworthy, free from contagious diseases and able to raise the child²⁴².

The female custodian of a male child should be within the prohibited degree of relationship to that child. Similarly, the male custodian of a female child must be within the prohibited degree of relationship to that child. A male custodian must also be of the same religion of the child and be able to show that there is a female who can assist in the duties of custody. In Sudan the custodian may work outside the home if suitable arrangements are made for the care of the child. A female custodian would normally lose custody if she remarried and her spouse is not within the prohibited degree of relationship to the child. However, the judge does have a degree of discretion in this matter. If the mother cannot be the custodian, the right to custody passes to the maternal grandmother, then the paternal grandmother, the full sister, the uterine sister, the consanguine sister, the daughter of a full sister, the daughter of a uterine sister and then the daughter of a consanguine sister²⁴³. Custody is traditionally a contentious subject in southern Sudanese society, much more so than in Sharia law which is very clear on the issue. In southern Sudanese communities custody of children is a complex issue, being bound up with marriage payment (dowry) of 'bride wealth' and divorce. The most complicated aspects concern girls who might attract considerable 'bride wealth' to a family upon marriage. It is not uncommon for a young woman to become pregnant and the man refuse to marry her. She and her child would remain with her parents. Whenever the child is a girl and grows up to be an attractive, marriage able (and valuable) individual, biological fathers commonly claim these girls as daughters in customary law courts (Jok et al. 2004)²⁴⁴.

Saudi Arabia: Child custody battles are difficult ordeal for Saudi women. In order for a woman to be heard in court or to file a court case, she needs a legal guardian. She also must be accompanied by her male guardian to prove her identity. This puts Saudi women at a great disadvantage because their guardians can also be the very ones they are fighting against: their husbands. Because a father has legal custody for his children, mothers cannot travel with her children, enrol them in school, obtain school or medical files, or open bank accounts for their children without the father's permission.

²⁴² Ibid.

²⁴³ Reunite international, Sudan, PP: 2-3, available at: <http://www.reunite.org/>

²⁴⁴ Samia al-Nagar, Sudan Country Case Study: Child Rights, PP:18-19, available at: www.oecd.org

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Religious law (Sharia) will apply if one or both spouses are Muslim, and custody disputes will be decided in the family court. Under Sharia law, the mother is entitled to custody of her children up until the age of nine for boys and seven for girls. The mother will retain the right of custody up until these ages unless the court rules the mother is not of sound mind, has the intention to move the child to another country or has remarried. It typically takes approximately six to eight months for a custody cases to process through the family courts. Appeals are possible through the Court of Cassation and can take up to two years. If neither parent is Muslim, Sharia law does not apply, unless one of the parents approaches the local court seeking to have custody of the children. The parent who does not have custody is entitled to contact with the child²⁴⁶.

Somalia: The mother has priority in the right to custody of the children following the separation of the parents. Article 64 of the Family Code permits the mother to have custody of her male children until they reach the age of 10 and of her female children until they reach the age of 15. If the mother remarries she may lose custody of younger children, unless the father gives his consent to the continued custodianship of the mother.

If the father is deceased then the mother will keep custody even if she remarries someone outside the prohibited degree, according to Article 67 of the Family Code. Article 69 establishes the right of the court to extend the period of custody if this is in the best interests of the child. After the mother the father has the right to custody. If both parents are absent the court may appoint a custodian

²⁴⁵ Saudi Arabia: Male Guardianship Policies Harm Women", *Human Rights Watch*, April 21, 2008, <http://www.hrw.org/news/2008/04/20/saudi-arabia-male-guardianship-policies-harm-women>. Rachel Bridges, Polygamy, Divorce, and Child Custody, available at: <http://humweb.ucsc.edu/>

²⁴⁶ GOV.UK, Child Abduction - Saudi Arabia, PP: 1, available at: <https://www.gov.uk/government>

according to the best interests of the child. Article 65 states that custodians must be capable of safeguarding the child's best interests and be of sound mind²⁴⁷.

Tunisia: According to Article 57 of the Law of Personal Status, while the marriage subsists the mother and father have equal responsibility for the custodianship of the child. However, Article 154 reads that the father is the automatic guardian of a minor child. If a marriage ends in the death of one of the partners, the surviving parent will be awarded custody. In the event of divorce custody may be awarded to one of the parents or a third party.

The Tunisian Code does not specify set ages as limits for custody of the mother. All custody cases are decided by the court in the best interests of the child (Article 67). Article 4 of the Child Protection Act states that in considering the best interests of the child the moral, physical and emotional needs of the child, the child's age and state of health and family environment must all be taken into consideration. According to Article 58 of the Law of Personal Status the person awarded custody must be an adult of sound mind who is trustworthy, able to provide for the welfare of the child and is free from contagious diseases. It also stipulates that if custody is awarded to a man he must show that there is a woman who will be able to help carry out the responsibilities of the custody. He must also be a relation within the prohibited degree of a female child in his custody.

A female custodian must not be married except where it is judged by the court to be in the best interest of the child to award custody to a married woman or if the husband is within the prohibited degree of relationship to the child. Article 59 states that if the custodian has a different religion to the father of the child their custodianship lasts only until the child reaches the age of 5 and as long as there is no risk that the child would be raised in another religion. However, this does not apply if the custodian is the mother²⁴⁸.

With regard to detention in custody in Tunisia, it was inquired whether detainees were entitled to apply for the assistance of a lawyer or to communicate with their families; what the maximum period was of detention in custody and on what basis such a period could be extended; the extent of the examining magistrates power to decide on the duration of periods of detention; and what legal provisions, if any, were applicable to detention without trial.

²⁴⁷ Reunite international, somalia, PP: 2, available at: <http://www.reunite.org/>

²⁴⁸ Reunite international, Tunisia, PP: 2-3, available at: <http://www.reunite.org/>

It was also asked whether there was any legislation governing the detention of drug addicts, vagrants, or persons with infectious diseases; whether a person detained in a psychiatric hospital had the right to apply for a judicial review of his case; and whether hard labour had been abolished by Act No. 89-23 of 1989.

Lastly, members observed that obligatory civilian labour, used as a means for combating unemployment, appeared to be incompatible with article 8 of the Covenant. The period of custody was fixed by law at four days, renewable once, with the possibility – as an exception - of a further two days. Under no circumstances could custody legally exceed 10 days, a period that was considered to be reasonable given various practical difficulties involved in making it shorter - such as the lack of judicial police officers competent to conduct inquiries. Exceptional cases where the period of custody had been longer were thoroughly investigated and sanctions had been imposed. A number of commissions were actively engaged in seeking the greatest possible harmonization of all Tunisian Codes with the provisions of the Covenant.

Efforts were being made, for example, to eliminate shortcomings in respect of the practical possibility for a detained person to contact a lawyer and his family. The law of 26 November 1987 on custody and pre-trial detention allowed detained persons or members of their family to call for a medical examination during or at the end of the period of custody. Any refusal had to be the subject of a written statement counter signed by the detainee²⁴⁹

Today, Tunisian law (Article 67) dictates that a child be transferred to the father from the mother at age 7 for a boy and age 9 for a girl, unless a judge rules otherwise²⁵⁰. According to Tunisian law, parents have equal rights in child custody and guardianship.

When married, mothers and fathers share equal rights and responsibilities regarding their children. After a divorce, a judge decides custody based on the best interests of the children. If the mother is awarded custody, she retains guardianship authority with respect to the child's travel, education, and financial affairs. Furthermore, the Tunisian Code of Personal Status specifies that "the court shall provide, even if not asked to, for all important matters relating to the residence of the spouses, maintenance and custody of children and the meeting

²⁴⁹ Universität Wien organization, TUNISIA, PP:35-36, available at: <http://www.univie.ac.at/>

²⁵⁰ Jamal J. Nasir. *The Islamic Law of Personal Status*. 3rd Ed. Kluwer Law International, 2002. p. 171. Woodrow Wilson international center for scholars, *Progressive Family Laws in Muslim Countries*, August 2005, PP:24, available at: <http://www.wilsoncenter.org/>

of children,” unless such aid is specifically renounced by both spouses, and that the guardian not only may not refuse the other spouse the right to visitation but must pay travel expenses²⁵¹.

United Arab Emirates: An interesting facet of custody laws in the U.A.E. is the different roles assigned to mothers and fathers. These differences are most often seen in the descriptions of guardians and custodians. A guardian of a child financially maintains the child, makes important decisions about the child's education and upbringing, and generally takes care of the child's affairs. The custodian, on the other hand, is concerned with the child's day to day life; the custodian has actual, physical custody of the child and must raise, take care, and up bring the child. This separation between custodian and guardian is not definitive, for it is possible for one parent to play both roles. Most often the mother is awarded custody, whereas the father is always considered the guardian; however, everything is dependent on the child's best interests.

In divorce cases, spouses typically fight over the custody of the child, and generally it is the mother who wins out in the U.A.E. Again, since the courts of law are only concerned with the child's best interests, mothers are not awarded custody when they are deemed unfit. The custodian needs to fulfil a list obligations, including being of sound mind, honest, mature, capable of raising a child, free of infectious disease, and not sentenced to a serious crime. If a parent contradicts any of the aforementioned conditions, the laws indicate that the child must be placed with the one that will seek the child's best interests. Certain laws even specify that a custodian must be of the same religion as the child; nevertheless, courts must not adhere to that condition if the interests of a child are best served with a custodian of a different religion.⁵

Though the separation between custodian and guardian, mother and father, and husband and wife may seem complex at first, it is important to note that the main question of concern is: what are the best interests of the child? Although divorces and custody battles are messy, the comprehensive laws in the U.A.E. attempt to cover as many situations as possible, and it is essential in their practical use to centre the issue on what is best for the child. For example, Article 156 of the Federal Law No. 28 of the year 2005 (UAE Personal Status

²⁵¹ Tunisian Code of Personal Status (1956), as amended in 1981, Article 32. Translation in Mahmood, Tahir. Statutes of Personal Law in Islamic Countries, 2nd Revised Ed., 1995, p. 174-5; Nasir, Jamal J. The Islamic Law of Personal Status. 3rd Ed. Kluwer Law International. 2002. p. 169. Woodrow Wilson international center for scholars, Progressive Family Laws in Muslim Countries, August 2005, PP:27, available at: <http://www.wilsoncenter.org/>

Law) states that the custody of a child should go to the mother, until 11 years of age for a boy and 13 years of age for a girl. In that same clause, the law sets out that this circumstance can change if the court determines something else is best for the child.

A recent case concerning child custody reached the Supreme Court of Abu Dhabi. In this case the child, a young girl of 13 years of age, who lived with her mother, the custodian, was to be returned to the guardian, her father, in accordance with Article 156, mentioned above. After months of trials, hearings, and appeals, the Supreme Court of Abu Dhabi did not grant the father custodianship.

Though this goes against Article 156, the court found it would be in the best interests of the young girl to stay with her mother until she is married. It is clear that legally and practically speaking, the goal is the same – custody is awarded to the parent that best fits the needs of the child's best interests²⁵².

According to Maliki principles a mother would normally have custody of her children following a divorce from the father until a female child marries and until a male child reaches puberty. Under Hanbali law the period of the mother's custody is not fixed since children can be given a choice as to whom they will live with when they reach the 'age of discretion'. This is not a fixed age since it is interpreted as being the age at which a child can discern in matters of religion and understand right from wrong.

The minimum age is considered to be seven. The voice of the child may be heard in court if he/she has reached the age of discretion. However, the wishes of the child, if heard, are not binding on the court. In the case of Shia law custody normally lasts until the age of two for a male child and seven for a female child. In order to qualify for custody the mother must reside within the UAE, be of good character and she must raise the child as a Muslim. If she remarries she would ordinarily lose custody of her children, although Judgement No. 8/97 Dubai Court of Cassation allowed a mother who had remarried to retain custody of her children.

However, this was due to a written agreement between the parents in which the father had agreed to forgo the right to custody if the mother were to remarry. If

²⁵² Dajani, Haneen. "Girls 'Should Stay with Mothers Until Marriage'" The National. Abu Dhabi Media, 18 May 2012. Web. 06 June 2012. <<http://www.thenational.ae/news/uae-news/courts/girls-should-stay-with-mothers-until-marriage>>. Hassan Elhais, Child Custody Laws In The UAE, available at: <http://www.mondaq.com/>

the mother is non-Muslim the custody period may be shortened to five years of age and it can be lost completely if it is feared that the children will not be raised as Muslims. Therefore, a non-Muslim mother will often not be given custody of her children²⁵³.

Yemen: In Yemen, the mother has the most right to custody over her young children as long as she fulfils the necessary requirements. She must be capable of raising the child, must not remarry or live in a house where there are people outside the prohibited degree of relationship to the child. She must not remove the child away from the father preventing him from having access to the child. The period of custody lasts until a male child is nine and a female child is twelve according to Article 139 of the Yemeni Personal Status Law. This period may be extended by the court without limit. At the end of the custody period the children may then choose with whom they wish to live²⁵⁴.

E. Conclusion:

Custody policies should provide equal access to both the mother and the father, treating both mothers and girls as equals with their male counterparts, neither disqualifying women from guardianship nor fixing the year of the end of custodianship to the child's gender. In ensuring equal access for women to custody of their children following separation, varied implementation is a major factor.

Guaranteeing the equality of the man and the woman in issues of child custody does not mean that other issues, such as the woman's decision to remarry or her choice of residence, if distant from the father, will not override that fundamental right. This also applies to issues of alimony, where loopholes in the law allow the payment of only a fraction of what both mother and child might need. Implementation of these statutes is highly regionalized, even within countries where the national law is quite specific.

Family law reform has been very active in recent years, however, and some advocates have developed creative and innovative ways to continue to push legal change that is presented as coming from within the Islamic legal tradition. One of the earliest strategies used in family law reform has been labeled "the exercise of preference," which takes advantage of the differences among the

²⁵³ Reunite international, united Arab emirates, PP: 2, available at: <http://www.reunite.org/>

²⁵⁴ Reunite international, Yemen, PP: 2, available at: <http://www.reunite.org/>

schools and even the minority views within the schools. In an effort to improve the rights of women and children, reformers and legislators have pursued what we have called an internal approach, in the sense that legal changes are presented as compliant with Islamic law, to achieve the best possible legal results for women and children²⁵⁵.

Many Islamic countries deny women custody of their children altogether in the event that she renounces Islam, commits acts of “immorality” or adultery, or geographically moves too far away from the father.²⁵⁶ Maintenance of the child after separation of the couple is equally variable, receiving specific attention in some statutes but left mostly to the disposition of the courts in others. This pertains to both financial support and to the visitation rights of the parent who has not received custody.

It is difficult to enforce maintenance, however, especially in cases of divorce, and when the parent is self-employed. Tunisia and Turkey give equal rights of custody and guardianship to both parents, and courts support decisions based on the best interest of the child—typically, this means that the father contributes maintenance until adulthood, and the mother has custody. Though this is highlighted as a best practice, the father as guardian often has more rights than the mother, leaving her with many responsibilities but few supervisory rights. Single mothers are often disadvantaged with regard to child custody and maintenance. An unregistered marriage is often seen as invalid, or void, and the child and mother are penalized through both social norms and legal codes that leave the unmarried woman the sole guardian of her child, often unable to provide adequately.

Egyptian courts often criticize women who try to establish paternity. Non-Muslim mothers rarely get custody; in Tunisia, non-Muslim mothers retain custody until the child is five years old, “provided that there is no risk that it shall become inclined towards her religion²⁵⁷.” Even legal statutes that do not

²⁵⁵ Kristen Stilt, *Strategies of Muslim Family Law Reform*, 2011, PP: 10, 35, available at: <http://scholarlycommons.law.northwestern.edu/>

²⁵⁶ According to U.S. Department of State, Bureau of Democracy, Human Rights and Labor. “Country Reports on Human Rights Practices - 2004.” Iran. Feb. 28, 2005. <http://www.state.gov/g/drl/rls/hrrpt/2004/41721.htm>. Woodrow Wilson international center for scholars, *Progressive Family Laws in Muslim Countries*, August 2005, PP: 25, available at: <http://www.wilsoncenter.org/>

²⁵⁷ Tunisian Code of Personal Status (1956), as amended in 1981, Article 59. Translation by Mahmood, Tahir. *Statutes of Personal Law in Islamic Countries*, 2nd Revised Ed., 1995, p. 176. - Woodrow Wilson international center for scholars, *Progressive Family Laws in Muslim Countries*, August 2005, PP: 26, available at: <http://www.wilsoncenter.org/>

specifically mention the loss of child custody for a non-Muslim mother make it difficult for a woman to retain custody if she changes religion. Algeria, Lebanon, Egypt, Morocco, and Pakistan, among others, require that the primary consideration in the awarding of child custody be “the interests of the ward,” a definition that is sometimes interpreted to include religious cultivation²⁵⁸.

Paragraph III: Early marriage in the Arab world

Marriage in the Arab world has undergone such profound changes during the previous decades that scholars have started to talk about a marriage revolution or a nuptiality transition (Rashad & Osman 2003; Tabutin & Schoumaker 2005).

Today, one seven girls marries before her 18th birthday in the Arab region. Considerable proportions of women marry in their thirties or forties and the number of early marriages has been largely reduced, thus, contributing in reducing the consequences of early marriages. Families who marry off their daughters at such a young age may believe that it is in the girls' best interest, not realizing that they are violating their daughters' human rights. Looking at the consequences of child marriage, we can realize that it often means an end to the girls' schooling, forced sexual relations, and early childbearing. Moreover, girls who marry at a younger age are generally more vulnerable to spousal violence than girls who wait longer to marry. Child marriage often perpetuates a cycle of poverty, low education, high fertility, and poor health, which hinders societies' economic and social development²⁵⁹.

A. Definition and Overview

The international community has taken a number of steps to protect the rights of children, but few human rights instruments offer explicit protection from early marriage.²⁶⁰ One of the important steps is making legal changes in the minimum age at marriage.²⁶¹

²⁵⁸ The Law and Religion Program of Emory University. “Islamic Family Law.”

<http://www.law.emory.edu/IFL/index2.html>, Woodrow Wilson international center for scholars, Progressive Family Laws in Muslim Countries, August 2005, PP: 26, available at: <http://www.wilsoncenter.org/>

²⁵⁹ Farzaneh Roudi-Fahimi and Shaimaa Ibrahim, Ending Child Marriage in the Arab Region, available at <http://www.prb.org/Publications/Reports/2013/child-marriage-mena.aspx>

²⁶⁰ According to UNICEF, “Despite the efforts of reformers in the early part of the 20th century, early marriage has received scant attention from the modern women's rights and children's rights movements. There has been

Several international conventions explicitly highlight the importance of spousal consent to enter into marriage, but fall short of an outright prohibition on child marriage. For example, Article 16(2) of the Universal Declaration of Human Rights provides that “marriages shall be entered into only with the free and full consent of the intending spouses,” but fails to expressly state that children are incapable of giving the requisite consent.²⁶²

The United Nations' Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, while explicit in its condemnation of child marriage, is drastically hindered by limited ratification, especially within the MENA region. Article 2 of the Convention prohibits the marriage of children under the minimum age for marriage, “except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.”²⁶³ The Convention has not been widely adopted.

In the MENA region, only occupied Palestine, Jordan, Libya, Tunisia, and Yemen have signed or ratified the Convention. Although Article 36 requires that “States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare,” there is no specific mention anywhere in the CRC of early marriage. The International Covenant on Economic, Social, and Cultural Rights comes closer to providing explicit protection for child brides, requiring consent to enter into marriage and further providing that “children and young persons should be protected from economic and social exploitation.”²⁶⁴

virtually no attempt to examine the practice as a human rights violation *in itself*.” See Child Spouses, *supra* note 22 at 2-3, International Centre for Missing & Exploited Children, Arab Charter on Human Rights 2004,” Boston, University International Law Journal, 2006, Art. 33(1), Child Marriage in the Middle East and North Africa, a White Paper, pp: 13

²⁶¹ - Paul Puschmann - Koen Matthijs, The Janus Face of the Demographic Transition in the Arab World, The Decisive Role of Nuptiality, PP: 18

²⁶² Universal Declaration of Human Rights, U.N.G.A Res. 217A (III) U.N. Doc. A/810 (1948), Art. 16(2). The same applies to the International Covenant on Civil and Political Rights, 19 December 1966, 999 U.N.T.S. 171, Art. 23(3) (“No marriage shall be entered into without the free and full consent of the intending spouses”). International Centre for Missing & Exploited Children, Arab Charter on Human Rights 2004,” Boston, University International Law Journal, 2006, Art. 33(1), Child Marriage in the Middle East and North Africa, a White Paper, pp: 13

²⁶³ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 521 U.N.T.S. 231 (Dec. 9, 1964), Art. 2.). International Centre for Missing & Exploited Children, Arab Charter on Human Rights 2004,” Boston, University International Law Journal, 2006, Art. 33(1), Child Marriage in the Middle East and North Africa, a White Paper pp:14

²⁶⁴ International Covenant on Economic, Social, and Cultural Rights, 993 U.N.T.S. 3, Art. 10(3). International Centre for Missing & Exploited Children, Arab Charter on Human Rights 2004,” Boston, University International Law Journal, 2006, Art. 33(1), Child Marriage in the Middle East and North Africa, a White Paper PP:13

However, the Covenant again avoids an outright prohibition on child marriage, and thus forgoes any explicit protection for child brides.²⁶⁵ Article 36 is arguably without teeth when addressing child marriage, particularly when read in conjunction with Article 1, which defines a “child” as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier.” Many countries, especially in the MENA region, set the minimum age for marriage well below the age of 18, in some countries as low as 13.²⁶⁶

At the same time, the Arab Charter on Human Rights 2004, the League of Arab States established regional legislation that also does not explicitly protect children from entering into marriage; it does establish that men and women should be of a marriageable age in order to grant their consent to enter into marriage. The League of Arab States aligns regional legislation in the Middle East and North Africa with international legislation on spousal consent. While the Arab Charter does not address limitations to what constitutes an appropriate marriageable age, it does mandate Article 16(2) that “no marriage can take place without the full and free consent of both parties”.²⁶⁷

Considering religious views, in Islam and according to traditional norms, girls and boys may be married as soon as they reach puberty. Child marriage itself is also seen as a way to safeguard against illicit relationships. Although not a primary reason, some fathers want to ensure that their daughters are virgins when they become married, and child marriage is a way to do so according to them. Marrying the daughter while young, according to those fathers means that the daughter will not engage in illicit relationships and lose her virginity before marriage, thus safeguarding the family against a wayward daughter²⁶⁸.

Child marriage is justified by many Muslims in many Islamic countries mainly because of the story of Prophet Muhammad and his young bride, Aisha. Hadith

²⁶⁵ Convention on the Rights of the Child, 20 November 1989, 1577 U.N.T.S. 3, Art. 36. International Law Journal, 2006, Art. 33(1), Child Marriage in the Middle East and North Africa, a White Paper PP :14

²⁶⁶ See Roudi-Fahimi, *supra* note 21. International Centre for Missing & Exploited Children, Arab Charter on Human Rights 2004,” Boston, University International Law Journal, 2006, Art. 33(1), Child Marriage in the Middle East and North Africa, a White Paper, pp:14

²⁶⁷ Dr. Mohammed Amin Al-Midani, and Mathilde Cabanettes, “Arab Charter on Human Rights 2004,” *Boston University International Law Journal*, 2006, Art. 33(1). International Centre for Missing & Exploited Children, Arab Charter on Human Rights 2004,” Boston, University International Law Journal, 2006, Art. 33(1), Child Marriage in the Middle East and North Africa, a White Paper PP: 15

²⁶⁸ Neha Nigam, Child Marriage in Saudi Arabia, PP: 1, 5, 6; available at <http://www.csames.illinois.edu/>

reports, which are essentially supplements to the Quran, state that the Prophet married Aisha when she was 7 and consummated the marriage when she was 9.

Based on that, it is hard to ban child marriages in some Arab countries, especially those with a low level of literacy.

In the early 1970s, around 40 percent of women ages 15 to 19 were married in Kuwait and Libya, but these figures had dropped by the mid-1990s to 5 percent and 1 percent, respectively. The pace of decline has been even faster in the United Arab Emirates, where the percentage of women ages 15 to 19 who were married dropped from 57 percent in 1975 to 8 percent by 1995. For the region as a whole, women are marrying later (some in their late 20s or early 30s), and some women are not marrying at all.

In Tunisia, Algeria, and Lebanon, only 1 percent to 4 percent of women ages 15 to 19 are married, and the percentage of women ages 35 to 39 who have never married in these countries now ranges from 15 percent to 21 percent.

Around the middle of the twentieth century, females in Morocco, Algeria, Mauretania, Libya, Kuwait and Saudi Arabia married on average between their 18th and 20th birth day and it was not uncommon that girls married at an age between 12 and 15.

Today, at the other end of the spectrum, child marriage is rare in Tunisia, Algeria, and Kuwait, the United Arab Emirates Libya and Egypt—the most populous Arab country - is home to the largest number of child brides in the region, where the singulate mean ages at marriage (SMAM) among females have risen to around 30 years. Compared to a generation ago, rates of child marriage have declined in Arab countries; still, a significant number do marry young, and the decline in early marriage has stopped in some countries such as Iraq, where 25 percent of girls marry before age 18 and 6 percent do so before age 15.²⁶⁹

Though less common than before early marriages are still prevalent in Oman, Yemen, and to some extent Egypt, as well as among Palestinians living in Gaza. Around 17 percent of Omani and Yemeni women ages 15 to 19 are married, as are about 60 percent of those ages 20 to 24 in these countries. Among Egyptian

²⁶⁹ Farzaneh Roudi-Fahimi and SHAIMAA IBRAHIM, ENDING CHILD MARRIAGE IN THE ARAB REGION, pp: 1 available at: <http://www.prb.org/>

women, 10 percent of 15-to-19-year-olds and 52 percent of 20-to-24-year-olds are married. Universal marriage also prevails in Egypt, Oman, and Yemen, where fewer than 5 percent of women ages 35 to 39 have never married.²⁷⁰

In Jordan a recent change in the law put the marital age at 18 for both genders. In the region, women are expected to marry in order to secure their future, since it is the most reliable economic security for women. In most Arab cultures, a woman gains her value by producing many children, and hence a young wife is preferred for this task. In addition to this, poor families may choose to marry off their daughters early in order to get one less mouth to feed and to get their hands on the bride-price.²⁷¹

In Bahrain the minimum age for boys and girls is still only 15 16 (Roudi Fahimi 2010). Saudi Arabia is a country which still has no minimum age at marriage. In their struggle against child marriages, international human rights organizations like Amnesty International and UNICEF are actually pushing Saudi Arabia to establish a law which prevents minors from getting married.

Conservative forces try to obstruct the establishment of a minimum age at marriage as they argue that such a measure is not in line with Islamic law (Alsharif 2012; Anabtawi 2012).²⁷²

At the same time, the highest rates of child marriage are seen in the poorest countries, Sudan, Somalia, Yemen, and South Sudan. One-third or more of the girls in these countries marry before their 18th birthday.

According to Progress of Arab Women 2004 , a report by UNIFEM, women in the region are delaying marriage on average by three to seven years compared to figures in the 1960s (UNIFEM 2004: 145). Furthermore, while marriage used to be almost universal in all Arab countries, we see an increasing number of women who stay unmarried. In Jordan, Kuwait, Morocco, Syria, Qatar and Libya 10 % of the women in the age group 30-34 are unmarried. Being

²⁷⁰ - Hoda, Rashad, Magued Osman, and Farzaneh Roudi-Fahimi ,MARRIAGE IN THE ARAB WORLD, pp: 2,3, available at: <http://www.prb.org/>

²⁷¹ - The bride-price in Islamic societies is often referred to as “dowry” but this is not the correct term.

Money and gifts are given to the bride and her family (hence the term “bride-price”), whereas a “dowry” are goods and possessions the girls bring into the marriages and homes. Pernilla Ouis, Faculty of Health and Society, Malmö University, Sweden, International Journal of Children's Rights 17 (2009) 445–474, Honourable Traditions? Honour Violence, Early Marriage and Sexual Abuse of Teenage Girls in Lebanon, the Occupied Palestinian Territories and Yemen, pp: 16, available at: <http://dspace.mah.se/>

²⁷² Paul Puschmann - Koen Matthijs, The Janus Face of the Demographic Transition in the Arab World ,The Decisive Role of Nuptiality, pp: 15, 16

unmarried is a social stigma, and the fear of never getting married may contribute to early marriages.²⁷³

The percentage of women ages 35 to 39 who have never married is a good indicator for measuring changes in the universality of marriage, because the likelihood of a single woman marrying after age 40 is quite low. However, the timing of marriage varies within the region. We can consider that early marriages are more restricted to cultural factors than socioeconomic factors, since even in developing countries like Egypt and Libya, child marriage is low.

According to data of the Supreme Council of the population there are a million child under the age of 15 years are ready to enter the age of marriage , bringing the number of females at the stage of marriage, pregnancy and childbearing , which will see an increase in the population as a jump number of women / female than a million and one-third to two million by 2020, an increase of 50%.Expected increase in cases of early marriage if he continued global trend on its current status without interference or action or activation of legislation to reduce it.

In (2010) married (67) million women who ranged from the ages of (20 - 24) years before they reach eighth years of age, half of them in Asia and Africa. During the next decade (2011 - 2020) married (14.2) million girls annually without their age of eighteen, and these numbers rise over the next decade to reach (15.1) million girls annually during the period (2021 – 2030).²⁷⁴

²⁷³ Pernilla Ouis, Faculty of Health and Society, Malmo University, Sweden, *International Journal of Children's Rights* 17 (2009) 445–474, Honourable Traditions? Honour Violence, Early Marriage and Sexual Abuse of Teenage Girls in Lebanon, the Occupied Palestinian Territories and Yemen, pp: 17, available at: <http://dSPACE.mah.se/>

²⁷⁴ Issa Hamad Al-Hewetat, People to Economic & Social Training, available at: <http://www.annalindhfoundation.org/>

Table 1: Percentage of Women Ages 20 to 24 Who Married Before Their 18th Birthday²⁷⁵ -

Libya	2
Algeria	2
Djibouti	5
Jordan	8
Morocco	13
Egypt	17
Syria	18
Palestine	19
Iraq	25
Yemen	32
Sudan	33
Somalia	45
South Sudan	52

Note: Palestine refers to the Arab population of Gaza and the West Bank, including East Jerusalem.

Sources: Special tabulations by PAPFAM for Libya (2007), Syria (2009), and Iraq and Morocco (2011). The data for Jordan is from the 2012 Jordan Population and Family Health Survey. The data for remaining countries: Palestine (2004); Algeria, Djibouti, Somalia, and Yemen (2006); Egypt (2008); and Sudan and South Sudan (2010)—are from Child info, Monitoring the Situation of Children and Women, accessed at www.childinfo.org/marriage, on May 10, 2013.

The wider cultural, political and economic contexts of the region are of importance for analyzing early marriages. In a regional workshop organized by SCS and the Arab Resource Collective (ARC) in 2001, early marriages were analyzed.

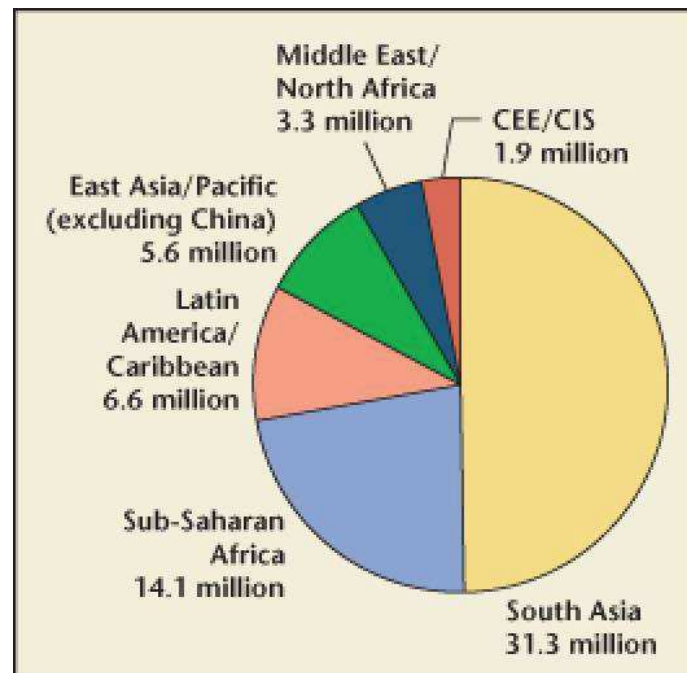
The report from the workshop pointed out that one significant cause for the continuation of the practice of early marriages is the weak “culture of rights”

²⁷⁵ Farzaneh Roudi-Fahimi and SHAIMAA IBRAHIM, ENDING CHILD MARRIAGE IN THE ARAB REGION, pp: 1, available at: <http://www.prb.org/>

and “right-based legislation” and their relative ineffectiveness compared to “inherited traditions” (ARC and SCS 2001: 6)²⁷⁶

The following figure shows the number of women aged 20–24 who were married or in union before age 18, by region (2006). The number of women in the Middle East and North Africa is 3.3 million.²⁷⁷

Figure 2 :



Early marriage compromises girls' development and often results in early pregnancy and social isolation. Child marriage also reinforces the vicious cycle of early marriage, low education, high fertility, and poverty. Thousands of girls married a day before the age of 18 years and by up to 15 percent in the Arab countries, especially in rural areas and among uneducated girl. Setting and enforcing a minimum legal age for marriage is necessary to protect girls, who are more affected than boys by the practice of child marriage. Most countries in the Middle East and North Africa (MENA) region have laws on the minimum

²⁷⁶ Pernilla Ouis, Faculty of Health and Society, Malmo University, Sweden, *International Journal of Children's Rights* 17 (2009) 445–474, Honourable Traditions? Honour Violence, Early Marriage and Sexual Abuse of Teenage Girls in Lebanon, the Occupied Palestinian Territories and Yemen, pp: 17, 18, available at: <http://dSPACE.mah.se/>

²⁷⁷ Rights, and Health of Young Married Girls. Washington, DC: International Center for Research on Women; 2003. http://www.icrw.org/docs/tooyoungtowed_1003.pdf. Nawal M Nour, MD, MPH, available at <http://www.ncbi.nlm.nih.gov/>

age for marriage, ranging from age 20 in Tunisia for females, and from age 15 in Yemen to age 21 in Algeria for males.

Table 2: Minimum Legal Age for Marriage in the Middle East and North Africa²⁷⁸

Country	Female	Male
Algeria	18	21
Egypt	16	18
Iraq	18	18
Jordan	18	18
Morocco	18	18
Tunisia	20	20
Yemen	15	15

Source: UNdata, "Minimum Legal Age for Marriage Without Consent" (<http://data.un.org/Data.aspx?q=marriage>, accessed Feb. 18, 2010)

B. Early marriage in the Arab Countries

Algeria: Algerian law conforms to the provisions of article 1 of the Convention, where the child is generically defined as a, "human being below the age of 18 years."²⁷⁹

Despite the fact that the minimum age for marriage is set at 19 years (with some exception), Act No. 84-11 of 9 June 1984 establishing the Family Code stipulates in article 7 that the marriageable age is 21 years for men and 18 years for women²⁸⁰. In the Algerian Family Code, child still exists in certain ethnic groups.²⁸¹ Early marriages are less common, and fertility rates have declined, and the rise in the average age of marriage, fertility rates have dropped from 2.7 births per woman in 2000 to 2.4 in 2007²⁸².

²⁷⁸ Farzaneh Roudi-Fahimi, Child Marriage in the Middle East and North Africa, available at: <http://www.prb.org/>

²⁷⁹ The African child policy forum, DEFINITION OF THE CHILD: THE INTERNATIONAL/REGIONAL LEGAL FRAMEWORK, December 2013, pp: 1, available at: <http://www.africanchildforum.org>

²⁸⁰ National law and policies on minimum ages, minimum age for marriage, Algeria, available at: <http://www.right-to-education>

²⁸¹ Children of Algeria, Realizing Children's Rights in Algeria, available at: <http://www.humanium.org/>

²⁸² Nadia Marzouk, World Bank, "Genderstats—Health," <http://go.worldbank.org/UJ0Q1KQKX0>, freedom house, Algeria, pp: 41

Bahrain: Article 1 of the Convention clearly states that: “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”²⁸³

According to the law, the minimum age of marriage 15 years of females and 18 for males, but special circumstances allow marriages below these ages with approval from a Sharia court.²⁸⁴

Lawmakers from the largest opposition bloc in the Bahraini Parliament are opposing setting the minimum marriage age for girls at 15, saying this is against Islamic principles. MPs from Al-Wefaq bloc are criticizing a ministerial order setting the marriage age for girls at 15 and men at 18. “This decision is unconstitutional and clearly interferes with the judiciary. It is against Islamic principles, he Bahrain Women Union said setting the age of marriage for girls at 15 was not right. “The age of marriage for both men and women should be fixed at 18. This can only be done if the details are included in the family law, which has been waiting for years to be passed”. The order was a violation of the UN CEDAW and other agreements that Bahrain is a signatory of. “This is like promoting child marriage. They are supposed to be in school rather than getting married.

Early marriage of a girl confines her to household activities and deprives her of an education,” said a human rights advocate. Raising the marriage age is essential as women’s wombs are not complete and ready for pregnancy before the age of 20,” Bahrain, like several other Arab countries, does not have a single codified family law because of fears that amendment to the legislation would violate Sharia.²⁸⁵

Comoros: The Act No. 05-008/AU on the Family Code adopted on 3 June 2005 stipulates in its article 14 that the age of marriage is 18 years for both sexes. Nevertheless, the judge has the jurisdiction to allow a marriage of a person below that age on serious and legal grounds where both parties have consented to the marriage (art. 15). The Code does not however set the minimum age below which this derogation does not apply. On the other hand, it sets the age of consent at 7 (art. 92(2) of the Family Code).

²⁸³ Bahrain monitor, The Child Bill and Bahrain’s International Obligations, available at: <http://www.bahrainmonitor.org/>

²⁸⁴ Embassy of the united states, Human Rights Reports: Bahrain, 2012, published on April 19, 2013, available at: <http://bahrain.usembassy.gov/>

²⁸⁵ Arab News, 05 May 2009, available at: <http://www.wluml.org/>

Under Muslim law, the age of majority is considered to be 14 to 15 years, and, in some cases, marriages may be arranged even earlier, especially for girls; the Comorian family code, however, provides that a man under the age of 22 and a woman under the age of 18 may not enter into marriage (*ibid.*). A United Nations report published on 23 October 2000 noted the lack of a uniform legal age for marriage and the occurrence of early marriages as an area of concern in Comoros.²⁸⁶

The marriage in Comoros may not be concluded without the authorization of the matrimonial tutor and the consent of the woman. The woman does not however conclude the marriage herself. She is represented by her matrimonial tutor.

In the case of first marriage, the father of the woman cannot oblige her to conclude the marriage without her consent (art. 23 of the Family Code). One of the principal effects of marriage is to give to the child the full legal capacity. This possibility in marrying the child before the age of 18 and the emancipation thereof might have an impact on the evaluation of the police or the court on the prevention of the child abduction or indecent assault (articles 345 to 348 and 318 and 320 of the Penal Code). In practice, the new Family Code is not yet applied and marriages are still performed according to the tradition in front of the Quadi (Judge) or his representative.²⁸⁷

Egypt: For the purpose of this Law, the term “child” within the context of care and welfare, shall mean all individuals who have not reached the age of eighteen (18) complete calendar years. The age of a child shall be verified by means of a birth certificate, an identification card or any other official document.²⁸⁸

Egypt is one of the Arab countries who usually experience low rates of early marriages; however, the social and political instability that has rocked Egypt in recent years has led to a rise in child marriages and the development of an international child bride market. Seventeen percent of Egyptian marriages involve brides aged 18 or below, with two percent involving children under age 15. The Director of the Child Anti-Trafficking Unit at the National Council for

²⁸⁶ Refworld, Comoros: The status of women; whether forced marriages exist; the types of punishments inflicted on women who refuse to enter into forced marriages; state protection available to victims (February 2004), available at: <http://www.refworld.org/>

²⁸⁷ Riziki Djabir, The African child policy forum, Harmonisation of laws relating to children, Comoros, pp: 12,13, available at: <http://www.africa4womensrights.org/>

²⁸⁸ The African child policy forum, DEFINITION OF THE CHILD: THE INTERNATIONAL/REGIONAL LEGAL FRAMEWORK, Child Law, 2008, December 2013, pp: 5, available at: <http://www.africanchildforum.org>

Childhood and Motherhood in Egypt reported that some girls have been married as many as 60 times by the time they turn 18 years of age and most of these marriages last only a few days or weeks.

According to a report by The Protection Project, wealthy Saudi businessmen regularly travel to Egypt to purchase young Egyptian brides for as little as 500 dollars.²⁸⁹ Temporary and transactional marriages, such as *zawaj al-muta'a*

(Pleasure marriage for as little as one day), *zawaj al-safka* (a contract marriage based on benefits and interests) and *zawaj al-misyar* (visitor marriage or summer marriage that last only a few months), that provide a means for circumventing the restrictions of Islamic law on pre-marital sex are on the rise in Egypt.

Such short-term marriages are often used as a guise for human trafficking and child prostitution. Marriage brokers often facilitate these temporary marriages, receiving a commission for convincing the girl's family of the benefits of the arrangement. The results of 2006 census show that 63% of the Egyptian females age 16 and above are married. This percentage rises from 10% among females in the age group (16 - 19) to 90% among females in the age group (30-39).

The comparison of the distribution by age and gender shows that the percentage of married females in the age group (20-29) is twice the percentage of married males in the same age group. Furthermore, Marriage and divorce statistics of this census show that number of early marriage cases (for girls under 20 years old) represents 29.2% of the total marriages that took place in 2006. In 14.5% of these cases the age of the husband was 30 years or higher. 35.5% of ever married women in the age group (16-20) who have been married for one year or more have given birth to the first child before the end of the first year of marriage and that 36% have given birth to the first child before the end of the second year of marriage.

As a result, the marriages that took place in 2006 for girls aged less than 20 years will result in about 54 thousand births in the first year of marriage and 55 thousand births in two years, all of them for mothers under the age of 22.

²⁸⁹ A Human Rights Report on Trafficking in Persons, Especially Women and Children, Protection Project 2010, available at <http://www.protectionproject.org/wp-content/uploads/2010/09/Egypt.pdf> (last visited September 15, 2013). International Centre for Missing & Exploited Children, Arab Charter on Human Rights 2004," Boston, University International Law Journal, 2006, Art. 33 (1), Child Marriage in the Middle East and North Africa, a White Paper PP: 20

This means that Egypt bears the burden of an extra 110 thousand births annually that can be avoided by raising the age at first marriage which also could save those children from the exposure to diseases, malnutrition and higher infant mortality associated to the young age of the mother.

Early marriage also leads to a prolonged reproductive life of a woman, leading to a rise in the number of children born to the woman, and thus to higher fertility rates. DHS 2005²⁹⁰ data show that the mean number of children per woman in the age group (45-49 years) increases as the age at first marriage decreases, the same result could be noticed from the mean household size.²⁹¹

Egypt has taken few, if any, meaningful steps toward addressing its child marriage problem. Egypt is the only country in the African Union to have lodged a reservation against the child marriage prohibition contained in the African Charter on the Rights and Welfare of the Child.

Although the Child Law of 2008 sets the legal age for marriage at 18 for both boys and girls, in 2012 the Egyptian Parliament began drafting legislation to lower the marriage age to 14, a move that many observers consider a giant step backward in the fight to end child marriage.²⁹²

Iraq: The law sets the minimum marriage age for both sexes at 18, though courts can permit juveniles as young as 15 to marry with a guardian's approval or as a matter of urgent necessity. Unauthorized, underage marriages are potentially punishable by imprisonment, but such marriages do take place, conducted by religious leaders with little regard to women's well being²⁹³. Adolescent Pregnancy which is defined as pregnancy in a woman aged 10-19 years (age of women at the time the baby is born) represents a public health priority in Iraq as in many other developing countries where early marriage and

²⁹⁰ El-zanaty, F. and Ann Way, 2006, "Egypt Demographic and Health Survey 2005", Ministry of Health and Population and National Population, CouMagued Osman, Ph.D.2, Hanan Girgis, M.Sc, marriage Patterns in Egypt, pp: 7, available at: <http://www.princeton.edu/papers/91490>

²⁹¹ CouMagued Osman, Ph.D.2, Hanan Girgis, M.Sc, marriage Patterns in Egypt, pp: 7, available at: <http://www.princeton.edu/papers/91490>

²⁹² A Human Rights Report on Trafficking in Persons, Especially Women and Children, Protection Project 2010, available at <http://www.protectionproject.org/wp-content/uploads/2010/09/Egypt.pdf> (last visited September 15, 2013). International Centre for Missing & Exploited Children, Arab Charter on Human Rights 2004," Boston, University International Law Journal, 2006, Art. 33(1), Child Marriage in the Middle East and North Africa, a White Paper PP: 19.

²⁹³ Huda Ahmed, Iraq, 2004-2009, freedom house, pp: 12, available at www.freedomhouse.com

childbearing is encouraged by community due to many socioeconomic reasons and cultural background.²⁹⁴

The legal age of marriage in Iraqi-Kurdistan is 18 years. Yet, thirteen year-old girls are being forced into marriage by their families.

Child marriage is a serious problem in the region. The law is being violated on a regular basis. The future of thousands of little girls is being snatched away. A look at the frequency of coverage shows media apathy towards this issue. The latest article in Kurdish media condemning child marriage was published in July 2013. The one before that was in August 2009²⁹⁵

Djibouti: The practice of early or forced marriages exists in Djibouti. Article 13 of protection law says that the future spouses shall be aged 18 years or older. The marriage of minors who have not reached the legal age of majority is subject to the consent of their guardians. (Article 14, Djibouti 2002).

The Children's Rights Portal noted that, although the Djiboutian family code sets out a minimum age of 18 to marry, in practice, this is not respected, "notably in cases of accord with the child's guardian-which permits an overriding of the child's consent with no age limit". According to the EDIM data collected in 2006, 3.5% of married women aged 15 to 49 living in rural areas were married before the age of 15 (compared with 2.8% of women living in urban areas), 13.6% were married before the age of 18 (compared with 9.4% of women living in urban areas) and 12.8% are currently aged between 15 and 19 years (compared with 4% of women living in urban areas) (Djibouti Dec. 2007, 84).²⁹⁶

Although the Constitution establishes the principle of equality between men and women, discriminatory laws persist, in particular within the family code, adopted in 2002.

²⁹⁴ Camacho AV, Chandra-Mouli V. Adolescent pregnancy: a global perspective. Paper presented at: Training Course in Sexual and Reproductive Health Research; 2010 Sep 18; Geneva. - Shaimaa Ibrahim, Ministry of Health, Baghdad, Iraq, Adolescent pregnancy - Adolescent health and development with a particular focus on sexual and reproductive health – Assignment, pp: 1

²⁹⁵ Shahd, Iraqi media must break its silence on child marriage 8th Oct 2013, available at: <http://www.girlsnotbrides.org/>

²⁹⁶ Immigration and Refugee Board of Canada Djibouti, Forced marriage, including the frequency and the consequences of refusing such a marriage; state protection and government services available, available at: <http://www.refworld.org/>

Polygamy is authorized under article 22. Although this clause makes it possible for a wife to challenge her husband's new marriage, many marriages remain polygamous (estimated at 11.2% in 2004).²⁹⁷

Jordan: Jordan defines early childhood as a stage that covers different levels that starts from pregnancy till the age of 9. This stage can be divided into five main sub stages, according to the following (National ECD Team in Jordan)-

- a. Pregnancy
- b. Birth to age one
- c. From age one to age four
- d. From age four to age six
- e. From age six to age nine

Until the year 2001, the legal age for marriage in Jordan was 15 for girls and 16 for boys. The practice of early marriage in Jordan persists despite an amendment to the Personal Status Law in 2002, which changed the legal age of marriage from 15 to 18. Following demands by civil society groups and women's rights activists, the law was amended so the minimum age for both boys and girls is now 18. The amended law, however, leaves room for exceptions for the marriage of boys and girls between the ages of 15 and 18 if the judge deems it would "benefit both spouses", giving the judge the right to marry from completed the age of fifteen if he sees that in her marriage to its interest as well as the case for the pair.²⁹⁸

Despite the fact that the personal status law Jordanian sets the minimum age for marriage for eighteen years, the Jordanian government approved an amendment to the Personal Status Law allows married minors under the age of fifteen, in certain cases determined by the judge legitimate, which was provoked disapproval by bodies and women's organizations. Acts and sexual practices carried out by the husband with his wife « child » constitute sexual violence in the concept of medical, psychological, although not punishable by provisions of the penal laws.

²⁹⁷ Djibouti, African Women Rights, pp: 2, available at <http://www.africa4womensrights.org/>

²⁹⁸ Areej Abuqudairi, Early marriage persists in society despite law amendments - activists, Apr 29, 2013, available at <http://jordantimes.com/>

In 2010, early marriages comprised 10.1 per cent of marriages registered that year, according to a statement released by UNFPA figures. According to the Chief Islamic Justice Department's (CIJD) annual report, marriages involving brides below the age of 18 constituted 12.6 per cent of marriages in 2011. A study prepared by the Islamic courts in the Hashemite Kingdom of Jordan showed that the incidence of early marriage in the kingdom, constituting (14%).

On the other hand, Jordan hosts more than 500 thousand Syrian refugees, 70 percent of whom are women and children, according to the UN High Commissioner for Refugees (UNHCR). Ten percent of Jordan's population became Syrians refugees, every day entered Jordan borders around 1000 to 2000 to the Syrian camp fleeing the ongoing war there.

Marriages in the ranks of the Syrians reached to 2470 cases, 502 cases were less than 13 years, representing 20%, and that for is normal in the Syrian society, and there in the camp of Zaatari delegates from the religious judiciary or documenting the marriage contracts. It is noteworthy that the number of Syrians in Jordan reached more than one million and 300 thousand people, 750 thousand of them entered before the start of the revolution in Syria (March / March 2011) by virtue of kinship and descent and intermarriage, and the rest entered after the eruption of the crossings, official and unofficial²⁹⁹.

The phenomenon of early marriage has become a worrying phenomenon in the Jordanian society. The marriage of girls which is termed early marriage deprives them of their rights and exposes them to danger, standing obstacle to education, health and productivity of most of them, are excluded from making decisions concerning their lives as a time of marriage and choice of spouse. Coerce women into early marriage is more than a behavior is illegal and unlawful and immoral that a form of violence against women, and a form of violence against children with childhood that reference is less than 18 years old. It presents the girl suffering severe psychological by her father or guardian legitimate, but agreed the girl reluctantly to this marriage and passed legally the life with a husband will be affected, and will present, in addition to psychological violence, to other forms of physical abuse, and sexual abuse by husband.

²⁹⁹ Issa Hamad Al-Hewetat, People to Economic & Social Training, available at: <http://www.annalindhfoundation.org/>

Early marriage is often linked to social conditions characterized by ignorance and lack of education, poverty and social isolation. The medical risks of direct early pregnancy and childbirth, is to increase the likelihood of maternal death due to the risk factors relating to small age pregnant, and increase the likelihood of premature birth, and increase the proportion of complications during childbirth, and the lack of birth weight, and increase the likelihood of abortion and death in uterus or after birth fetus directly.

It is worth mentioning the definition of the World Health Organization that Health is complete healthy physical and psychological, social, and not merely the absence of disease »,the marriage of a child or young who did not exceed 22-year old is not characterized by any way healthy physical, psychological and social not achieve the principles of basic reproductive health, on the grounds that this marriage is not expected to be a sexual relationship by equal, does not constitute a body child or adult natural environment for normal pregnancy would not be appropriate for the birth of nature, and extends to the lack of readiness psychological and social development in this age of early to deal with children as children provide them with their basic needs. Early marriage constitutes a flagrant violation of human values which are related to human nature a mature concept of the exercise of decision.

Kuwait: paragraph 13 of the initial report of Kuwait indicated that, according to the legislative texts, a child was defined as a person between the ages of 7 and 18.³⁰⁰

In Kuwait the minimum legal age of marriage varies according to gender, where the age of marital consent is 15 for girls and 17 for boys. Although Kuwaitis live in a far more open social environment than their counterparts in neighboring Saudi Arabia, relationships before marriage are largely taboo and people are encouraged to marry early, usually in unions arranged according to family ties and social status. Polygamous marriages are not uncommon in Islamic societies but only small numbers of Kuwaiti men have more than one wife. Traditionally, up to a third of marriages have ended in divorce and that figure has been rising in recent years. The pressure for women to marry starts from around the age of 21.

³⁰⁰ Miss MASON, COMMITTEE ON THE RIGHTS OF THE CHILD, Nineteenth session, Summary record of the 488th meeting: Kuwait. 04/14/1999, CRC/C/SR.488, pp1: available at: <http://www.unhchr.ch/>

"Girls want to get married so they can have freedom. The number of men getting married later than age 24 grew to 65 percent in 2008 from 61 percent in 2000, according to a calculation based on statistics compiled by the United Nations. For women, the number rose only slightly over the same period, from 38 percent to 40 percent. Some urban Kuwaitis say that attempts to encourage early, traditional marriages belong in the past."³⁰¹

The young age of marital consent for girls raises the possibility of cutting their education short. In this country, marriage is associated with the duty to procreate, but in general teenagers are not physically developed enough to bear a child. Therefore the pregnancy of these girls can have serious health consequences.

Early marriage also raises the issue of marital rape. Marital rape is not recognized in Kuwaiti law, leaving married girls more vulnerable to this type of violence. The Committee on the Children's Rights strongly recommends that Kuwait raise the age of marriage at 17 years for girls.³⁰² The Committee is seriously concerned that in spite of previous UN recommendations, the State has still not raised the minimum age of marriage from 15 years for girl and 17 years for boys, and is deeply concerned that a marriage is considered legitimate when children have reached the age of puberty and are of sound mind and that girls continue to be forcibly married by the families in some parts of the country. The Committee urges the State to bring its marriage laws in full compliance with the definition of the child (i.e. 18 years) without further delay. In addition, the Committee is seriously concerned that someone can abduct a girl and escape punishment if he legally marries her after her guardian approves. The Committee urges the State to ensure all cases of abduction of children are prosecuted and perpetrators are brought to justice.³⁰³

Lebanon: The Lebanese law adopts the same definition of child adopted by the CRC. For the purpose of civil obligations and contracts, a child is any person who has not yet reached the age of eighteen.³⁰⁴

³⁰¹ Westall, Sylvia, Marriage loses its sparkle in Kuwait, Oct 10, 2012, available at: <http://www.reuters.com/>

³⁰² Humanium, Children of Kuwait, Realizing Children's Rights in Kuwait, available at: <http://www.humanium.org/>

³⁰³ Cinn, COMMITTEE ON THE RIGHTS OF THE CHILD'S CONCLUDING OBSERVATIONS FOR KUWAIT'S 2ND PERIODIC REPORT, available at: <http://crin.org/>

³⁰⁴ The law Library of congress, Children's Rights: Lebanon, Civil Code, issued Mar. 9, 1932, art. 4 available at: <http://www.loc.gov/>

Early marriage affects small percentages of Lebanese teenage girls up to more than 50 % of the girls below the age of 18. This number could be interpreted to mean that early marriage is in decline in modernizing Lebanon, while the political situation of living under occupation has halted such a development in the OPT (Johnson 2006). Early marriage is sometimes a form of sexual violence.

Some held the view that this was not the case if the girl had given her consent or if the husband was a teenager too (i.e. it is only sexual violence if the husband is an adult man). In Lebanon, for instance, 76 % of the girls in the FGDs did not consider early marriage to be a case of sexual violence if the girl had given her consent. However, the rest, 24 % of the girls agreed that it was sexual abuse "regardless of circumstances", which could be interpreted as quite many anyway that actually agreed with the statement that it is sexual abuse or even violence regardless of consent.³⁰⁵

In Lebanon, the Laws of the different religious groups regulate the legal age for marriage and most personal status matters. Consequently, no amendments have been made to these Laws, until the present date. Most legislative acts deliberately specify a technical age for puberty which is higher than the actual age. The authorities are then permitted to license marriage before that age in exceptional cases.

The age at which marriage may be licensed is determined by a number of considerations, including physiological capacity and the general social customs and traditions of the two spouses and their families, including their educational attainment.

This is a result of Article 9 of the Constitution, which leaves personal status regulation to the various religious groups in Lebanon, and their relative jurisdictions. In spite of that, NGO's and the syndicate of lawyers are still pursuing their efforts in that concern.

The entire Lebanese legislation in force, with the exception of the Personal status Law is a civil and non-sectarian Law. However, in all matters related to the personal status and especially in marriage and its related issues, Lebanese

³⁰⁵ Pernilla Ouis, Faculty of Health and Society, Malmö University, Sweden, *International Journal of Children's Rights* 17 (2009) 445 – 474, Honourable Traditions? Honour Violence, Early Marriage and Sexual Abuse of Teenage Girls in Lebanon, the Occupied Palestinian Territories and Yemen, pp: 16,18, available at: <http://dSPACE.mah.se/>

citizens are subject according to their religion to the religious laws set forth by their respective religious authorities. The Lebanese State has recognized 18 official religious groups in Lebanon. Article 9 of the Lebanese constitution has ensured the respect of the Personal status laws of each of these groups, including the right of the independence of its judicial courts and legislation. Therefore, the minimum age for marriage differs between a person and another depending of his/her religion. The age of marriage differs also between male and female in the same religious group.

On this subject, the position adopted in the personal status laws of the different confessional groups can be summarized as follows:³⁰⁶

Table 3: Age of puberty and age at which marriage may be licensed in accordance with the laws of the different confessional groups

confessional group	Specified age of puberty		Age at which marriage may be licensed		Licensing authority	Articles in the law of the confessional group
	Male	Female	Male	Female		
Sunni	18	17	17	9	Judge	4, 5, 6
Shiite	True puberty	True puberty	15	9	Judge	7.8
Druze	18	17	16	15	Judge of the confessional group or shaykh	1, 2, 3
Catholic groups	16	14	14	12	The Patriarch	57, 62
Greek Orthodox	18	18	17	15	Head of the diocese	5, 18
East Syrian Orthodox	18	14	-	-	-	4
Evangelical	18	16	True puberty	True Puberty	Religious court	22, 2
Jewish	18	12,5	13	12,5 unspecified	Guardianship or consent of the father and agreement of the girl's mother or asister if she is an orphan	

³⁰⁶ National law and policies on minimum ages – Lebanon, Minimum age for marriage, right to education project, available at: <http://www.right-to-education.org/>

Libya: In Libya, a child is a person under 16 years.³⁰⁷ Marriage is more a family than a personal affair and a civil contract rather than a religious act. Because the sexes generally were unable to mix socially, young men and women enjoyed few acquaintances among the opposite sex. Both the monarchical and revolutionary governments enacted statutes improving the position of females with respect to marriage. The minimum age for marriage was set at sixteen for females and at eighteen for males. Marriage by proxy has been forbidden, and a 1972 law prescribes that a girl cannot be married against her will or when she is under the age of sixteen. A girl who is a minor (under the age of twenty-one) may petition a court for permission to proceed with her marriage³⁰⁸.

Morocco: Article 209 defines the age of legal majority as eighteen complete Gregorian years.³⁰⁹

Even though Article 19 of the family code adopted in 2004 prohibits marriage for anyone below 18 years of age, the phenomenon of child marriage is still a reality in Morocco. It continues to grow, and causes irreparable negative social consequences.³¹⁰

Underage marriage continues to represent a sensitive legal and political issue in Morocco. Despite the provisions of the Family Code, child marriages are on the rise in Morocco. The raised the minimum marriage age from 14 to 18 and required a judge's approval for nuptials with a minor. Still, five years after the Family Code became law, 33,253 females below the age of 18 tied the knot. Moreover, in several cases, judges are forced to give their approval in order to legalize traditional marriages for girls who are already pregnant.

As such, a solution to the problem necessitates social development, especially in terms of education.³¹¹ There were nearly 3,000 more child brides in 2009 than during the previous year, the Social Development Ministry reported. In some places, girls aged 13 or 14 who are still single are regarded as old maids.

³⁰⁷ The African child policy forum, DEFINITION OF THE CHILD: THE INTERNATIONAL/REGIONAL LEGAL FRAMEWORK, Children's Protection Act, 1997, December 2013, pp: 8, available at: <http://www.africanchildforum.org>

³⁰⁸ Libya - The Society, available at: <http://www.mongabay.com/>

³⁰⁹ The African child policy forum, DEFINITION OF THE CHILD: THE INTERNATIONAL/REGIONAL LEGAL FRAMEWORK, Family Code, 2004, December 2013, pp: 9, available at: <http://www.africanchildforum.org>

³¹⁰ Larbi Arbaoui, Morocco world news, Morocco considers law on child marriage, Sunday 10 March 2013, available at: <http://www.moroccoworldnews.com/>

³¹¹ Siham Ali, RABAT , Underage marriage increase, 26 January 2011, available at <http://magharebia.com/>

Worse still, some parents pledge their underage daughters in exchange for 60,000 or 100,000 Dirhams until they reach marriageable age," The problem lies not in the legal domain but in people's attitudes, according to the minister. According to AFP TV, official figures show that the number of child marriages in Morocco has risen to more than 35,000 in 2010 up from 30,000 two years before.³¹²

Mauritania: Pursuant to article 6 of Act No. 2001-052 of 19 July 2001 on the Personal Status Code, "the legal capacity to marry is possessed by all persons of sound mind aged at least 18 years". The most significant point in this reform is the fixing of the age of majority necessary for marriage at 18 years and the rendering of marriage subject to consent, except in cases determined by a judicial decision based on the best interests of the child.³¹³

It is with these issues in mind, that Equality Now has released 'Protecting the Girl Child: Using the Law to End Child, Early and Forced Marriage and Related Human Rights,' a detailed report illustrating that child marriage does not take place within a vacuum – it is part of a continuum of abuse experienced by a girl and is often linked with female genital mutilation, sex trafficking or force-feeding before marriage, rape, domestic violence and the removal of future opportunities as a result. Early marriages account for over 35 percent of all marriages in the country, according to the U.N. Population Fund.

Child marriage directly affects approximately 14 million girls a year, and in the process legitimizes human rights violations and the abuse of girls under the guise of culture, honor, tradition, and religion. It is part of a sequence of discrimination that begins at a girl's birth and continues throughout her entire life.³¹⁴

Since there is no law in Mauritania forbidding child marriage or force-feeding, no action is being taken against anyone who may have been involved.

Calls for Mauritania to ban force feeding and child marriages, L'Association des Femmes Chefs de Famille is calling for both laws to be enacted and

³¹² Larbi Arbaoui, Morocco world news, Morocco considers law on child marriage, Sunday 10 March 2013, available at: <http://www.moroccoworldnews.com/>

³¹³ Right to education project, National law and policies on minimum ages – Mauritania, available at: <http://www.right-to-education.org/>

³¹⁴ Jacqui Hunt, CNN, Time to end child, 21st, 2014, available at: <http://globalpublicsquare.blogs.cnn.com/>

implemented urgently. Early childhood marriage is linked to gavage, which accelerates puberty and makes younger girls appear more womanly.

An increase in the number of girls being fattened up and married off early, which is attributed to families facing increased financial difficulties. The organization has recently handled around 140 cases of child brides subjected to gavage, mostly chemical gavage. It tries to annul marriages, and encourage girls to lose weight, get medical attention and go back to school.³¹⁵

Oman: The delegation confirmed that the minimum age of marriage for girls is 15. Later, the minimum legal age of marriage was set as 18 for both boys and girls. Even though it is forbidden to register a marriage under the minimum legal age, the custom still recognizes marriages below the age of 18. The Committee encouraged Oman to take legislative measures to change the age to 18 in order to fully comply with the Convention's definition of the child.³¹⁶

No data are available on the prevalence of child marriage in Oman in the UNICEF global database. Oman is planning to carry out a Multiple Indicator Cluster Survey (MICS) in 2011 and this is expected to increase the availability of data on the situation of girls and women in the country. Polygamy is permitted in Oman following Islamic law³¹⁷. In 2005, 17% of young Omani women aged between 15 and 19 were married. Even though the legal age today is 18 years, customs and traditions mean that, in reality, young Omani girls marry before they reach this age.³¹⁸

Palestine: Palestine applies the definition of a child as a person under 18 also in the Palestinian territories, in line with article 1 of the Convention on the Rights of the Child.³¹⁹

According to the law, one must be 18 in order to sign legally binding documents such as a marriage contract. Nevertheless, the law is regularly ignored in the case of marriages, where instead, Sharia law is followed; indeed, two different versions of Sharia law. In the West Bank, the Jordanian example is followed,

³¹⁵ Emma Batha, Thomson Reuters Foundation - Mauritania must ban deadly force feeding of child brides – activists, Sat, 18 Jan 2014, available at: <http://www.trust.org/>

³¹⁶ COMMITTEE ON THE RIGHTS OF THE CHILD, Oman (second periodic report, Meeting of the 43rd Session (Geneva, 11 September – 29 September 2006), pp: 2 available at: <http://olddoc.ishr.ch/>

³¹⁷ Unicef, OMAN, MENA Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa, PP:4, available at: <http://www.unicef.org/>

³¹⁸ Humanium, Children of Oman, Realizing Children's Rights in Oman, available at: <http://www.humanium.org/>

³¹⁹ Children's rights in the Occupied Palestinian Territory , Key issues and concerns, pp: 1, <http://www.upr-info.org/>

whereby the minimum age of marriage for girls is 15 and boys 16, while in Gaza, Egyptian law is followed, and the ages are 16 and 17 for girls and boys respectively. This is a contradiction in the legal system. To date, Palestinian law lacks clear and straightforward guidelines on early marriage and many times puberty is used as a measurement for the age of marriage while the legal and social age of maturity, which is 18, is ignored³²⁰.

Palestinians appear to have a unique marriage pattern: early but not universal. According to the 2004 Palestinian Demographic and Health Survey, while 14 percent of 15-to-19-year-old and nearly 60 percent of 20-to-24-year-old Palestinian women are married, 12 percent of Palestinian women ages 35 to 39 had never been married. However, Gaza and the West Bank have two different marriage patterns. While marriage for women in Gaza is generally early and universal, the opposite is the case for Arab women of the West Bank (including East Jerusalem). One reason for the Palestinian situation could be that only men and not women of the West Bank can marry Jordanians and bring them to the West Bank, which means a higher percentage of female residents of the West Bank will never marry. Overall, more than one-half of married Palestinian women ages 15 to 54 had married by age 19³²¹.

Early marriage with its related social and health problems is a significant phenomenon in society, and therefore constitutes a major area of concern. Statistics for 2002 show that 19.1 percent of all marriages involved young people between the ages of 15 and 19. Of that 19.1 percent, 18.4 percent involved girls in that age group and only 0.7 percent were male. In two percent of cases, girls under the age of 15 were married³²².

Qatar:

The delegation set that under the article 49 of the Civil Code and more recently under the article 88 of the Family Act, the child was everyone below 18 years of age. It further explained that in some areas, there were minimum age differences between boys and girls.

³²⁰ Amneh Stavridis, The problems of early marriage in Palestine, Published October 20, 2004, available at: <http://www.palestinereport.ps/>

³²¹ Palestinian Central Bureau of Statistics, special tabulation, 2004 Palestinian DHS ,Hoda Rashad, Maged Osman, and Farzaneh Roudi-Fahimi, MARRIAGE IN THE ARAB WORLD, pp: 3, available at: <http://www.prb.org/>

³²² Amneh Stavridis, The problems of early marriage in Palestine, Published October 20, 2004, available at: <http://www.palestinereport.ps/>

The Committee asked whether it was discrimination, but the delegation simply stated it was part customs and traditions of Qatari society and that nothing prevented further changes in the future. Regarding the minimum age of marriage, the delegation answered that before 2006 there was no limit of age. Since 2006, the minimum was 16 for girls and 18 for boys. The Committee noted that a single age to define the child would be more in compliance with the CRC.

However having a minimum age for marriage under the Family Act was already a huge change and achievement for the State Party. In addition, the delegation stated that early marriages were reducing because the rate of working woman is increasing.

A court may allow a marriage below the minimum age, but it requires the consent of the legal guardian as well as the consent of the two persons to be married. Marriage of persons below this age is not permitted except in conformity with religious and cultural norms which are specific to the State. The Act lays down conditions which limit the possibility of contracting such marriages, including the need to obtain consent from the legal guardian, to ensure that both prospective marriage partners consent to the union and to apply for permission from a competent court. Polygamy is legal in Qatar.³²³ Apparently the marriage rate has dropped significantly in the last decade, from 34.9 to 24.1 for men (per 1,000 men) and 32.2 to 23.4 for women. Now there are some slight differences between the numbers, for example the Qatari numbers includes people aged 15 and above where other countries tend to use anywhere from 16-18, but even if you adjusted for that the differences between Qatar and the West are huge. Marriages in Qatar are arranged and it is expected that a man will get married anywhere around age 22 to 27.³²⁴

Saudi Arabia: Article 1 of the CRC defines the child as “every human being below the age of eighteen years.” Article 16(2) of CEDAW states that the “betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.” Article 16(1) (b) of CEDAW also stipulates that women shall

³²³ Unicef, QATAR MENA Gender Equality Profile, Status of Girls and Women in the Middle East and North Africa, PP: 4, available at: <http://www.unicef.org/>

³²⁴ Skeptics in Qatar, Qatari Marriage Statistics, Saturday, April 14, 2012, available at: <http://qatarskeptic.blogspot.com/>

have the same right as men “freely to choose a spouse and to enter into marriage only with their free and full consent.” However, Saudi Arabia has neither defined a minimum age of marriage nor taken steps to ban child marriages.

On the contrary, Saudi Arabia's commonly accepted practice of male guardianship over women, where a woman is considered to be under the guardianship of her father or closest male relative all her life, is directly contradictory to international human rights standards. The combined effect of the lack of a minimum age of marriage and practice of male guardianship over women mean that a Saudi girl can be forced into marriage at any age at the wish of her male guardian³²⁵.

In order to understand how child marriage works in the larger system of Saudi government, it is important to examine the governance system itself. The government applies a form of Sharia law derived from the Hanbali School, which is one of the more traditional Sunni schools of Sharia. Additionally, there is no secular family law; all family law is based on religious edicts known as Fatwas.

There are significant incentives to wait until a child grows older to marry her off, although such incentives bring up other women's rights issues. There are monetary incentives to marry the child off early as well. A family could decide to marry off a girl at a young age if the bride price, the monetary gifts from the groom to the bride's family, is high enough. In some cases, the bride price may be more than wages a girl might earn, which encourages the family to wed her and forego any future money she might have made through work. For example, a 12 year old girl's marriage to an 80 year old man resulted in the bride's father receiving \$22,665 from the groom. The consideration of monetary circumstances provides separate reasons to delay or hurry marriages.

There is no law against child marriage in the country. Child marriage is relatively more prevalent than in many other Muslim countries. The male marriage guardians have the legal right to marry off their female charges to whom they wish and when they wish and the male marriage guardian of the groom can also marry him off if the groom is young since fat was are the law of the land, this edict means that child marriage is officially sanctioned by the

³²⁵ Equality now, Saudi Arabia: End Child Marriages and Male Guardianship over Women, 29 Nov 2010, available at: <http://www.equalitynow.org/>

government. Furthermore, the Grand Mufti issued a fatwa that approved marriages for girls aged ten and above 14. This fatwa did not set a minimum age of marriage. It sanctioned marriage at age ten, but did not disallow earlier marriage. Such fat was allow the practice of child marriage to continue and thousands of Saudi Arabian girls are married off at a young age.

In 2012 alone, there have been 5,622 marriages so far where the bride is under 1415. While international focus is on marriage of female children, it is also important to note that males can also be married off at a young age. Some young boys have guardians as well that make marriage decisions for them. Many of these children seek to do their family's bidding and do not completely understand what entering into a marriage at a young age entails.

Child marriage, both for girls and boys, is undoubtedly a significant issue in Saudi Arabia that has garnered tremendous international attention. One recent trend in the marriage system is a slowly rising age of marriage. Due to international and internal pressures, the age of marriage has risen in the past two decades.

Consequently, rates of child marriage have decreased. In 1987, 16.1% of girls aged 15-19 had ever been married. In 1996, 7% of Saudi Arabian girls aged 15-19 were married. By 2007,4% of girls aged 15-19 were married, divorced, or widowed. While these statistics demonstrate a reduction in child marriages, they imply that a portion of that 4% were married before the age of 15 and were widowed or divorced while aged 15-19. Additionally, these statistics only cover four years of age, and thus, do not include marriages of children under the age of 15. The available evidence suggests that the rate of child marriages is slowly decreasing, although the subject sample must be taken into account.³²⁶

Somalia: The minimum marriage age is 18 years for both parties; female party may marry at 16 with guardians consent; Court may grant exemption from minimum age requirements in case of necessity³²⁷ Between 2000 and 2009, 45% of young women admitted to being married before the age of 18. Arranged marriages, often unknown to the future couple, are very common. Some girls

³²⁶ Neha Nigam ,Child Marriage in Saudi Arabia, PP: 1,5,6 , available at <http://www.csames.illinois.edu/>

³²⁷ The African child policy forum, MINIMUM AGE OF MARRIAGE IN AFRICA, Family Code, 1975 (No. 23/75), pp: 12, available at: <http://www.girlsnotbrides.org/>

run away from their families to escape this situation, which is highly disapproved of in Somali society.³²⁸

According to the 2005 Demographic and Health Survey, the average age of first marriage for women age 25-49 in the Somali Region is 18.0, while the average age of first marriage for men aged 25-49 in the Somali Region is 24.3. These ages are higher than the national averages, which are 16.1 for women and 23.8 for men.

A national survey conducted in 2007 by EGLDAM found a prevalence of 21.4 % and a relatively low early marriage prevalence of 4% in the Somali Region. Out of the 35 focus groups in which early marriage was discussed, 20 focus groups (57%) stated that early marriage is common in their area and 15 focus groups (43%) stated that early marriage is rare or not taking place in their area.

Sudan: "Child" means every person, who is not above the age of eighteen years.³²⁹ The greatest achievement in the past ten years in Sudan is the enactment of the Child Act in South Sudan in 2008 and the National Child Act in 2010.

Advocacy by organizations such as Save the Children Sweden (SCS) and UNICEF in cooperation with local partners funded by Sweden and Norway have been significant in the drafting of these legal instruments. But there is a challenge of enforcement and a lack government readiness to act.

The national government institutions, in particular the NCCW, have not developed the necessary strategy to monitor the implementation of the Child Act, and in the South the Child Welfare Council is still in the process of being established. However, national strategies have been developed in cooperation with international organizations like the SCS and Sudanese civil society organizations. All child institutions, in the North and South and at the state level have to deal with challenges of recognition and resources from political and decision-making leaders.

The NCCW's lack of human and financial resources provided by the government continues to constrain its operations. Advocacy for child-sensitive

³²⁸ Humanium, Children of Somalia, Realizing Children's Rights in Somalia, available at: <http://www.humanium.org/>

³²⁹ The African child policy forum, DEFINITION OF THE CHILD: THE INTERNATIONAL/REGIONAL LEGAL FRAMEWORK, The Child Act, 2010, December 2013, pp: 13, available at: <http://www.africanchildforum.org>

or specific budget items favouring children should be a part of the advocacy strategy of civil society organizations.³³⁰

According to government statistics, close to half (48 percent) of South Sudanese girls between 15 and 19 are married, with some marrying as young as age 12. the consequences of child marriage, lies in the near total lack of protection for victims who try to resist marriage or leave abusive marriages, and the many obstacles they face in accessing mechanisms of redress.³³¹

Syria: According to international law, a child is a human being below the age of 18 years as indicated in the first Article of the CRC: “For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.

However, Syria did not state in the laws pertaining to labour relations (such as the Labour Law, Agricultural Relations Law and Fundamental Law of Public Sector Employees) a definition for children and youth, but rather defined a minimum age for working children and youth along with a set of rules and regulations ensuring their safety and protection. Certain laws have given the relevant ministers the prerogative of defining children and youth within the executive instructions related to these laws.³³²

Girls are more likely to be subject to parental decisions notably on marriage. The official figure of child marriage among women aged between 15 and 19 is almost 10%.³³³

Syrian refugees in Lebanon and Jordan are experiencing early marriages. There has been a great deal of media speculation about the frequency and nature of early marriage among Syrian refugees in Jordan. Rates of early marriage among surveyed Syrian refugees are high: 51.3% among female where and 13% among male responded to have been married before the age of 18, bringing the average of those who had ever been married before 18 years old to 33.2%.

For both male and girls, around one-third of survey respondents (30% and 33% for boys and girls respectively) noticed that the average age of marriage has changed since coming to Jordan. For both boys and girls, the majority of survey

³³⁰ Sudan Country Case Study: Child Rights, available at: <http://www.oecd.org/>

³³¹ Human rights watch, South Sudan, MARCH 7, 2013, available at: <http://www.hrw.org/>

³³² ILO Regional Office for Arab States and UNICEF (Syria) ,March 2012, National Study on Worst Forms of Child Labour in Syria, pp: 50, available at: <http://www.ilo.org/>

³³³ Child Protection Priority Issues and Responses Inside Syria, Multiple Indicator Cluster Survey 2006, Desk February 2013, pp :3, available at: <http://cpwg.net/>

respondents (over 65%) said that the average age of marriage has stayed about the same since coming to Jordan. Of those who thought it had changed, respondents were two to three times as likely to say that the age for both males and females had decreased – about 23% said this, compared to less than 10% saying it had increased.

Displacement was the most commonly cited factor for any change. Similarly, when focus group participants were asked directly whether the rate of early marriage had increased in Jordan, the majority responded that the current situation in Jordan had not affected the average age of marriage for Syrian refugees, and that, in their opinion, there may even be fewer marriages in general.³³⁴

Tunisia: According to article 3, a child is every human being below the age of eighteen years and who has not attained the age of majority by special provisions.³³⁵

Marriage age in Tunis, until 1956, a girl could be married as soon as she reached puberty. 42% of women aged 15-19 were married. The father was the one that took the decision. Girls and even boys could be married in their early teens. Early age marriages were quite common then, but things changed thanks to the CPS and age became 15 for girls and 18 for boys. Some years later, the legislature decided to raise the age to 17 for girls and to 20 for boys (Office of the High Commissioner of Human Rights).

Article 5 stipulates: “each of the two spouses not having reached the age of eighteen years of age cannot enter into a marriage contract.

Below this age, contracting marriage shall be contingent upon a special permission from the court. This permission shall only be granted for pressing reasons and for the obvious benefit of both future spouses (Ben Mahmoud: 79-80).

In 1994, only 3% of women of the same group were married. At the end of the 1990s, according to Papfam survey, average age at marriage for men was 32.9 and 29.2 for women. As to age difference between spouses, between 1966 and

³³⁴ Peace and Security UN Women, Amman, Jordan, July 2013, Gender-based Violence and child Protection among Syrian refugees in Jordan, with a focus on early marriage, pp: 37,40, available at: <http://www.unwomen.org/>

³³⁵ The African child policy forum, DEFINITION OF THE CHILD: THE INTERNATIONAL/REGIONAL LEGAL FRAMEWORK, Code On Child Protection, 1995, December 2013, pp: 14, available at: <http://www.africanchildforum.org>

1994 it declined from 6 to 2.8 years in rural areas and from 6.2 to 4.1 years in urban areas.

This increase in the minimum age for marriage is in keeping with the social changes that have occurred in response to a number of factors, in particular to education and access to employment. Today, less than 5% of girls marry before age 16. Some scores were positive, however, such as child marriage for girls (less than 5% of Tunisian women are married before the age of 16), and education. According to the Women Stats Projects, there is a 0.2% difference between educational attainment for Tunisian women and men at the high school level, slightly favouring women. The WSP report found that polygamy may exist in minority enclaves and that less than 5% of Tunisian women live in polygamous relationships.³³⁶

The fact that court's permission must be obtained for an under-age marriage to take place slowed down and reduced the process. Going to court and asking for a special permission requires time and a solid reason and we may understand that the procedure contributed to make such a marriage a rare phenomenon. Marriage below the age of legal majority requires the consent of the guardian and the mother. In the event of their refusal or of one of them and the insistence of the minor on contracting marriage, recourse shall be made to the judge. The judge's ruling authorizing the minor's marriage cannot be repealed (Ben Mahmoud, 89).

United Arab Emirates: 55 % of women under 20 in the United Arab Emirates are married. singulate mean ages at marriage have risen. This is especially the case for United Arab Emirates, which received in the recent past first of all unaccompanied male migrants who worked mainly in oil-industry and construction (Mc Falls 2007: 21). As a consequence, there has arisen a large female shortage at the marriage market, which makes it harder for males to find a suitable partner within their country of settlement. This forms an important reason why men in that specific region of the Arab world more often search their partner in life outside their country of residence (Rashad, Osman & Roudi-Fahimi 2005).³³⁷

Yemen: There is no legal minimum age for girls to marry in Yemen and the only legal protection for girls is a prohibition on sexual intercourse until the age

³³⁶ Dr. Khadija Arfaoui, Early marriage, May 5-6, 2012, equality now, available at: <http://khediya.blog.fr/>

³³⁷ Paul Puschmann - Koen Matthijs, The Janus Face of the Demographic Transition in the Arab World, The Decisive Role of Nuptiality, pp: 17

of puberty. In some cases documented by Human Rights Watch, however, girls were married before their first menstrual period and were raped by their husbands. There are almost no legal protections against child marriage in Yemeni law. In 1999, the Yemeni Parliament abolished the provision in Article 15 of the country's Personal Status Law that set a minimum age for marriage. Eight years later, a majority of the Parliament voted to set the marriage age at 17, but the strong conservative minority was able to stall the law's adoption and the recent civil uprising caused the effort to be shelved in definitely. Absent a legally established minimum age, girls as young as eight are regularly married off to much older men, often close male relatives.

Child marriage is a common practice in Yemen in both rural and urban areas. Girls may be married as early as 12 or 13, especially if the girl is wedded to a close relative. In rural areas, such as Hadhramawt and Hudaida, girls may be married as young as eight, and in Mukalla around 10. The age of marriage in urban areas is slightly higher.³³⁸ Of the 31 girls and women Human Rights Watch interviewed in Sanaa, all but one were married between the ages of 12 and 17, with the majority married before age 15.³³⁹

Yemen has the highest rate of child marriage in the MENA region - 52 percent of Yemeni marriages occur before the bride turns 18. It has the fourteenth highest rate in the world and is the only MENA country currently identified as a child marriage "hotspot." There are a variety of factors that account for the country's high rate of child marriage. Yemen is the poorest country in the Middle East and is currently besieged by widespread civil unrest. Nearly 80 percent of the population lives in rural areas of the country. Yemen has an extremely conservative and patriarchal society, and legal discrimination against women and girls is rampant in the country's civil code. Illiteracy rates in Yemen are among the highest in the MENA region, especially among women. Only 67 percent of Yemeni girls under age 24 are literate, and the most recently reported secondary school enrolment rate for girls was 26 percent.³⁴⁰

³³⁸ Adel Majid al-Shargaby, "Early Marriage in Yemen: A Baseline Study to Combat Early Marriage in Hadhramawt and Hudaidah Governorates," Gender Development Research and Studies Centre, Sanaa University, 2005, pp. 4 and 7. Human rights watch, *How Come You Allow Little Girls to Get Married, Child Marriage in Yemen*, pp: 16, available at: <http://www.hrw.org>

³³⁹ 5 UNICEF, "Yemen Multiple Indicator Cluster Survey (MICS)," 2006, <http://www.childinfo.org/mics/mics3/archives/yemen/survey0/outputInformation/reports.html> (accessed January 19, 2011), p. 4, Human rights watch, *How Come You Allow Little Girls to Get Married, Child Marriage in Yemen*, pp: 16, available at: <http://www.hrw.org>

³⁴⁰ Id. at 12-13. International Centre for Missing & Exploited Children, *Arab Charter on Human Rights 2004*, Boston, University International Law Journal, 2006, Art. 33(1), *Child Marriage in the Middle East and North* 598

Severe and long-lasting harm to Yemeni girls forced by their families to marry, in some cases when they were as young as 8. Yemen has backtracked on protecting girls from forced marriage. In 1999, Yemen's parliament, citing religious grounds, abolished the legal minimum age for marriage for girls and boys, which was then 15.

Statistics conducted by the Yemen central bureau of statistics shows that the age group 10-19 constituted the largest number of early marriages in Yemen society in 2001, with a percentage of 75% of girls and 25% of boys. The majority of women get married in the age of 15 with a percentage of 48%. The following table shows the percentage of early marriage according to age group:³⁴¹

Age group	women	men
10-19	75	25
20-24	68	32
25- 29	58	42
30-34	55	45
35-39	55	45
40-44	51	49
45-49	50	50
50-54	49	51
55-59	40	60
60-64	31	69
65+	25	75

(Source: central bureau of statistics, 2005, pp: 37)

In 2005, Yemen ranked 14th (tied with Liberia) on a list of 20 worldwide “hot spots” for child marriage compiled by the International Centre for Research on Women, with 48.4 percent of girls married before reaching the age of 18. Yemeni government and United Nations data from 2006 shows that approximately 14 percent of girls in Yemen are married before age 15 and 52 percent are married before age 18. According to the Yemeni government and UNICEF 2006 Multiple Indicator Cluster Survey, a nationally representative survey of 3,586 households, almost 52 percent of Yemeni girls were married before the age of 18 and 14 percent were married before the age of 15.³⁴²

³⁴¹ Saem, Najat, Early Marriage, National Women Commission, p. 4, seen at <http://www.genderclearinghouse.org/>

³⁴² Adel Majid al-Shargaby, “Early Marriage in Yemen,” Gender Development Research and Studies Centre, Sanaa University, p. 8., Human rights watch, How Come You Allow Little Girls to Get Married, Child Marriage in Yemen, pp: 16, available at: <http://www.hrw.org>

In 2009, a majority in parliament voted to set 17 as the minimum age, but a group of lawmakers, contending that reinstating a minimum age would be contrary to Sharia, used a parliamentary procedure to prevent the law from going into effect³⁴³

It is not only the case that a high percentage of girls marry below the age of 18; they also marry at a much lower age compared to the other countries. Marriage involving girls aged 12-14 is common in Yemen and this can be interpreted as a sign of tribalism, weak economic development, and the absence of welfare structures. The children in Yemen stated that early marriage happens for social and economic reasons. The social ones often have to do with taking care of in-laws and carrying out domestic work. Yemen is party to a number of international treaties and conventions that explicitly – or have been interpreted to – prohibit child marriage and commit governments to take measures to eliminate the practice, including the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage. UN treaty-monitoring bodies that oversee implementation of the CEDAW and the CRC have recommended a minimum age of 18 for marriage.³⁴⁴

In recognition of the continuing problem of child marriage in Yemen, in September 2013 the Yemeni Minister of Human Rights, Ms. Huriya Mashhoor, announced that she will seek to revive the Bill that has lain dormant since 2009 in order to raise the minimum age of marriage to 18, following the recent death of an eight year old Yemeni girl allegedly due to severe sexual injuries on the first night of her marriage.

³⁴³ Human rights watch, Yemen, SEPTEMBER 11, 2013, available at: SEPTEMBER 11, 2013

³⁴⁴ Human rights watch, Yemen, SEPTEMBER 11, 2013, available at: SEPTEMBER 11, 2013

**PART II: APPLICABILITY OF WOMEN'S AND CHILDREN'S
RIGHTS IN THE ARAB WORLD**

Chapter I: The Applicability of Women's Rights in the legal system of the Arab World

Since the Convention on the Elimination of Discrimination against Women (CEDAW) entered into force in September 3, 1981 and was ratified by 20³⁴⁵ out of 22 Arab states, (Sudan and Somalia were the non-ratifying states), most Arab states attached to their signature and ratification some reservations that are similar in their content and justifications. Yemen, Djibouti and the Comoros did not add any reservations that affected the content of the Convention.

It goes without saying that the political systems in each Arab state played a critical role in the ratification and accession process to the CEDAW. However, this role was countered with pressures from the civil and women societies calling for ratification and accession. The pressures were variant and different in their form in each Arab state. The non-governmental organizations (NGOs) and civil societies played an equally significant role in pressuring the Arab governments to ratify the Convention, and narrowing down their reservations to the least possible.

In this respect, we commend the retraction of the Egyptian and Tunisian governments of their reservations on article (9/2) relating to the right of a woman married to a foreigner to grant nationality to her children in equality to the rights of a man married to a foreigner. The same acclaim goes to the withdrawal of the governments of Tunisia and the Kingdom of Jordan of their reservations on article (15/4) relating to the equality of the movement of persons and the freedom to choose their residence and domicile.

The Moroccan government announcing its intention to lift all reservations on the Convention falls in the same category as well as the ratification of Tunisia on the Optional Protocol which made it the second state, after Libya, to join the Protocol, and the signature of Qatar in 2009.

Meanwhile, many Arab states still maintain their reservations on the Convention. It is then only natural to look for the content, reasons and justifications of these reservations and discuss them from a legal perspective, and study how these reservations are perceived by International Law. This will be done through The Position and Practical Value of the CEDAW in the Arab World (Chapter I), Efforts of the League of Arab States towards Upholding

³⁴⁵ Abu Ghazaleh, H. CEDAW Indicators, AWO, UNIFEM & LAS, 2009, Nubar Printing House, Cairo, p 39.

Women's Rights (Chapter II), and we end up with conclusions and recommendations.

Section I: The Position and Practical Value of the CEDAW in the Arab World

The Vienna Convention on the Law of Treaties³⁴⁶ stipulated in articles (14, 15) on the way states access international agreements which is done by either ratification or accession; ratifying a treaty and implementing it is one subject that most Arab constitutions treated extensively. Arab constitutions have mainly focused on many important issues such as the mechanism of ratifying treaties; including the ratifying authority, as governed by law and its powers, in addition to the implementation of ratified treaties within the legal system of the state.

Some states see treaties at a higher regard than national constitutions, as is the case in France, while others believe in their equal value to the constitution, such as the United States of America.³⁴⁷ Arab states on the other hand have all considered treaties to be equal to a laws passed by the legislative power less than their constitution.

In the following we go through a review on the mechanisms by which Arab states ratify treaties, and the implementation of such treaties within the Arab legal systems.

Paragraph I: Ratification of the Arab States on the CEDAW

A. Mechanisms related to ratification of treaties in the Arab constitutions

Arab constitutions indicate one of two mechanisms in ratifying or accessing treaties. The first gives the head of the state the power to sign and ratify the treaty; for instance the Basic Statute in the Sultanate of Oman considers the process of ratifying and accessing to international agreements is solely in the power of the Sultan and his alone.

³⁴⁶ The Vienna convention on the law of treaties was adopted during United Nations (UN) conference as a document on the law of treaties endorsed by the General Assembly by Resolution 2166 of 5 December 1966, and 2287 of 6 December 1967. The conference was held for signature in two sessions in Vienna during the period of 26 March to 24 May 1968 and 9 April to 22 1969. The convention was adopted at the second session on 22 May 1969 and was held for signing on 23 May 1979 and entered into force on 27 January 1980.

³⁴⁷ Dr. D. Abu Al Kheir Ahmad Attiyeh Omar, *International and National Legal Guarantees for the Protection of Human Rights*, Cairo, Dar al-Nahda al-'Arabiya, first edition, 2004, p 315, 316.

The second gives the power of ratification to the head of state and restrains it in some cases; such as in Egypt, where the constitution gave the head of state the power to sign treaties and the Egyptian parliament to give consent.

However, treaties that result in a modification to the territories of the states, peace treaties, alliance or trade treaties which result in financial commitments that do not figure in the state budget, require the approval of the parliament before ratification by the head of state.

This leads us to conclude that the Arab legal systems consider the ratification of treaties as a prerogative of the head of state, at times bound by constitution, at others free from any restrictions.

Furthermore, this means that Arab parliaments have no power to propose the ratification of such treaties. Regardless of the reasons or need and despite the fact that Arab parliaments have the power to propose draft laws, amendments to the constitution and approve access to treaties that the head of state signs, they do not have the authority to suggest the accession to a treaty they see necessary.

We can also conclude that some Arab regimes still refuse to be bound by any treaties relating to Human Rights, like the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights. These states still reply they are in the prospects of studying their accession to these conventions, among those are: the Sultanate of Oman, Qatar, Saudi Arabia, the United Arab Emirates, Palestine, and the Comoros (signed only).

B. Procedures related to implementation of treaties in the Arab legal systems

Almost all Arab constitutions have acknowledged the implementation of treaties within their territories. Article (76) of the Basic Statute in the Sultanate of Oman designated that "Treaties and agreements shall not have the force of Law except after their ratification. In no case, shall treaties and agreements have secret terms contradicting their declared ones."

Article (151) of the Egyptian constitution stipulated that "The President of the Republic shall conclude international treaties and forward them to the People's Assembly with the necessary explanations."

Article (52) of the same state: "The President of the Republic negotiates treaties in coordination with the Prime Minister. These treaties are not considered ratified except after approval of the Council of Ministers. They are to be made known to the Chamber whenever the national interest and security of the state permit. However, treaties involving the finances of the state, commercial treaties and in general treaties that cannot be renounced every year are not considered ratified until they have been approved by the Chamber".

The Syrian constitution also stipulated the same in article (71/5): "Approval of international treaties and agreements connected with state security; namely, peace and alliance treaties, all treaties connected with the rights of sovereignty or agreements which grant concessions to foreign companies or establishments, as well as treaties and agreements which entail expenditures of the state treasury not included in the treasury's budget, and treaties and agreements which run counter to the provisions of the laws in force or treaties and agreements which require promulgation of new legislation to be implemented."

Article (104) also stipulated "The President of the Republic ratifies and abolishes international treaties and agreements in accordance with the provisions of the Constitution." While article (127/7) stated that "Concluding agreements and treaties in accordance with the provisions of the Constitution" is in the power of the Cabinet.

The Jordanian Constitution stipulated in paragraphs 1 and 2, amended, that "(i) The King declares war, concludes peace and ratifies treaties and agreements, (ii) Treaties and agreements which involve financial commitments to the Treasury or affect the public or private rights of Jordanians shall not be valid unless approved by the National Assembly. In no circumstances shall any secret terms contained in any treaty or agreement be contrary to their overt terms."

Regarding treaty power, it is established in international law that once a state ratifies a treaty it becomes bound by it, both on the international and national levels equally, and its provisions need to be honoured and implemented in its internal statute.³⁴⁸ Jurisprudence has seen a lot of debate concerning the binding force of treaties in the legal system; some opinions consider treaties at a higher rank than the constitution of a state, others see it at a median level between the constitution and Law, while others consider treaties as equal to a regular Law,

³⁴⁸ Prof. Dr. Abu Al Kheir Ahmad Attiyeh Omar, Literature cited, p 307.

which is what most Arab constitutions stipulate. Such consideration was left to scholars of jurisprudence regarding the legal position and authority of treaties, and most have agreed on setting them on a median level between the constitution and regular Law. They are outranked by the constitution and are more binding than regular laws.

What we can deduce from most Arab constitutions is that they hold treaties at a rank higher than internal statutes. Generally speaking, treaties, including Human Rights covenants, are always favoured over internal statutes and are always binding whether or not they conflict with a national legislation prior or post to their implementation.³⁴⁹ Therefore, they cannot be contradicted by a national legislation, and this proposes much theoretical and practical debate concerning the ratification of the state on a specific treaty, and issuing laws that contradict the same, or maintaining the contradicting laws even after the ratification of the treaty.

In this instance, we resort to the enacted jurisprudence: imperative one; the special law shall supersede the general laws, imperative two; later laws supersede earlier laws.

C. Implementation of treaties in the Arab legal systems

From a theoretical perspective, we notice a disagreement between two large traditions that are known in international jurisprudence as: Monism and Dualism of the legal system.

Monism of law entails that a treaty is applicable in the internal statute aside from issuing special legislation that includes the provisions of the treaty. This tradition considers the international and national law as one complementary unit, and acknowledges the supremacy of the international law. That is why it is described as monism. Some states that follow this tradition are Switzerland, Germany, the Netherlands, and France.³⁵⁰

Dualism of the law, on the other hand, emphasizes on the significant difference between national and international law, or the internal statute and treaties. In order to implement a treaty in the domestic law, it has to be translated into a

³⁴⁹ Literature cited, p 325.

³⁵⁰ Prof. Dr. Hamed Sultan, *International Law in Peace Time*, Dar al-Nahda al-'Arabiya, 1969, p 244

national legislation that includes its provisions. One of the states that adapt this tradition is Italy; where no ratified treaty is considered a national law in the Italian legal system unless it is issued as legislation from the Italian Parliament. The treaty is no more an international law, and becomes a national law or an Italian legal rule.³⁵¹

Most Arab legislations have followed a tradition of monism, which does not require a special legislation that renders the treaty provisions applicable, but rather apply it directly after ratification and publication by constitution and law.

Regarding the implementation of treaties on the national level, most Arab legal systems have acknowledged a need to issue a national law for the ratification of treaties according to the conditions set in the legal system in the state. This law represents the legal validation for the implementation of the treaties under national law. It is also required that the ratification law and the text of the treaty be published in the official Gazette where domestic laws are published, in addition to the date the legislation would enter into force.

The purpose is to give all public institutions and the citizens the opportunity to review the provisions of the agreement and operate accordingly.

D. The ratification of Arab states on the CEDAW

The CEDAW is one of the international agreements that Arab states have accessed. These states have ratified the Convention as they would do any other agreement. They attached their reservations on some articles and items, as they would in any other agreement. Nineteen Arab states joined the Convention: Jordan, Algeria, Comoros, Iraq, Kuwait, Morocco, Tunisia, Lebanon, Libya, Egypt, Yemen, Djibouti, Saudi Arabia, Mauritania, Bahrain, Syria, Oman, UAE, and Qatar (signed only).³⁵²

The political regimes in each Arab state played a role in whether and how each country joined the Convention. Women and human rights groups and civil

³⁵¹ MOSLER L'APPLICATION du droit international public par les tribunaux – Nationaux R.C.A.I- tome I-1957- p 644. Literature cited in Prof. Dr. Abu Al Kheir Attiyeh, p 313.

³⁵² Attached a list of the Arab states which ratified the CEDAW, as listed on the website of the United Nations Development Program UNDP: <http://www.arabhumanrights.org/resources/ratification.aspx?cg=1>

society organizations also contributed to the process of joining the Convention or limiting the reservations that on some of its provisions.

It is noteworthy that many considerations govern the Arab states when ratifying human rights and women's rights international treaties, and here two of them:

First- There is no doubt that all Arab states are still in a developing stage; they have been under occupation for decades struggling for freedom, independence and sovereignty over their territory and resources. During that period, the international law witnessed tremendous development due to the positive interaction of the international community. Bilateral agreements governing the relations between states with common borders, trade or cooperation agreements and military alliances soon became international. Establishing the League of Nations commanded international agreements that organize the rights of workers and minorities in general; the International Labour Organization (ILO) was then created and a series of agreements relating to protecting the rights of workers were set.

As the world folded the chapter of World War II, the United Nations Organization emerged. International treaties saw another makeover; an international humanitarian law was in the horizon.

The Universal Declaration of Human Rights in 1948 was followed by the International Covenant and the International Covenant on Economic, Social and Cultural Rights in 1966, and the Women's Convention (CEDAW) in 1979, the CRC in 1989, and others. During the 1950s and 1960s, most of the Arab states gained their independence after national liberation movements ravaged the region.

These states were then more concerned with maintaining national sovereignty, which caused some delay in them keeping pace with the international community. The wave of development was happening amid the resounding absence of Arab States which were still under occupation. In this respect, Arab States feared that with the ratification of international treaties on human rights this will create a loophole for foreign intervention. Another factor was that Arab states were deeply keen on preserving their heritage and traditions which regard women at a lesser level than men, and looked for the smallest excuse to justify their position. Some were waving the flag of religion, while others were clinging to traditions and customs or the supremacy of national laws.

Second- After studying how treaties are prepared, we can obviously understand that the Arab decision-makers are not familiar with the drafting process of international conventions. Developing treaties is done primarily in Western states that have the theoretical practical and technological means and potential of preparation of such treaties and agreements. The Western states then present their treaty draft, often written in French or English, to the General Assembly of the United Nations or at an international covenant.

The Arab negotiator would only have a few hours to study the Convention and voice his opinion, or even to hypothetically sign his initials in order to later ratify the treaty after a careful study of the text of the Convention. Given that these agreements are drafted by Western states, and Western societies usually have absolute freedom - especially in issues relating to women – and are different from the Arab societies that adhere to religions and traditional values and principles, Arab negotiators usually feel the need to express some reservations for fear of conflict with the vision put forward by the treaty and the religious traditions and customs that Arab states sanctify.

Add to that the reluctance of the majority of Arab states to ratify, join and implement conventions relating to human rights in general, and conventions relating to women in particular. In contrast, we find Arab states ratifying and implementing treaties, even amending national legislations, and taking all effective measures with an unusual speed when these agreements relate to trade, security, terrorism or money laundering.

The delay that prevented the Arab states from keeping pace with the development of the international law, especially in the field of international agreements, in addition to a sense in the Arab states that these treaties have been custom-fit to Western states, and the unfortunate fact that some Arab intellectuals voice these fears, have all led the Arab states to try and find a way out to ensure the preservation of religion, values, customs and traditions - according to how these are perceived by these states and their cultures – save face with the international community and be part of the development. The use of reservations in the name of religion, domestic laws, customs or traditions was done to alleviate the weight of international obligations under these conventions, especially those relating to women.

Paragraph II: The Reservations of the Arab States to the CEDAW

Twenty Arab states joined the CEDAW³⁵³. Their position is of utmost importance and should be commended for two main reasons. First, joining the CEDAW reflects the desire of Arab states to engage themselves in the international community, influence and be influenced by it. Second, it is an important step in modernizing and developing national legislation that would be at a higher degree of fairness and objectiveness, despite all the reservations that these states expressed on the same.

Arab states expressed several reservations on the provisions of the Convention; some states had entered a general reservation to all the provisions of the Convention, while other states had reservations on specific items.

A reservation is a unilateral statement, however phrased or named, made by a state or an international organization when signing, ratifying, (formally confirming, accepting etc.), whereby the state purports to exclude or to modify the legal effect of certain provisions of the treaty in their application.³⁵⁴

The question that arises in this regard is why have the Arab states ratified this Convention, and carried all these reservations that nullified its content?

Does international prestige alone suffice as justification for joining the CEDAW? Saudi Arabia, for example, which had ratified the Convention with certain reservations that kept all sorts of discrimination against women within their legal systems and community; by so doing, would it have a genuine desire to achieve equality between men and women and reach a better status for women's rights?

What is the legal standing regarding the reservations of the Arab states that conflict with article (28/2) that stipulates that reservation may be entered on condition not to violate the main purposes or objectives of the Convention?

We will try to review this complex legal position that should be open for debate.

By reviewing the reservations of Arab states we can see they cover current issues, some of which are related to family legislation, others regard issues of custody, guardianship, inheritance and the nationality of children, child

³⁵³Haifa Abu Ghazaleh, literature cited earlier.

³⁵⁴Prof. Ahmed Abu-El-Wafa, International Law and International Relations, Dar al-Nahda al-'Arabiya, Cairo, 2006, p68.

marriage, polygamy and the right to divorce, alimony, and the marriage of a Muslim woman to a non-Muslim.³⁵⁵

That said, we can divide Arab reservations on the CEDAW into two communities, the first includes general reservations to the whole Convention, and the second includes specific reservations. We will address both in detail as follows:

A. The general reservations to the CEDAW

Several Arab states expressed a general reservation prior to their ratification to the CEDAW to all of its provisions that conflict with the legislation of Islamic law (Sharia), while other states expressed other general reservations to the items that are not conflicting with their local legislation.

a. The reservations based on Islamic law

Most Arab legal systems were drafted within the framework of Islamic law in general, and the guidelines of the personal status laws, in particular. As a result, many Arab states expressed their general reservations to the Convention based on conflict with Islamic law, while other Arab states entered specific reservations to certain articles, and justified doing so with their violation or conflict with items in the Islamic law, for example:

- Saudi Arabia expressed its general reservation to all the provisions of the Convention stating: “In the case of contradiction between any terms of the Convention with the provisions of Islamic law, the Kingdom of Saudi Arabia is not under obligation to observe the contradictory terms of the Convention”.
- Mauritania expressed its general reservation to the Convention stating: "The Government of Mauritania, having seen and examined the Convention, have approved and do approve it in each and every one of its parts which are not contrary to Islamic Sharia and are in accordance with our Constitution.”

³⁵⁵ Amena Al-Jablawi, article on the Arab Reservations on the CEDAW, “Cultural Privacy or Arab Privacy?” Published on “Al-Awan” website, on Wednesday 29 December 2010: <http://207.45.177.54/%D9%82%D8%B1%D8%A7%D8%A1%D8%A9-%D9%81%D9%8A-%D8%A7%D9%84%D8%AA%D8%AD%D9%81%D9%91%D8%B8%D8%A7%D8%AA.html>.

- The Sultanate of Oman also expressed a general reservation to the Convention stating: "The Sultanate expresses reservations to all provisions of the Convention not in accordance with the provisions of the Islamic Sharia and legislation in force."

Many Arab states founded their reservations to other articles of the CEDAW, as follows-

- Jordan, Algeria and Tunisia entered reservations on article (15/4) regarding equality in the freedom of movement and choice of residence and domicile; where they stated that this article is contrary to the teachings of Islam. Jordan said that according to the state religion (Islam), a woman follows her husband and cannot choose her place of residence alone, whether married or single.
- Egypt's reservations were made to article (16), while Jordan and Libya expressed their reservations on article (16/c) of the Convention relating to marriage and family relations; which stipulates that men and women have "the same rights and responsibilities during marriage and at its dissolution." Egypt maintained that "the provisions of Islamic law have identified rights and duties that are balanced and equal between men and women during marriage and at its dissolution, and guaranteed the right of the wife in her dowry and the right to manage her own property, and granted her the right to divorce pending the approval of a judge." Jordan justified its reservation to the same as being contrary to the teachings of religion, which states that men have ward ship over women, a reality that denies the wife the full freedom of action.

Based on the same justification, Jordan also expressed reservation to paragraph (d) of the same article which relate to women having the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount.

Libya justified its reservation to the above-mentioned paragraphs as being in line with "the observance of the rights granted by the Islamic law for women."

- Iraq expressed reservations on article (2), paragraphs (f) and (g), article (9), paragraphs (1, 2) and justified the same with its observance of

Islamic law that gave women equal rights with their husbands, assuring the equal balance between them.

- Kuwait made reservation on article (16/f), which stipulates that men and women have "the same rights and responsibilities with regard to guardianship, ward ship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount."
- Morocco, Libya and Egypt expressed reservations on article (2) of the Convention, relating to the equality of men and women in their national constitutions or other appropriate legislation. Morocco stated its readiness for adopting the article on condition it does not conflict with the provisions of the constitution of hereditary monarchy, or with the provisions of personal status in Islamic law.

Libya also stated that "the implementation of this article is bound by the provisions of Islamic law regarding the distribution of inheritance between males and females."

Egypt conveyed its interest in adhering to the provisions of this article, provided they are consistent with the provisions of Islamic law.

The arguments over the above mentioned reservations that are based on Islamic law provisions can be discussed and countered as such:

Review of the position of some states-By reviewing the position of many non-Arab states it appears that most of them have expressed attitudes that are considered more advanced than those of Arab states. In a review that covers the ratifications of some non-Arab Muslim countries, and some non-Muslim non-Arab states, and some Arab Islamic states, we find the following:

✧ *The position of some non-Arab Muslim states:*

- Turkey: an Islamic state neighbouring Arab countries has marked only one reservation concerning article (29/1), which stipulates the use of arbitration to settle disputes over the application of the Convention. Thus, this Islamic country does not see the issue of elimination of discrimination as conflicting with the laws of the country, nor with its religion or with the characteristics of culture.

- Indonesia: an Islamic State did not express any reservations to the Convention except on article (29/1).
- Pakistan: had no reservations either, except on article (29/1), a text that many non-Arab and non-Muslim states disclosed reservations on.

✧ *The position of some non-Arab and non-Muslim states:*

Spain: if we look at this European non-Arab and non-Muslim monarchy, we see that Spain noted no reservations on any article of the Convention, but expressed a condition on preserving the monarchy from any of its effects.³⁵⁶

✧ *The position of some Arab Muslim countries:*

Tunisia: put reservations on some of the articles of the Convention but none on article (2) thereof, a very important item in the CEDAW. Article (2) binds the state party to take all legislative and executive measures to eliminate all forms of discrimination against women. In 2006, Tunisia withdrew its reservation to article (9) relating to citizenship.

The CEDAW Committee considered that some reservations are too general and are not confined to a certain item or article in the Convention.³⁵⁷ So far, the Commission has issued 25 general recommendations in that regard. The Committee noted a number of general recommendations about the large number of reservations which it considers contrary to the object and purpose of the convention.³⁵⁸

The general reservations of the Arab states on the CEDAW, which are justified in saying its articles are in conflict with Islamic law, are wide and do not allow us to determine the items thereof. Saying that the state has reservation on all the items of the agreement that are contrary to Islamic law is a very fit-all view. One cannot identify the conflicting articles, matters remain unclear and this same fact allows more ambiguity for the other parties that have a right to treat the state having reservations the same (the principle of reciprocity).

As clearly stated above, many Islamic countries had no reservations on the articles of the Convention such as Turkey, Indonesia and Pakistan, does that

³⁵⁶ Amena Geblawi, literature cited.

³⁵⁷ Jane Connors, Andrew Byrnes, Chaloka Beyani, "Evaluating the Status of Women: A Reports Guide on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)", issued by the Commonwealth Secretariat in London and the International Action Network on Women's rights in the United States, Copyrights: the United Nations Development Fund for Women (UNIFEM), 2003, p 120.

³⁵⁸ Rabea Naciri, literature cited, p 15.

mean these countries have a different understanding of Islamic law? Or that the Arab countries have a better understanding of Islamic law than other countries? To answer that, several important issues will be addressed below.

1. Prohibition of Discrimination in Islamic law

Islamic law freed man from slavery and servitude, and included many of the principles and rules that urge to free the enslaved. It also included many items that advocate justice and equality in all aspects of life and among all people, far from any discrimination in the way they are treated, except for the distinction made due to the biological nature of women; such as keeping them from praying or fasting during certain periods, otherwise, men and women are equal in their rights and duties. Proof of that resides in the mere existence of model Muslim countries that have not remarked any reservations in this regard.

The teachings of Islam promote gender equality and have been accepted by Muslims in the first Islamic era, where these teachings permeated to all aspects of daily life. However, Islamic societies have seen in later centuries a return to the concepts and ideas of al-Jahiliya (era of ignorance) with regard to women, where treatment of women was taken to the times of backwardness and decadence. The poor situation of women in some Muslim societies is due to widespread ignorance that surrounds them, and is not the result of the teachings of Islam.³⁵⁹

2. Articles 15 and 16 of the CEDAW in the light of Islamic Law

There was no mention whatsoever that the objective of the Convention is to achieve equality in inheritance, or in matters of personal status, or to legalize adoption, as some interpret when reading the articles of the Convention. The Islamic law tolerates a wider understanding. It sets a framework of complementarities between the roles of both. Even if it had granted women half a right then a man in the issues of inheritance, it has granted her an equal share to man in most cases, and a bigger share in some cases. Even in the event she gets half of what a man does, that is justified by the obligation a husband, father

³⁵⁹ Prof. Dr. Rushdi Shehata Abu Zeid, *Violence Against Women and How to Confront it*, first edition, 2008, Dar Al Wafaa Ledonia, Alexandria, p. 200, 201.

and brother, has in order to secure her financially. The Islamic law should be looked at with all its integral parts.

With regard to issues of personal status, many Arab states signalled their reservations on some paragraphs of the articles (15, 16) of the Convention, we can see that the first paragraph of article (15); which speaks about equality before the law, the second paragraph; relating to equality in civic rights and the right to conclude contracts, property management and litigation before the courts and tribunals, in addition to the third paragraph, which is concerned with revoking any contracts or acts that imply legal effects directed at restricting the legal capacity of women, are all subject to no dispute. The fourth and final paragraph, which focused on the equal freedom of movement and choice of housing and residence, was met with reservations from Jordan, Algeria and Tunisia. Their justification for this reservation was that it was contrary to the teachings of Islam. Jordan said that according to the state religion (Islam) a woman follows her husband, and cannot choose her place of residence alone, whether married or single.

This argument can be countered with the fact that the majority of Arab and Islamic countries give women the right to freedom of movement alone, and residing alone; in case she wishes so, there is nothing in Islamic law that explicitly forbids women from moving or living alone. The argument is simply an opinion of jurisprudence that some modern scholars still hold.

On the other hand, the issue of polygamy is one of the very controversial topics and is often source of difference in the points of view, due to the difference in doctrine between the intellectuals themselves, i.e. the diversity of sects.³⁶⁰

In the same context as polygamy, the good opinion in matters of restricting the right in divorce to the husband alone and allowing polygamy without reference to the first wife, is to present the case before a judge's order to preserve the rights of all parties. If the husband has the right to divorce his wife or marry a second, the rights of the wife and children must be maintained. If the husband has the right to marry more than one wife; his freedom is restricted to his ability to provide his wives with financial security and be fair to both, and have the consent of his first wife.

³⁶⁰ Prof. Dr. Mohammed Beltagy, *The Status of Women in the Quran and Sunnah*, Al Shabab Library, Cairo, 1996, p 261.

The Holy Quran did not state it was permissible for the Muslim to have more than one wife unless he is able to be fair among them, and believes that he would not infringe on one of his two wives. If he fears not to do them justice, then he forfeits this right (And if you fear that you cannot act equitably towards orphans, marry such women as seem good to you, two and three and four; but if you fear that you will not do justice between them, then marry only one or what your right hands possess) then the Holy Quran added (this is more proper that you may not deviate from the right course).³⁶¹

Hence, the Holy text has stipulated that a man has to do justice to his wives, as a condition to taking more than one wife. The Quran also said (And you cannot do justice between wives, even though you wish (it)).³⁶² When looking at both verses together, we can see that polygamy is not permissible in any case, since failure to meet its conditions is inevitable. This is what Tunisia adopted by in its personal status law which prevented the husband from marrying another wife only after either divorce or consent is granted from the first wife.³⁶³

Most scholars see that a woman has the right at marriage to ask her husband for divorce if he wants to marry another. This condition is not meant to prevent the marriage from happening or restrict the man's right to divorce, but it is a blunt statement of the right of the wife's right who has the freedom not to accept this situation be imposed on her after marriage, this is consistent with the Islamic law.

The Moroccan Law also followed the same; it required the approval of the first wife for the husband to marry another.

The Moroccan Family Code that was issued in 2003 enforced strict conditions on polygamy most important of which is the approval of the first wife to her husband's marriage, his own financial capacity to spend on two houses, the presence of justified extraordinary reason for marrying a second wife, and the ability of the husband to provide justice to his wives and their children in all aspects of life. The new law also gave the right of the adult girl in marriage without the consent of an adult guardian, and raised the minimum age for

³⁶¹ Sura An-Nisa, verse 3.

³⁶² Sura An-Nisa, verse 129.

³⁶³ Mohammed Beltagy Dr., literature cited earlier.

marriage from 16 to 18 years, and made divorce depending on a judge's order.³⁶⁴

In the same line of thought, the Saudi Ministry of Interior issued a series of regulations on the marriage of its citizens to Moroccan women; such are: providing a copy of passport or personal status card as proof of identity, the approval of the first wife certified by the court, and a certificate of salary from the employer. The Saudi authorities also requested employees of the public sector to provide a pay check document certified by the Chamber of Commerce, as well as a copy of the evidence to serve as testimony to issue a certificate of good conduct, and to ensure the absence of precedents on the person by the Embassy, and the origin of examination before marriage.³⁶⁵

Doing justice to the wives, having enough financial capacity and a good health and psychology, in addition to the approval of the first wife, are the conditions that most scholars agree on in this regard. All these issues cannot be proven unless through recourse to the judge; who can verify their availability, and evaluate their validity and approve them. The CEDAW did not include any reference to the elimination of polygamy or divorce to prevent or restrict either. There was no mention of banning polygamy or divorce.

The CEDAW advocates for the preservation of the rights of all parties, specifically the wife's and children's rights.

It is clear that the considerations invoked by the Arab states when justifying their reservations to CEDAW, which were based on Islamic law, are in fact an expression of social customs and traditions passed down, cloaked with Islam to justify their aspects of unacceptable discrimination.

Article (16) of the Convention, which focused on matters relating to marriage and family relations, has included several items, such as item (a) stating that women and men have the same rights in marriage, and item (b) stating that both have the same right to freely choose a spouse and to enter into marriage with their free and full consent, item (c) stating that they have the same rights and responsibilities during marriage and at its dissolution, item (d), stating that both have the same rights and responsibilities as parents, where the interests of the

³⁶⁴ Article published on the Arabic website: http://www.moheet.com/show_news.aspx?nid=388503&pg=32

³⁶⁵ New article entitled: "The First Wife's consent, a requirement for Saudis Marrying Moroccan Women", published at Al-Awael magazine website: http://www.el-awael.com/news/art_2/1404.html

children are paramount, item (e) stating that they have the same rights to decide freely and responsibly on the number and spacing of their children and the right to use means of organizing their family, and item (f) stating that they have the same rights and responsibilities with regard to guardianship, ward ship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation, item (g), stating that they have the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation, and item (h) stating that a woman has the right to own and manage her property freely.

The second paragraph of the article stipulates that the betrothal and the marriage of a minor shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Based on the review of the text of the above-mentioned articles (15) and (16), we find no cause for objection. Item (f) of article (16) on equality in guardianship, ward ship, trusteeship and adoption of children received major criticism from Arab states and was subject to many reservations, while this issue does not recall for so much debate and the counter argument is very simple:

When reviewing this item, we need to keep in mind that this Convention has not been put forth for the Arabs or Muslims alone, but it was developed for all the peoples of the world, including Muslims, Christians and Jews, and people of other religions such as Buddhists, Hindus, as well as communities that do not adopt any religion. The Convention tried to establish a set of universal rules accepted by everyone, so that there would be no problem for Christians in the issue of adoption; for example, in Europe, women and men have equal ward ship and guardianship of children, and in the event of separation, custody of the children goes to the fittest parent and not necessarily the father or the mother, as stipulated by the national laws in most countries of the European Union.

The universality of the Convention also led to the formulation of its articles in a general manner that is compatible with all religions and different cultures. Proof of such is that the word adoption in the Convention was followed immediately by "or similar institutions", this can be translated in accordance with the national regulations in each state. In the Arab and Islamic countries "or similar institutions" can be understood as the sponsorship system (Kafala) in Islam.

○ It is noteworthy that we cannot be limited to the literal meaning of the text. The meaning is in the general context, and most of the Arab and Islamic legal systems have stipulated that in case the father could not assume his custody of the child, custody would be reverted to the mother. This is a standard measure in most of the laws of personal status in the Arab states. Add on, there is a tendency to make the educational guardianship a responsibility of the guardian, be it the father or mother. Hence, the guardian has to cater for the child's education in order to avoid the dispute between the father and mother in providing for the children's education in case of separation. The Egyptian legal system has adopted such legislation in its amendment of the law in 2008.

3. Jurisprudence in Islamic law reflects human understanding

The jurisprudence in Islamic law upon which Arab states rely on, are the interpretations of a human understanding of the Law. Jurisprudence may be agreed or argued with; such an example resides with some states withdrawing their reservations to the Convention; such as Jordan, Morocco and Egypt. These countries withdrew some reservations and were still committed to the Islamic law as the official religion of the state and a major source for their legislation. Scholars may disagree on the same matter, better yet; even a scholar might have different opinions on the same matter in different environments.

For example; Abu Hanifa permitted women to marry without guardian, while Hanbali and Shafi'i, Maliki, conditioned her marriage with a guardian. As long as there is no definitive text in the Qur'an, Sunnah or Fiqh, any human interpretation is subject to debate. A scholar (who fulfils the requirements after deploying his maximum effort) is subject to either reward or double reward, for there is a possibility of not being right, and if there was a possibility of agreement among scholars, such discretion would have been achieved by the Companions of the Messenger of Allah (PBUH), who were a homogenous lot in their language and culture.³⁶⁶

Islamic jurisprudence is not equal to the provisions of Islamic law, but it is an explanation and interpretation of a human mind, thus, it is only a scholar's effort far from any divine nature.

³⁶⁶ Prof. Dr. Mohammed Beltagy, literature cited, p 596.

Given the difference of opinions between scholars, better yet the conflicting views in most cases; and given that the family laws in Arab countries are taken from this jurisprudence or Islamic schools they designate as Sharia; and given that their source is as such, their contents have come to be different. Thus, every Arab state has addressed the content of the articles of the Convention according to their approved doctrine (including family code). That is one of the main reasons why some Arab states did not enter reservations on a certain article or items, while others rejected the whole article or several of its items.³⁶⁷

We should make clear the difference between the Islamic religion with its sanctity and assertion on the principles and rules of justice, equality and freedom, and Islamic jurisprudence, which is a human endeavour that interprets religion from its sources, and may so vary from a person to another and in a specific era.

For example, while many scholars confirm that guardianship is reserved to men, some believe that "guardianship was associated with a certain era where security was not provided. But now, government authorities provide security for the people."

Others argue that Islamic law shows no basis for concluding that the Hanbali School of jurisprudence (the official doctrine of Saudi Arabia) discriminates between men and women with regard to legal capacity.

According to Dr. Mohammad Fadel³⁶⁸, the vast majority of Hanbali texts rejects the idea of the existence of foundation for the guardianship of the man over his wife that would restrict her independent legal capacity. And while some Hanbali jurists believe that a guardian (or the government at the end of the day), can restrict the rights of women under the pretext of preserving some other interests, such as preserving the family name, or limiting the interaction in society (i.e. no mixing between men and women, the separation in public and private space and facilities between women and men, and other things, such as: the prohibition of

³⁶⁷ Farida Banani Dr., *The Legitimacy of the Reservations of the Arab Countries to the Convention on the Elimination of All Forms of Discrimination Against Women*; a paper presented and published in the Regional Conference on Ways to Activate the Convention on the Elimination of All Forms of Discrimination Against Women, edited by Dr. Nivine Masaad, Beirut, 26-27 January 2004.

³⁶⁸ Mohammed Fadel, Assistant Professor of Law at the University of Toronto, paragraph cited from: "Perpetual Minors – Human Rights Violations resulting from the Guardianship of Men and Separation Between the Sexes", which comes under the International Reports on Women's Rights in Saudi Arabia, issued by Human Rights Watch 2008, published online: <http://www.hrw.org/ar/node/62258/section/7>.

women driving cars, practicing sports and many other activities that may be imposed on her because of her gender), these restrictions are not legally binding. That is why, according to Dr. Fadel, "any restrictions in Saudi law or customs preventing women from exercising their legal rights is a matter of political will and not strict adherence to the Hanbali ideology."

There are also many differences among Islamic jurists on the extent of the authority of the guardian and its restrictions. For example, there are different interpretations in the Hanafi and Shafi'i ideologies in the application of guardianship at the minors due to their incomplete legal capacity and ability to act for themselves. According to Dawoud El Alami, a Sharia expert at the University of Wales, "As to who must have a guardian in marriage, the jurists have taken different positions.

The general view is, however, that minors, the insane, and inexperienced or irresponsible persons of either sex, must have a guardian - yet the jurists focus on the woman's need for guardianship while little is said about the need of the man for the same". Even among those who support male legal guardianship over adult women, there exist certain requirements for the exercise of this guardianship. The person must be a Muslim male of sound mind and good character. Even some Hanbali jurists considered that the guardian must be just when exercising his guardianship, according to the text of the holy Quran, and this guardianship should in all cases be limited and conditional.³⁶⁹

Ward ship is strictly related to the personal relationship between a wife and husband, and does not exceed it to discrimination in financial and non-financial conduct granted by Islam to women, as being independent persons and have full capacity. It does not overboard to professional relations and functions either, since Islam permits a woman to preside over thousands of men in the professional life as long as she has enough qualifications to do so.³⁷⁰

These are some opinions in Islamic jurisprudence that show that the issue is simply a legal interpretation (Ijtihad), that is being exploited in the name of religion to enforce guardianship over women.

³⁶⁹ Reference "Perpetual Minors" cited.

³⁷⁰ Mohammed Beltagy, literature cited, p 577.

b. Reservations based on conflict with national legislation

Some Arab countries expressed general reservations on the CEDAW not to violate the Constitution; example:

- Tunisia: submitted a general reservation declaring that it shall not take any administrative or legislative decision in conformity with the requirements of this Convention where such a decision would conflict with the provisions of Chapter I of its Constitution.
- Morocco: with respect to article (2) of the Convention, it declared its general reservation to any violation of the constitutional provisions of the hereditary monarchy system.³⁷¹

B. Specific reservations to the CEDAW

Many other Arab countries attributed their reservations to some articles of the CEDAW on the basis of national laws, for example:

Oman declared reservations on "All provisions of the Convention not in accordance with the provisions of the Islamic Sharia and legislation in force".

Kuwait: found article (7/a) with regard to the equal right to vote and voting contained in the Convention to conflict with the Kuwaiti Electoral Act, which limits the right to participate in elections as specific to male citizens only. (Kuwaiti women won the right to participate in elections in 2005).

Jordan, Algeria, Kuwait, Morocco and Tunisia: found article (9/2) of the Convention with regard to equal right to transfer nationality to children conflicting with the law of nationality. Algeria found article (15/4) on the movement of persons and the freedom to choose their residence and domicile of the Convention to conflict with the provisions of Chapter (4) item (37) of the Algerian Family Code, and Morocco found it conflicting with articles (34) and (36) of its personal status law, while Tunisia expressed reservations on the same article for contradicting the personal status law in Chapter (23) and (61).

³⁷¹ ADFM Report on the Application of CEDAW, 2009, p 6.

These general and specific reservations based on conflicting items of the Convention with the constitutions or national laws, and these reservations, can be countered as follows:

First- Under the Vienna Convention on the Law of Treaties of 1969, article (27) stipulates: "A party may not invoke the provisions of its domestic law as justification for its failure to perform a treaty". This text gives priority to a treaty over national laws, and therefore the latter may not be invoked in the reservation when accessing treaties. In the case of conflict between a treaty and national laws the conflict should be resolved in accordance with article 27 by virtue that the international rules supersede national laws of the Vienna Convention, ratified by a majority of Arab countries, and on the basis that later laws supersede earlier laws with regard to conflict of agreement with national laws. Therefore, a treaty should be given priority on national laws. Upon ratification of a treaty, or even before ratifying, the state should review its national laws in terms of any conflict and amend its domestic laws to conform to the treaty they ratify.

Second- All Arab constitutions include specific mechanisms for the ratification or accession to international treaties, and mention a reference of the value of international treaties in its legal hierarchy. As we mentioned earlier, the majority of jurisprudence in the Arab countries agrees on the supremacy of treaties over the national laws, through the interpretation of constitutional and legal provisions, or considered treaties in a level equal to their national laws – at the least - and that the legal systems in Arab countries follow the principle of monism of the law; i.e. the treaty is applied in the state directly, without the need to seek special legislation to implement a certain Convention except for those related to the ratification of the treaty and its publication in accordance to the legal laws in force. The consent of the state over the Convention through its executive and legislative bodies, and publication of the same in the official Gazette, granting it equal power to that of national laws – at the least, if not higher³⁷² - the direct consequence of it is that the rule of "the later laws supersede earlier laws", a common legal rule, which means that the treaty is subsequent to national laws and must be given priority.

³⁷² Refer to Chapter I of this Thesis for more details on the legal value of treaties in the Arab legal systems.

However, if the national laws came after the ratification of the treaty, another rule shall apply "special laws supersede general laws", since a treaty is a special provision in a specific field. Example to which is the CEDAW, which is considered a special provision on women's rights, and must supersede the general provisions prior and post to the ratification of this Convention. This rule states that the ratified treaty would be enforceable and supersedes the national general laws (public law), whether prior or later to the Convention.

a. Summary of the reservations

The CEDAW is one of the human rights conventions that countries expressed many reservations on, including the Arab countries, who limited their reservations to the following-

- Article (2): relating to the elimination of discrimination in national constitutions or other appropriate legislation (Iraq, Morocco, Egypt, Algeria, Libya, Syria), because of legal discrimination against women in some of the national legislation of these countries.
- Article (7): relating to the elimination of discrimination against women in the political and public life (Kuwait).
- Article (9): relating to the elimination of discrimination with respect to nationality (Jordan, Iraq, Kuwait, Morocco, Lebanon, Syria, Bahrain, Egypt, Oman, Tunisia, Qatar, Saudi Arabia, Syria, UAE), due to the violation of this article of the nationality laws in those states (the Comoros, Yemen, Libya, expressed reservations on this article while Egypt, Algeria and Tunisia withdrew their reservations thereof).
- Article (15): relating to the elimination of discrimination before the law (Jordan, Algeria, Morocco, Tunisia, Bahrain, Oman, Qatar, Syria, UAE). Reservations to this article focused primarily on the fourth paragraph; where (Syria, Algeria, Bahrain, Oman, Qatar, Tunisia) expressed reservations related to freedom of movement and choice of residence, which states that: "States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile."
- Article (16): relating to the elimination of discrimination in marriage and family relations, on which (Jordan, Algeria, Iraq, Kuwait, Bahrain, Morocco, Tunisia, Lebanon, Libya, Egypt, Syria, Oman, Qatar, and

UAE) expressed their reservations, while The Yemen, Comoros, Djibouti, did not.

- Article (29/1) relating to arbitration as a means to solve disputes between States Parties concerning the interpretation or application of the Convention was met with reservations by the majority of Arab countries, including: (Algeria, Iraq, Kuwait, Morocco, Tunisia, Egypt, Lebanon, Yemen, Syria, Oman , UAE, Bahrain).

Studying the reservations on the articles stated above, we reckon that the reservations of Arab countries aim at keeping a sort of discrimination regarding the issue of the article thereof, for example; the reservation to article (2) of the Convention, which binds states parties to apply the principle of equality in the constitutions and national legislation and take the necessary legislative and non-legislative measures to eliminate discrimination against women, etc.

This article is the beating heart of the Convention. It is a major theme of the CEDAW as it provides for its primary purpose, and the fundamental obligation of states parties which is the elimination of all forms of discrimination and its various manifestations. Therefore, any reservation to this article voids the commitment to the Convention and empties its content of any meaning.³⁷³

The expression of reservations and their multitude weights on the credibility of the Convention, in particular those on article (2), which contains essential provisions and the main purpose of the Convention, a reservation on this article would deny women equality with men, and restrict the state's obligation to take concrete steps in eliminating all forms of discrimination and reviewing pertinent laws and legislation.³⁷⁴

A reservation to this article implies that the concerned state would keep practicing its discrimination against women in its constitution and national laws, and will not take any legislative or other measures to prohibit such discrimination, and will not set forth any legal protection for women, it also means the possibility of exercising acts of discrimination against women, keeping existing laws and any penal provision which constitute discrimination against women.

³⁷³ Prof. Dr. Farida Banani, The Legitimacy of the Reservations of the Arab Countries to the Convention on the Elimination of All Forms of Discrimination Against Women; a paper published in the Regional Conference on Ways to Activate the Convention on the Elimination of All Forms of Discrimination Against Women, edited by Dr. Nivine Masaad, Beirut, 26-27 January 2004, p. 37, 38.

³⁷⁴ Dr. Haifa Abu Ghazaleh, literature cited, p 15.

The reservation on article (7/a) of the Convention, to which only Kuwait expressed reservations, implies that this state will not allow the participation of women in the political life. Kuwait justified its reservation by saying that this paragraph is incompatible with its Electoral Law, which limits the right of nomination and election to males.³⁷⁵ This means that Kuwait will keep the law with its discriminatory provision against women despite the ratification of the CEDAW, which holds as a main goal the elimination of all forms of discrimination against women. (Kuwait withdrew its reservation in 2005).³⁷⁶

This is also the case with the reservations of some Arab states on article (9/2) relating to the right of women to confer their nationality to their children in equality to men. Reservations to this article imply that the state will retain its discrimination against women; where men, unlike women (except in some extraordinary cases), would still be able to grant their nationality to their children, despite the damage caused by this discrimination to children. The same applies to articles (15) and (16), where the state insists on maintaining its discrimination against women, despite its ratification of this binding international treaty the main objective of which is to eliminate all forms of discrimination against women. Reservations to the above-mentioned articles - which relate to matters of personal status – have a negative impact on the rights of women, children and families in general.³⁷⁷

Regardless of the nature of the reservations made by Arab countries and the justifications provided, these reservations often express the lack of political will of many Arab states to implement the provisions of the Convention. A general reservation, in addition to the reservations to articles (2) and (16), is often a clear sign on the absence of an actual commitment that advocates gender equality.³⁷⁸

All the specific reservations made by the Arab states are concerned with some of the main topics covered by the Convention. However, even if the purpose of the Convention was to eliminate all forms of discrimination against women, the formulation of reservations that rather honour discrimination, is not acceptable

³⁷⁵ UNICEF and UNIFEM joint paper: "The Convention of the Elimination of all Forms of Discrimination against Women, the implementation of the convention in Arab countries", 2009, p. 5, 6.

³⁷⁶ Encyclopedia of Kuwait: <http://www.aboutq8.org/women.html>

³⁷⁷ Dr. Haifa Abu Ghazaleh, literature cited, p 15.

³⁷⁸ Rabea Naciri, advisor at the Economic and Social Commission for Western Asia (ESCWA), a study entitled "The Convention of the Elimination of all Forms of Discrimination against Women, Shadow Reports in Arab countries", issued by the United Nations, New York, 2007, published online: <http://www.escwa.un.org/information/publications/edit/upload/ecw-07-1-a.pdf>

legally, internationally, socially or humanly. In this Thesis we only discuss the legal dimension of these reservations and their legitimacy in international law, and from a legal standing we can say that such reservations are invalid for violating the objective of the Convention, as it is contrary to rules of *jus cogens* in public international law, which have been the norm for decades.

b. Reservations of Arab states in the light of International Law principles

1. The reservations as a violation of jus cogens

Although the CEDAW and international law allow states to express their reservations upon ratification of any treaty, these reservations would weaken the protection of women against violence.³⁷⁹ A deeper study of the rules of international law allows us to confirm that equality between men and women and non-discrimination on the basis of gender is a *jus cogens* that has been the norm for decades. This leads us to a discussion of the concept of *jus cogens* in order to allow a more precise definition thereof.

○ International legal norms of *jus cogens*:

The emergence of *jus cogens* played a significant role in reorganizing the sources of public international law. Dr. Salah al-Din Amer, says that after the international jurisprudence considered the rules of international law of equal legal value and binding power, the Vienna Convention on the Law of Treaties of 1969 came to turn things upside down. The idea of *jus cogens* was brought back to the surface, as article (53) of the Vienna Convention showed a new addition under "*Treaties conflicting with a peremptory norm of general international law (jus cogens)*". The text of the article is as follows:

"A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character".

³⁷⁹ Dr. Haifa Abu Ghazaleh, literature cited, p 15.

Article (64) also states: "If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates."

The Vienna Conference on the Law of Treaties followed up with the International Law Commission in this regard until the final phase of formulation and introduction of this new theory of international law was completed. The concept received wide support from the international jurisprudence that had called for such laws. It is now normal to say that the theory of jus cogens in international law has become a given.³⁸⁰

Dr. Salah al-Din Amer took recourse in searching for criteria to distinguish between international legal norms of jus cogens and informal rules of jus cogens. He based his search on selecting the features that characterize the international rules of jus cogens to reach a common denominator which is the standard for the international rule of jus cogens. He found some important features in this regard, which can be summarized, as follows:

First- The rule must be derived from a source of international law.

Second- Practice indicates that some sources do not themselves lead to a general nature in the rule, thus the possibility of a confluence of many sources to consider one a jus cogens. An international agreement might cover the clarification and elaboration of a general principle of law, and finds support in international practice and confers the same upon public acceptance.

Third- A jus cogens must be characterized by its generality; however, this does not mean that the opposition of one or a limited number of states would prevent the emergence of a peremptory rule, it only means that a norm needs to be accepted and recognized and supported by a large majority in a sort of consensus; which was confirmed in article (53) of the Vienna Convention that stated the rule needs to be accepted by the "community of states as a whole."

Fourth- The rule must be significant in the international sphere, and should be related to common, critical and essential interests; so that any violation thereof would reverberate across the international sphere.

³⁸⁰ Prof. Dr. Salah Eddine Amer's "Jus Cogens in the Supreme Constitutional Court in Egypt", paper published in "Addoustouriya" magazine of the Supreme Constitutional Court in Egypt, literature cited, and p. 9 and after.

Fifth- There are different divisions in international jurisprudence of international legal norms of jus cogens³⁸¹; some cited examples of jus cogens such as rules concerning the prohibition of the use of force in international relations, the prohibition of slave trade, others divided them into two parts; the first concerns the vital interests of the international community, and the second related to the laws of human rights. A third group found international legal norms of jus cogens to be divided into three sections; section one that protects the basis of the international system such as the prohibition of genocide.

Section two relates to the protection of fundamental human rights including the protection of prisoners, while section three relates to the peaceful cooperation and safeguard of common interests such as freedom of the seas and the right of self-determination.

The Vienna Convention on the Law of Treaties of 1969 endorsed the rules of nullity of the treaties that are contrary to a peremptory norm of international law; where it decided that if a treaty was contrary to a certain international norm of jus cogens, this treaty would be void in full as stated in article (53) of the Convention. However, if a new (later to the conclusion of the treaty) international legal rule emerged, then, any invalidity affects only the items in violation of the international rule.

Thus, the Vienna Convention decided on the absolute invalidity of other international treaties that are imposed by force or threat of use of force in a manner contrary to the objectives of the UN Charter and its principles. The same was adopted by the International Court of Justice in its decision of February 2, 1973 relating to jurisdiction in matters of fisheries. The Court expressly emphasized that the international treaties that are imposed after the use of force are deemed absolutely null and void under the rules of contemporary international law.³⁸²

The Vienna Convention also declared the objective of protection of international legal norms of jus cogens, as stated in article (66/1) of the Convention: " If, under paragraph 3 of article 65, no solution has been reached within a period of 12 months following the date on which the objection was raised, the following procedures shall be followed:

³⁸¹ Prof. Dr. Salah Eddine Amer, literature cited, p. 10-.

³⁸² Prof. Dr. Hazem Mohammad Atlam: The Law of Armed Conflicts (LOAC), Introduction- Timeframe, Dar al-Nahda al-'Arabiya, Cairo, 2002, second edition, p. 314, 415.

(a) any one of the parties to a dispute concerning the application or the interpretation of articles 53 or 64 may, by a written application, submit it to the International Court of Justice for a decision unless the parties by common consent agree to submit the dispute to arbitration.”

The opinion of Dr. / Salah al-Din Amer states that the theory of jus cogens has become a norm, and that international law has come to know a gradual level of rules.³⁸³

We fully agree with the above-mentioned opinion in terms of the source of jus cogens and the role of the Vienna agreement in the development and structure of jus cogens. International laws are a fact and whether we like it or not, there is a certain group of international laws that enjoy a privilege over other international rules; and that is it may not be agreed to contest them. In case they are contested following a jus cogens, the convention in full is nullified, but if they were prior to it, then only the conflicting items are nullified. The main reference in judging such nullity is in the correct legal understanding, and in the case of a dispute, the international law represented in the International Court of Justice is the competent authority to turn to in case the parties of the dispute do not agree on arbitration, in accordance with article (66) of the Vienna Convention on the Law of Treaties of 1969.

Given what we have set forth, a jus cogens in international law on gender equality and the non-discrimination based on gender in all aspects of life exists, this rule has come forth and settled decades ago, and many states from around the world, including Arab states, have contributed to its emergence and establishment. The following confirms it:

- The Charter of the United Nations in its preamble states: “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women”. The Charter also affirmed in paragraph (1) of article (1) that one of its goals is “encouraging respect for human rights and for fundamental freedoms for all without distinction as to sex”. All Arab states are members of the United Nations, and did not attach reservations on these texts since the inception of the United Nations in 1945.

³⁸³ See details on this in Prof. Dr. Salah Eddine Amer's “Jus Cogens in the Supreme Constitutional Court in Egypt”, paper published in “Addustouriya” magazine of the Supreme Constitutional Court in Egypt, literature cited, p. 9.

- The text of the Universal Declaration of Human Rights states: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article (7) of the same Declaration stipulates: "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

The declaration was approved in the General Assembly by show of hands, and was accepted by the international community including Arab and Islamic states. The Universal Declaration has a moral value all over the world. It is a guide and an inspiration to many constitutions worldwide. It has been considered in fact later to its adoption as a part of the international customary law.

- Article (3) of the International Covenant on Civil and Political rights stipulates: "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."
- The same was stipulated in the Arab Charter on Human Rights of 2004 article (3/3): "Men and women are equal in human dignity, in rights and in duties, within the framework of the positive discrimination established in favour of women."

Other international instruments have stipulated gender equality in all matters and fields and the prohibition of discrimination in all its forms. The CEDAW was indeed a consecration of all the efforts of the women's rights movement worldwide.

The principle of equality between men and women has been stipulated repeatedly in different international instruments. Non-discrimination and gender equality has been considered as a major rule in International Human Rights Law and thus is considered a *jus cogens* and cannot be contested.³⁸⁴

³⁸⁴ Salah Eddine Amer: *Jus Cogens in the Supreme Constitutional Court in Egypt*, paper published in "Addustouriya" magazine of the Supreme Constitutional Court in Egypt, literature cited, p. 9 -.

Many international and regional organizations confirm this principle, amongst which is the United Nations Organization, the League of Arab States, the Arab Women Organization established under the umbrella of the League of Arab States and the Arab Labor Organization, to name a few.

It is also a general and absolute rule that includes the principle of gender equality around the world and is of the same value as the law on the right of self-determination, life, the right not to be tortured and other *jus cogens*.

No one denies the importance of this law in the international sphere, the whole international community in fact does not accept any form of discrimination against women, proof of which is the non-existence of an international instrument that stipulates an aspect of discrimination against women, be it among Arab or non-Arab states.

As such, eliminating discrimination against women and promoting their equality to men are two fundamental principles for the UN and they form a binding obligation by the Charter of the United Nations. The reservations put forward by the Arab states are by such in conflict with the aforementioned principles.³⁸⁵

By reviewing some of the most important international instruments, we find that they uphold the principle of gender equality. The Charter of the United Nations that was adopted in San Francisco in 1945 is the first international treaty that refers in clear and precise terms to the equality between men and women in rights. The Charter considers gender equality a main objective. The International Declaration of Human Rights, following its stern belief in women's rights which was confirmed in the Declaration, extended its activities to eliminate discrimination against women and established the Commission on Status of Women in 1946.

International agreements confirming the human rights of women were issued one after the other. The general principle of non-discrimination based on gender was of mention in all the agreements on human rights, and the International Declaration of Human Rights stressed on the equality in rights between men and women and the need to ensure the application of the legal protection to women stated in the texts of the International Bill of Human Rights (which is the name given to three covenants: the Universal Declaration of Human Rights, the

³⁸⁵ Prof. Dr. Farida Banani, literature cited, p 46.

International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, and its two annexed protocols). These covenants are the moral and legal grounds on which the UN efforts on human rights are based, and they provide a foundation upon which the international legal system for protection of human rights is built and developed.³⁸⁶

Arab states have established an Arab Charter on Human Rights – latest version in 2004, which includes similar provisions that express a conviction and acceptance to the equality and non-discrimination between men and women, especially in its preamble and in article (3) of the same. In addition, there is a *jus cogens* that stipulates the equality between men and women and non-discrimination between them on the base of gender in all aspects of life, has been established and confirmed in the international law.

Another proof of gender equality being a *jus cogens* resides in:

- After the principle of equality was a common international right as stipulated by the Charter of the United Nations and the International Declaration on Human Rights, many resolutions of the General Assembly were being issued to improve the status of women. The Convention on the Political Rights of Women 1952 was the first covenant that deals exclusively with the rights of women. The General Assembly adopted in 1957 the Convention on the Nationality of Married Women and in 1960 the UNESCO Convention against Discrimination in Education. In 1962, the Assembly adopted the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; which guaranteed the freedom to marriage, elimination of the marriage of minors, and the need to a registry for marriages. The General Assembly adopted the CEDAW in 1979, which entered into force in 1981.

In 1990, the CRC was approved. Article (2) of the CRC prohibits the discrimination on the basis of gender, demanding the protection of a female child from any form of discrimination and confirming the importance of education for girls and their treatment within the family.

³⁸⁶ Daad Mousa, Women's Human Rights, research published online: <http://www.yassar.freesurf.fr/tiamat/bal514.html>

- Many international conferences were held to confirm the principle of equality, where 1975 was declared International Women's Year by the UN in Mexico city in July of the same year, then in 1980 in Copenhagen and in 1985 in Nairobi; where the Strategies for the Advancement of Women were declared and included a practical strategy to develop the status of women and to eliminate the discrimination based on gender. The strategy relied on the principles of equality (as stated in the International Bill of Human Rights and the CEDAW). In addition to the International Declaration on Human Rights was concluded in 1993 in Vienna where the Vienna Declaration and Program of Action were adopted. This Declaration is a milestone in history regarding the rights of women given the number of texts it includes that support those rights and confirm the equality of men and women. It also implies that women are still being subject to all forms of discrimination everywhere. Women issues took a large share of debate in the conference, and the Declaration came with much details and specification on women's rights as an integral part of Human Rights. The same was for the 1995 Fourth World Conference on Women in Beijing, which reaffirmed the equality between men and women in rights and human dignity, and considering women's rights as human rights, as well as ensuring that women enjoy all their Human Rights and taking all effective measures against any violation to these rights and freedoms. The convention was followed with the Fifth World Conference on Women (Beijing + New York 2000) and other international conferences they were focused mainly on the equality between men and women.³⁸⁷

This confirms that majority of the states of the world, including Arab countries contributed to the development and consolidation of *jus cogens*, and that the Arab states agreed on the adoption of gender equality in all areas, and have ratified those treaties and conventions without any reservation to articles on equality between men and women.

Consequently, any international treaty that includes any form of discrimination against women is considered invalid because it contradicts article (53) of the Vienna Convention on the Law of Treaties of 1969, which stipulates that: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory

³⁸⁷ Daad Mousa, Women's Human Rights, literature cited.

norm of general international law” and according to the concept of approval, if the treaty contrary to a *jus cogens* is void, then the reservation considered contrary to a *jus cogens* should also be void. We should not forget in this respect that a reservation is an individual act by one state, which is less in strength than the legal binding effect of an international agreement. Therefore, the reservations made by Arab countries to the Convention, which include maintaining the discrimination against women – should be denounced by the international community in general for being legally invalid for violating *jus cogens* in accordance with the provisions of the Vienna Convention on the Law of Treaties.

2. Invalidity of the reservations of the Arab states on the CEDAW

Expressing reservations is a legitimate right that each state enjoys. However, using such right is limited by some rules; some are mentioned in the CEDAW itself and others in the Vienna Convention as follows:

First- Article (28/2) of the CEDAW includes a very important limitation; it stipulates that ratifying states have the right to express their reservation at ratification, and the withdrawal of those reservations at any time. However, a reservation which is not compatible with the object and purpose (such as the elimination of all forms of discrimination against women) of the present Convention shall not be permitted.

Second- Article (19/c) of the Vienna Convention on the Law of Treaties of 1969, which forbid expressing reservations that conflict with the main object and purpose of the treaty. Article (26) of the same Convention stipulates that any treaty is binding to the states parties who are required to implement it in good faith.

This means that there is a wide gap between the reservations expressed by Arab states, whether general or specific, and the conventions that have aimed at establishing the right of equality between men and women in all domains. Expressing such a reservation by these states means that they intend to keep all aspects of discrimination against women, which contradicts with the core concept of the CEDAW. If we go about an evaluation to these reservations we find that the Arab states do not target the main purpose of the treaty, however,

they are not willing to commit to changing some of the relating items in their laws.³⁸⁸

Despite the fact that most Arab states still maintain their reservations to the treaty, we can say that their reservations are legally invalid.

3. Withdrawal from prior international commitments

Many Arab states ratified a number of International instruments on Human Rights. Some of the most important treaties are: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, which both entered into force in 1976, as well as the Arab Charter on Human Rights of 2004, as well as other treaties, international and regional agreement, all of which included laws and principles on gender equality in all aspects of life and the prohibition of discrimination on the basis of gender.

The Arab states ratifying these instruments expressed no reservations whatsoever upon ratification. When the International Community approved a culmination of these treaties with the CEDAW, it was surprised with the reservations that the Arab states expressed on many of its items including the items of gender equality, and the prohibition of discrimination against women on the basis of gender.

This means that these reservations are a retraction of the ratifying state that expresses reservations on those documents; moreover, it is an implicit withdrawal from the treaties that does not conform to the due legal procedure stated by international law.

The Committee on the Elimination of Discrimination against Women has noted that all states parties which have expressed reservations did not express same reservation on similar sections in agreements on Human Rights.³⁸⁹ This raises question marks on the legitimacy of reservations relating to previous treaties, or later treaties relating to human rights that include similar conditions to treaties on which Arab states had reservations on. Some clear examples are-

³⁸⁸ Dr. Haifa Abu Ghazaleh, literature cited earlier.

³⁸⁹ Jane Connors et al., literature cited earlier.

Example 1: ratifying a previous international instrument: Jordan joined the International Covenant on Civil and Political Rights on May 25, 1975 which entered into force on March 23, 1976, and had no reservations whatsoever on the same. The Convention included many principles that cover the principles of gender equality regarding all civil and political rights, most significantly articles (3) and (26).

Jordan signed the CEDAW on December 3, 1980, and ratified it on July 1, 1992. The Convention entered into force on July 31, 1992. Jordan observed three reservations on articles (9/2, 15/4, 16/c,d,g) of the Convention.

The question here is whether or not to consider Jordan a withdrawing state?

If not, then what is the state's legal standing regarding the reservations they expressed on the CEDAW that conflict with its prior commitment?

If yes, then what is the legal effect of that?

Example (2): ratifying later international instruments: Kuwait ratified the CEDAW on September 2, 1994, and expressed its reservations on articles: (7/A, 9/2, 16/F, 29/1), for instance let us consider its reservations on article (7/A) regarding a woman's political nomination and election. Kuwait justified its reservation on this article since it conflicts with the Kuwaiti electoral act limiting such right to men.

Kuwait then ratified the International Covenant on Civil and Political Rights on May 21, 1996, and it entered into force on August 21, 1996. Article (3) of the same states: "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant", Kuwait expressed no reservations on this Covenant.

That is why we cannot help but wonder if the ratification of Kuwait on Civil and Political Rights – seeing that it guarantees texts that acknowledge gender equality in all fields of civil and political life – is considered a withdrawal on the reservations of the previous article (7/A) of the CEDAW which it ratified with express reservation?

Regarding example (1), relating to the ratification on the Covenant first without any reservation and then ratifying the Convention with reservation. The

International Covenant on Civil and Political Rights did not state how to withdraw from it, that is where the Vienna Convention on the Laws of treaties comes in. Article (54) stipulates:

“The termination of a treaty or the withdrawal of a party may take place:

- (a) In conformity with the provisions of the treaty; or
- (b) At any time by consent of all the parties after consultation with the other contracting States.”

Article (44) of the Vienna Convention states that a withdrawal from the treaty is considered as a complete withdrawal from the treaty, unless otherwise agreed upon. Article (56) added that the withdrawing party needs to declare its intent 12 months' prior notice at least.

Considering the above mentioned, Jordan is in violation of its international commitment to the Covenant because it did not withdraw or give notice of withdrawing or declare it. It is an unclear standing and Jordan may be liable for not keeping its international commitment before other states parties, and other states parties must treat it as such.

In this regard we agree with the opinion that the ratification of the CEDAW is valid over any reservations if they conflict with an international prior commitment.³⁹⁰

Moreover, the norm takes that the state's commitment to implementing a treaty within its legal internal scope is a commitment to achieving results, and not only committing to due diligence. Should the state honor its commitment or otherwise, it would affect its international responsibility in that regard. The state's commitment covers all three legislative, judicial and legal authorities as well as the individuals.³⁹¹ The state that breaches an international commitment is responsible before the international community and before the states parties to the treaty, and is liable to all legal and political effects that follow.

As for example (2), the standing is different. Kuwait expressed reservations before it ratified the CEDAW, and then ratified the Covenant with no

³⁹⁰ Prof. Dr. Farida Banani, literature cited, p. 46, 47.

³⁹¹ Sami Abed Al-Majid: Sources of International Law: The International Rule, Dar-El-Matboaat-El-Gameya, Alexandria, 1995, p 237.

reservations. In this case, Kuwait's reservations include a principle it had already expressed reservations on in a previous treaty, which is considered an implicit waiver of the reservations on the CEDAW and a withdrawal of the same. It is worth noting here that the Bill of Human Rights is an important part of the *jus cogens* that has to be considered as a whole and not be disintegrated.

Section II: Efforts of the League of Arab States towards Upholding Women's Rights

The League of Arab States is one of the oldest Arab institutions that are concerned with the situation of Arab states. On the top priorities of the League is the status of Arab women, and we can say that the Arab League is a strong supportive of the CEDAW while considering that it represents the ruling Arab systems which expressed reservations on the Convention.

However, the position of the General Secretariat was very different from the official standing of the member states in the League which expressed strict reservations thereof.

Women in all Arab countries have a very similar situation except for small differences. Despite the fact that the situation is different sometimes in Arab countries; be it on the economic, social or political level, however, the subjective conditions under which Arab women live seem similar as the Arab Women Organization expressed: "We believe that political and economic equality and justice on all levels are a primary goal for Arab Women."³⁹² This similarity confirms the need to look for common solutions to the common problems women face in the Arab world.

Hence, we will define the position of the League of Arab states given its activities relating to women in general and the CEDAW in particular so that we can, at a later stage, evaluate that position.

³⁹² Fadia Ahmad Al-Fakir: paper: Democratic Women without Democracy; a published research entitled "Women Citizens and Democracy in the Arab Countries", by the Center for Arab Unity Studies, Beirut, first edition, 2001, p. 181, 182.

Paragraph I: The role of the League of Arab States in the promotion of Arab Women's Rights

Given the role of women in the society, the League of Arab States has given a great attention to the affairs of women by coordinating the efforts of concerned parties in the Arab world, setting up strategies, action plans and programs that aim at promoting Arab women, enforcing their status and implementing all international and Arab resolutions through the special Arab organizations.

These organizations work under the umbrella of the League, such as the Economic and Social Council of the Arab League (ESC), the Arab Labour Organization (ALO), which established the Committee on the Work of Arab Women to cover and support three main sectors: Arab governments, Arab business women and the labour organizations and unions concerned with the Arab working women, in order to strengthen the role of the private sector in creating work opportunities for women, bring about their causes and participation in the economic sphere, and increase the interest in professional training for working Arab women. Furthermore, the League has paid wide interest in the conference on “Women as Engines of Economic Growth in the Arab World” which has a great significance especially at this time.³⁹³

The Committee on Arab Women was established, in addition to the Department of Women Affairs at the General Secretariat in order to reinforce the status of Arab women, and support Arab cooperation efforts in organizing activities that help empower women. The General Secretariat adopted the Millennium Development Goals to improve the situation of women and structured them in different Arab strategies, action plans and programs.

We can summarize the most important efforts of the League of Arab States regarding the status of Arab women through the establishment of the Arab Women's Committee, the Arab Women Organization; as one of the specialized organizations of the League, and the Arab Women's Committee for International Humanitarian Law. The interest of the League is also highlighted through the Arab Charter for Human Rights of 2004. We will address the role of each in detail:

³⁹³ Advisor Hanaa Srour, Director of the Department of Women Affairs at the General Secretariat in the League of Arab States, Action Paper presented at a conference on the occasion of the tenth anniversary of the Barcelona Process 7-8/4/2005 in the European Parliament – Brussels – published at the “Women Gateway” website: <http://admin.womengateway.com/NR/exeres/E6DF0B01-239C-4908-B8DD-C9128830C3D2.htm>

A. The Arab Women's Committee

The creation of the Arab Women's Committee was at the top priority of the League of Arab states. The Committee was established in 1971 as a technical consultancy, to provide advice on the planning and execution of activities and programs relating to women, the same as the Committee on Women in the United Nations.

The Arab Women's Committee is concerned in encouraging states parties to lift their reservations on the CEDAW. The Committee also called for a study on the reservations of Arab states on the CEDAW and asked states parties who are members in the League to send regular reports to the Technical Secretariat relating to the Committee of the CEDAW, in addition to shadow reports.

It also called for a seminar on the "National Legislations and the CEDAW",³⁹⁴ and called the Arab non-ratifying states to joining the Convention.

Within the frame work of the Technical Secretariat, the Committee adopted a number of strategies to empower Arab women. Member states of the Arab League have taken successful measure in this respect such as encouraging Arab states to issue new laws and reviewing some of the items on labour laws in force to protect the economic rights of women. Some new constitutions have stipulated that the government should guarantee gender equality in all aspect of life, covering the political, social and economic rights among others. Arab labour laws stipulate gender equality, and guarantees women some additional right to help her tend to her family and work responsibilities; like maternity leave, and nursing hours, and unpaid leave to take care of the child, etc. In this regard, Arab states have worked on implementing the international agreements they joined, such as not having women work in dangerous and health threatening professions, and night jobs.³⁹⁵

Such stipulations, despite their importance, are not enough since they are not implemented in reality, and various acts of discrimination between men and women especially in the work field such as assigning a guardian in specifying their work fields and working hours.

³⁹⁴ Recommendations of the meeting of the Arab Women Committee on its 31st session in 2007, see par. Recommendations of the Arab Women's Committee published on the website of the League of Arab States: http://www.arableagueonline.org/las/picture_gallery/recommendations24april2007.pdf

³⁹⁵ For more details see: Advisor Hanau Sour, literature cited.

Session 32 of the Arab Women's Committee is considered one of the most important sessions relating to the CEDAW that was held in the headquarters of the League of Arab states in Cairo on 18-19 June 2008. Delegations of 16 Arab countries were represented in the session and article (6) of the final report was entitled: "Follow up with the CEDAW" and included:

- The representative of the Lebanon delegation stated the reasons why the League of Arab States needed to undertake this issue on its agenda; the representative pointed to different remarks that Arab states receive when they send their national reports to the CEDAW Committee at the UN, and the need to address the subject and study it first on the Arab level before presenting it to the Committee.

In reference to the importance of activating the role of the Arab women according to the suggestions Qatar had presented in a previous session and the importance of following up with international agreements, the Administrative Director suggested setting up a subcommittee to the Arab Women's Committee responsible for studying the reports of the Arab states before they are sent to the CEDAW and providing all needed technical help in cooperation with the UN Development Fund for Women according to the Memorandum of Understanding:

- Responsibilities of the Department of Women Affairs at the General Secretariat of the League of Arab States.
- The relation between the League of Arab States and the United Nations.
- Comparing between the women agencies in the League of Arab States and the United Nations.
- The reasons behind setting up a committee and its goals and responsibilities.
- Give a brief overview on the CEDAW and the specialized UN committee.
- Clarify any reservations of the Arab states on the Convention.

The Arab states that voiced interventions and opinions were: Lebanon, Qatar, Yemen, Bahrain, Tunisia, and Egypt; and the discussions covered:

- Following up with the CEDAW on the Arab level and then on the International level.

- Clarifying that being part of the Committee is not limited to the ratifying states, but includes also non-ratifying states (Qatar)³⁹⁶– Sudan – Somalia), considering it a chance to get introduced to the Convention and maybe joining it.
- Reaffirming the need for:
 - The Committee to present its suggestions and recommendations before drafting the national reports, and sending them to the Committee on the Elimination of Discrimination against Women.
 - The Committee to prepare studies, collect training evidence, hold training sessions and workshops necessary for the preparation of national reports.
 - To provide the needed human and financial resources for the Technical Secretariat, so that it can achieve the goals and core responsibilities.
- The representative of Bahrain also indicated the importance of presenting the subject on the Higher Council for Women in Bahrain before approving the establishment of an expert committee to follow up with the CEDAW.³⁹⁷

Despite the fact that the discussion in the session showed that some speakers might have wanted to use the Committee to justify the reservations and not withdraw them, this would only show that the League of Arab States is controlled by the tendencies of governments expressing reservations.

B. The Arab Women Organization (AWO)

According to Resolution (6126) of the League of Arab States in its regular session No. (116) held on September 10, 2001, and following the approval of the Economic and Social Council by resolution (1426) issued on September 12, 2011, the Arab Women Organization (AWO) was established. The Arab states agreed to establish the AWO as an independent body, aiming to contribute to

³⁹⁶ Note: Qatar joined the Convention in 2009.

³⁹⁷ The final report of the General Secretariat of the Arab Women's Committee of the 32nd session held in Cairo on 18-19 June 2008, published online:
http://www.arableagueonline.org/las/picture_gallery/rfinal18-19june2008.pdf

the promotion of Arab cooperation and coordination in developing the status of women and reinforcing their role in the society, more precisely:

- Achieve solidarity with Arab women as a main pillar in the Arab consolidation.
- Coordinate the joint Arab positions in the Public Arab and International life and carrying the cause of women at regional and international conferences.
- Promote awareness of the causes of Arab women on all economic, social, cultural, legal and media aspects of life.
- Support the cooperating and exchange of expertise in the domain of promoting women.
- Include women causes as a top priority in the different plans and policies of comprehensive development.
- Develop the capabilities of women and their ability as individuals and citizens in order for them to contribute effectively in the society and work fields as well as other activities, and participate in the decision-making processes.
- Promote health and educational services necessary for women.³⁹⁸

The AWO held many annual conferences focused on Arab women, some of the recommendations relating to the CEDAW came as follows:

- Calling all non-ratifying states to join the CEDAW.
- In light of the development in the societies of the states parties in the AWO, their reservations on the Convention are being reassessed.
- Working on promoting the Convention and the awareness of its provisions at the largest scale possible through media, cultural and educational outlets.
- Embodying the principles and provisions of the ratified Convention far from any reservations based on local legislation.
- The need for the states parties to the Convention to provide the AWO with regular national reports and final comments to the CEDAW Committee.³⁹⁹

³⁹⁸ See: Article (5) of the Arab Women's Organization convention, published online: <http://www.balagh.com/woman/hqoq/pa0pdeyy.htm>

³⁹⁹ The recommendations of the Legal Committee of the Arab Women Organization, published online: http://www.arabwomenorg.org/Details.aspx?Page_ID=1470

C. Arab Women's Commission for International Humanitarian Law

The Commission was established following an initiative presented by Tunisia's First Lady at the second conference of the AWO in Abu Dhabi which was held during the period from 11 to 13 November 2008. Tunisia held the first conference of the Arab Women's Commission for International Humanitarian Law on 21-22 February 2009, and the First Lady, who was presiding over the AWO, declared its launch on the 1st of February 2010 on occasion of the Arab Women's Day.

The motion was met with great interest and appreciation, and so it was approved during the fourth meeting of the Supreme council of the AWO held in Tunisia on June 25, 2009. The Arab Women's Commission for International Humanitarian Law has an advisory capacity at the AWO and manages motions of programs relating to the promotion of awareness and culture of International Humanitarian Law, in addition to training programs directed to the related governmental and non- governmental civil organizations.

The Committee includes seven members specialized and experienced in International Humanitarian Law who were appointed from the states parties.⁴⁰⁰

The Committee aims at achieving the aspirations of the First Ladies members of the Supreme Council in making the AWO an outlet for international, regional and local efforts towards the respect of the International Humanitarian Law and the promotion of its culture in benefit of Arab Women.

D. Arab Charter on Human Rights

The Arab Charter on Human Rights (latest version)⁴⁰¹, is an expression of the collective thought among member states of the League regarding Human Rights, keeping in mind the difference between the adoption of the Charter by the Council of the League and its ratification at the level of each member state. The Charter entered into force on March 15, 2008, two months after receiving its seventh ratification from the United Arab Emirates, who had deposited its documents to the League on January 15, 2008 as stipulated by the Charter itself

⁴⁰⁰ For more details see: the Arab Women's Organization website:
http://www.arabwomenorg.org/Details.aspx?Page_ID=1775

⁴⁰¹ Adopted by the Arab 16th Summit hosted by Tunisia on May 23, 2004

and approved by the Arab Summit in 2004 in Tunisia. It is worth noting that Jordan, Algeria, Bahrain, Libya, Syria and Palestine preceded the United Arab Emirates in ratifying the Charter, while Saudi Arabia ratified in April 2009.

Despite all the criticism that the Charter received on not covering enough related subjects of Human Rights, or for its weak follow-up and implementation mechanisms, it included a different aspect of the principle of gender equality. Several texts in the Charter asserted complete gender equality and non-discrimination based on gender, which goes in full agreement with the CEDAW, and confirms the International Women Convention.

Article (3/3) of the Charter stipulates "Men and women are equal in human dignity, in rights and in duties, within the framework of the positive discrimination established in favour of women by Islamic Sharia and other divine laws, legislation and international instruments. Consequently, each party state to the present Charter shall undertake all necessary measures to guarantee the effective equality between men and women."

This article expressly stipulates the principle of full gender equality in all fields of life and non-discrimination based on gender.

Article (33/2) stipulates the prohibition of violence against women and children.

Article (34/4) stipulates that no distinction between men and women shall be made in the exercise of the right to benefit effectively from training.

Article (41/3) stipulates that state parties shall take the appropriate measures to ensure partnership between men and women to reach the goals of development.

While article (43) stipulated that nothing in the Charter shall be interpreted as impairing the rights and freedoms protected by the state parties' own laws, or as set out in international or regional instruments of human rights including women's and children's rights.

Through the above mentioned we find that the Arab Charter has covered the principle of gender equality and non-discrimination. Furthermore, the Charter is a binding international agreement, and ratifying Arab states expressing no reservations on the Charter need to implement and activate it in their national legislation.

It is also clear that the Charter agrees in full with the CEDAW and the principle of non-discrimination and gender equality.

Paragraph II: Evaluation of the position of the League of Arab States

There is no doubt that the League of Arab States has a genuine interest in the status of Arab women in all domains, especially in aspects related to gender equality and non-discrimination against women. This interest was shown through many concrete examples some of which we have mentioned here above.

On the conceptual and structural levels; the interest of the League focuses on the Arab Charter on Human Rights, the role of the Arab Women Organization and the Arab Women Committee. The League also contributed in the planning and implementation of many of the strategies related to the promotion of women in the Arab states.

One must also keep in mind that the role of the Arab League is somewhat limited given that the League is a representation of formal governments, and that it is not an organization of higher authority than the governments nor is it a supreme Arab government, or a non-governmental organization. Each of these mechanisms and means of action have their appropriate organizational, conceptual and practical movement.

In addition, we need to take into consideration that the decision-making process in the League is affected by many factors; such as: the position of Arab member states in the League, the supervision that member states have over the General Secretary, the cooperation space that member states allow with the League, and the limited authority of the General Secretary who is always bound by the orientations and positions of the member states regarding the different problems and issues in setting his own strategy. The General Secretary acts within the framework of powers and specialties given to him by the Arab League Charter and inner laws and bodies of the league, as such, he cannot violate the rules be it in the aspects of his specializations or the methods, which eventually forms a set of rules that condition his actions and decisions.⁴⁰²

In conclusion, we should not expect the Arab League to give more than what it is being given. In the current situation, the League in fact is a reflection of the performance of Arab governments and their position towards human rights.

⁴⁰² Abdel-Hamid Mohamed Al-Mowafy: Mechanism Dynamics of the Secretariat of the Arab League; paper published under: "League of Arab States: Reality and Ambition", the Center of Arab Unity Studies, Beirut, 1992, second edition, p 617.

Despite all these considerations, we still expect from the League of Arab States much more regarding women's rights.

The League is criticized for the narrow perspective it has on the role of women, as being in need for protection and guardianship. It is also criticized for the contradicting positions of Arab states regarding international agreements, and not committing to treaties even after ratifying them. The League is content with the existence of some text relating to equality and does not follow up on the implementation of the laws within the states or even the practical steps that guarantee women's rights, especially gender equality and non-discrimination against women. Furthermore, the League is criticized for the lack of seriousness in requesting the withdrawal of reservations on the CEDAW and for not raising the issue in consecutive Arab summits.

Our recommendations to the League of Arab States are as follows:

- As stated by advisor Hana Srouf, Director of the Department of Women Affairs at the General Secretariat, in her paper on the 10-year anniversary of the Barcelona Declaration on 7-8 March 2005 at the European parliament in Brussels, the League of Arab states should not be seen as providing protection for women when they define their working schedules, fields or conditions. Arab governments are no guardian over women.⁴⁰³ Women are entitled to be treated as a complete human being with the right and freedom to choose her line of work.
- The need to coordinate the Arab positions especially when ratifying international agreements, and to work on having a unified Arab standing of such agreements; whether in approval or rejection or even in reservations if need be, after an objective and serious study of the subject at hand.
- Paying attention to the implementation of the legal rights of women and activating these rights in a tangible manner not limiting its course of action to non-implementable constitutional texts. In addition to joining international agreements that echo well expressing more reservations than the agreement can bear, under pretexts of no legal value and unrealistic justifications of respecting Islamic Sharia.
- demanding that Arab states withdraw their reservations on the CEDAW, as requested by the representatives of Human and Women's rights organizations in the Middle East and North Africa and the Gulf states

⁴⁰³ For more details see, Advisor Hanaa Srouf, literature cited.

with the support of the International Federation for Human Rights (FIDH), to demand that the Arab states take a decisive stand regarding the promotion of women's rights in the Arab world within regional campaign to achieve "equality without reservations."⁴⁰⁴

Paragraph III: The Position of the Arab States vis-à-vis the CEDAW's Protocol

The UN Committee on the Elimination of Discrimination against Women created a task force to draft an Optional Protocol to be annexed to the CEDAW, like some other conventions relating to human rights, in order to develop practical measures that make the Convention more effective and easier to implement. The General Assembly adopted the UN Optional Protocol to the CEDAW in October 1999, and it entered into force on 22 December, 2000. It is considered an independent agreement (complementary to the CEDAW Convention) and needs to be also ratified and joined by states parties. Thirty three states from around the world have so far ratified the Protocol.

The annexed protocol consists of 21 articles, according to which the CEDAW Committee receives notifications and reviews them. These notifications may be submitted by individuals or groups claiming to be victims of violations of any of the rights contained in the CEDAW. The Protocol defines the measures the Committee would undertake to confirm the authenticity of these notifications, investigate the cases through the state concerned, and request to proceed with the needed measures. It then sends its report to the Commission. This is an important step that ensures the commitment of states parties to the Convention, and leads to better results in eliminating all forms of discrimination against women.

Unfortunately, among all 22 Arab states, only Libya joined the Protocol in 2004 and Tunisia in 2008.⁴⁰⁵ The reason behind many Arab states not ratifying the Protocol is:

⁴⁰⁴ Article: the Coalition of "Equality Without Reservation" requests that the Arab League discuss the reservations of the convention of CEDAW, published online:

http://www.amanjordan.org/pages/index.php/news/arab_news/4913.html

⁴⁰⁵ UNDP website: <http://www.arabhumanrights.org/resources/ratification.aspx?cg=1>

First- The Protocol allows for individuals to file complaints against the state (art. 2) because of violations they have suffered in the state party to the Protocol. The Committee on the Elimination of All Forms of Discrimination against Women would then ask the state to take provisional measures necessary for averting the damage may be irreversible as a result of the violation (art. 5), and the state will have to provide explanations for the case at hand and the measures that have been taken thereon (art. 6).

The Committee would also make recommendations to the state (art. 8/3). In addition, the Protocol does not allow any reservation to its provisions (art. 17). Reservation to the Protocol may definitely hinder its purpose and leave it with no prerogative. All these issues are seen by the Arab states as derogation to the principle of state sovereignty – sovereignty is perceived as having control over their territory and citizens - and this is what keeps Arab states from accessing the Optional Protocol. Most Arab governments believe that their relation with their citizens is an internal affairs and should not be subject to interference by foreign states or international organizations.

Second- The overwhelming response from the Arab states in ratifying the Convention was offset with a stark rejection of the Optional Protocol, although the Convention itself includes provisions that should have invoked the same reaction from some Arab states that still regard women as lesser beings. Arab states sought to join the Convention so as to appear before the international community a respectful entity of the rights of women. At the same time, these states maintained their discrimination against women in many important and life related issues. This is what explains how the majority of Arab constitutions can include principles of gender equality in all areas, and at the same time, include domestic laws and regulations that discriminate against women; it is a double standard approach in their legal systems that they practice consciously, in the desire of weakening women and impeding their development.

Third- Unlike the Convention which received world media coverage, the Optional Protocol to CEDAW was not given its share of debate in international media. Many Arab states seeking to gain some positive exposure on the international level by accessing the Protocol, did not find it to be good publicity.

The same reason led many states to refrain from accessing the Optional Protocol of the International Covenant on Civil and Political Rights, and that of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment.

Fourth- The idea of accepting the natural person at the international level, and giving him/her the right to address subjects of international law such as international organizations and ad-hoc committees, remains topic of legal discussion. As is the case in many states, jurisprudence has yet to decide on giving the natural person the right to deal individually with entities of international law. Two directions guide the debate: The first holds on to the traditional principle based on the lack of an international personality of the individual, and therefore his/her ineligibility to resort to the international protection of his/her rights. The second, given the requirements of development that have affected the international system and related areas, recognizes the individual's right to seek protection of his/her rights. The International Labour Organization (ILO) has admitted the right of the individual in certain cases to resort to international protection of his/her rights.⁴⁰⁶

The ILO gave the individual the right to resort directly to international organizations, where an international convention specifies a regulatory body that the individual can resort to. This right is of a legal nature and cannot be evoked unless certain conditions are provided.⁴⁰⁷ The reason to that is the breadth of the human rights system, especially with the increasing number of legislating treaties and the diversity of their subjects, which often include certain mechanisms to ensure implementation of the treaty, from which the individual's right to lodge complaints, is defined.

Conclusions and Recommendations

Following all what has been mentioned above in this thesis, we conclude that:

- Most of the Arab parliaments do not have the authority to suggest the ratification and/or withdrawal from international instruments or even discuss the governments' reservations on the same, despite the fact that all Arab constitutions have defined the role of the parliaments in having the power to approve some treaties that ensure peace or the waiver of territories of the state or arranging budget expenses.

⁴⁰⁶ Prof. Dr. Ibrahim Al-Anani, Professor of Public International Law, 1990, p 472.

⁴⁰⁷ Literature cited p 475.

- In other cases, Arab parliaments have no power to suggest joining or withdrawing reservations, or suggesting or withdrawing from a treaty. The role of parliaments in the Arab legal systems is limited mainly to legislation and monitoring. As we have seen, most Arab legal systems see treaties as equal to regular laws – at the bare minimum – while treaties are implemented within the state on an equal level as national legislations that are issued by the parliament. Arab parliaments should have been given the power to suggest the ratification or withdrawal of an agreement, presenting or withdrawing a reservation on a treaty. Arab states need to look into this matter especially in the light of the recent constitutional being undertaken in the Arab world.
- The reservations expressed by Arab states on the CEDAW are void given that they are in conflict with a *jus cogens* related to gender equality and the non-discrimination against women, which is the rule that has settled in international law as the most important and greatest achievement in the principles of human rights. They are also void for conflicting with article (28) of the CEDAW and articles (19) and (26) of the Vienna Convention on the Law of Treaties of 1969, and a backing down of the Arab states from their prior or post to international commitments as we have shown in this Thesis. Therefore, the Arab states need to revisit their position regarding the reservations on the CEDAW.
- Given the inflexibility of the League of Arab States, especially regarding the reservations of those states on the CEDAW, there is a great need to reassess the role of the Arab League beyond the administrative role it has been entrusted which is limited to the implementation of the decisions of the Arab summits, and transform it into a more positive role that reflects the Arab states as a one Arab community with its own policies and interests on the economic, social and developmental levels. Moreover, the role of the General Secretary needs to be activated, and be given powers that are commensurate with his position as a step in allowing him to have more powers in decision-making. Another recommendation in this concern would be to have a governmental and popular support to the actions of the League to train its working teams through adequate

training⁴⁰⁸, so that it can shake off the administrative tone and access a better and more positive accentuation.

- Ratifying the Optional Protocol of the CEDAW as it is an important instrument in the activation of the treaty and its implementation, and finding an Arab mechanism that can stand strong in the face of individual as well as collective violations of women's rights or violence against them.
- All Arab states must review their national legislation closely and remove any form of discrimination against women, cancel all the laws in that regard, make sure that the laws in force are implemented, and not discriminate against women but rather ensure that equal opportunities are provided to them in all work fields in a way to help increase women participation in the public life.

⁴⁰⁸ Abdel-Hamid Mohamed Al-Mowafy, literature cited, p. 618.

Chapter II: The Applicability of Children's Rights in the legal system of the Arab World

Countries that ratify the CRC should take serious steps towards incorporating its principles and provisions in their legal systems. Some countries made sure to have the CRC incorporated in the constitution as the highest legal instrument in any country, and civil societies strived to make sure that the CRC becomes functional in the legal system of their countries.

A very interesting and inspiring experience regarding children's constitutional rights is the experience of Brazil⁴⁰⁹, where for decades, there had been pressure from NGOs and children's organizations for protecting children battered by poverty and hunger and despised by sections of the community. The most vulnerable children were those living or working on the streets. Often subjected to violence and repression from the police and armed groups, they and their advocates mounted the call for reform. In 1985, they founded the National Street Children's Movement, which in 1986 held its first Congress in Brasilia.

Brazil had then just emerged from 21 years of authoritarian rule and was in the process of drafting a new democratic Constitution. It was a golden opportunity for children to enshrine their rights in law. Even so, it was a daunting task. UNICEF played an important role in strengthening and broadening the alliance of institutions working for children and provided technical support for the drafting process.

The campaign received a boost in 1986 when the Government established a National Committee on the Child and the Constitution. Along with representatives from government ministries, a wide variety of NGOs participated, including the National Street Children's Movement. UNICEF worked with the Committee in a number of ways: providing a secretariat and technical assistance, recruiting private sector support and helping widen the network of groups and organizations involved.

This momentum led to a widespread public campaign -- including mass gatherings of children in a number of cities, as well as demonstrations in front of the National Congress. Organizations and NGOs from around the country proposed drafts for two constitutional amendments, which were endorsed by

⁴⁰⁹ <http://www.unicef.org/sowc96/lbrazil.htm>

200,000 voters and presented to the Constituent Assembly. These proposals ultimately became the chapter on the rights of children and adolescents in the Constitution -- passed by a vote of 435 to 8.

The success of the Constitution was followed by an even greater victory two years later, when the Statute of the Child and Adolescent was approved by both houses of the National Congress, legally obligating the Government to protect child rights. Children were involved in gaining its acceptance, with more than 5,000 meeting in Brasilia. Joeo de Deus, one of the organizers, recalls, "The day the children occupied the Senate was the most important day of my life....There were congressmen crying who gave up their seats to the children."

The Statute defines children as citizens with clearly stated rights to respect, dignity and freedom. It also gives precedence to important needs in a child's life, such as health, education, sports and leisure. Special provisions guarantee children's protection as a matter of "absolute priority."

To ensure that the Statute's provisions are enforced, Councils for the Rights of the Child and Adolescent were set up at federal, state and local levels, with members drawn from diverse backgrounds. These Councils have the authority to spend an allocated budget and to raise additional funds. This strengthens their work and helps provide protection for the most vulnerable children.

Upon this strong foundation, the Councils now face the challenge of continuing to transform and put into practice the nation's commitment towards its children as expressed in the Constitution.

Another very interesting and inspiring experience is the one of Ireland, in relation to the Thirty-First Amendment of the Constitution (Children) Bill 2012. A **constitutional referendum**

Concerning **children's rights in Ireland** was held on 10 November 2012. The Children's Referendum aimed at repealing Article 42.5 of the **Constitution of Ireland** and replacing it by a new Article, which would be 42A.

Section 5 of Article 42 of the Constitution which was proposed to be repealed stipulated the following: *"In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place*

of the parents, but always with due regard for the natural and imprescriptible rights of the child."

The Children's Referendum aimed at replacing the above-mentioned text and replacing it by the following text-

"Article 42A

1 The State recognises and affirms the natural and imprescriptible rights of all children and shall, as far as practicable, by its laws protect and vindicate those rights.

2 1° In exceptional cases, where the parents, regardless of their marital status, fail in their duty towards their children to such an extent that the safety or welfare of any of their children is likely to be prejudicially affected, the State as guardian of the common good shall, by proportionate means as provided by law, endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

2° Provision shall be made by law for the adoption of any child where the parents have failed for such a period of time as may be prescribed by law in their duty towards the child and where the best interests of the child so require.

3 Provision shall be made by law for the voluntary placement for adoption and the adoption of any child.

4 1° Provision shall be made by law that in the resolution of all proceedings—

i brought by the State, as guardian of the common good, for the purpose of preventing the safety and welfare of any child from being prejudicially affected, or

ii concerning the adoption, guardianship or custody of, or access to, any child, the best interests of the child shall be the paramount consideration.

2° Provision shall be made by law for securing, as far as practicable, that in all proceedings referred to in subsection 1° of this section in respect of any child who is capable of forming his or her own views, the views of the child shall

be ascertained and given due weight having regard to the age and maturity of the child."

The Children's Referendum was passed with the support of 58% of voters, with just three of the country's 43 constituencies rejecting the proposed amendment. The highest Yes vote was in Dublin South, with 73%, closely followed by Dublin South East and Dún Laoghaire. Welcoming the result of the referendum, Taoiseach Enda Kenny said it was a "historic day for the children of Ireland". He said passing the amendment would help "make childhood a good, secure and loving space for all our children". Minister for Children and Youth Affairs Frances Fitzgerald said passing the referendum will have a number of "very tangible, positive impacts. Children must now be listened to in certain court proceedings, when crucial decisions are being made about their future. The child's best interests will now be central to every decision taken on their behalf," she added.

The importance of the Referendum lied in the fact that for the first time, the constitution was able to take a child-centred approach to the protection of all children and to allow the State to better support families who are struggling, rather than wait for a situation to reach crisis point. The amendment of the Constitution revolved around the key principle of the CRC, which is the Best Interests of the Child. The amendment brought up a very important element of child rights also, which is their right to be heard in judicial and administrative procedures. Following the Thirty-First Amendment, judges in Ireland became under the obligation of listening to the views of children when making decisions affecting their lives.

Another successful example of child participation in the constitutional process comes from Timor-Leste. In November 2001, over one hundred children appeared before the Constituent Assembly of Timor-Leste, claiming more attention to their rights. The children delivered a letter from the Working Group for Child Rights to the members of the Assembly, asking that the Constitution specifically refer to the core rights of children, including the incorporation of guarantees of basic education and healthcare, and special assistance for vulnerable children.

Section I: The Position and Practical Value of the CRC in the Arab World

Paragraph I: Ratification of the Arab States on the CRC

Most of Arab countries ratified the CRC. Only Somalia did not ratify; it signed though the CRC. Most Arab countries made reservations on certain articles, and few of them did not make any reservations.

Algeria ratified the Convention on the Rights of Children in 1992 and is still attempting to ensure the implementation of all its provisions. Algeria created the "National Institute of Magistrates" which studied relationship between Algerian legislation and the CRC in 2002 with the purpose of eventually proposing any necessary amendments that would harmonize Algerian law with international law. In February 2005 the Algerian Government revised the "Act on the system of penal institutions and the social reinsertion of detainees which improves the status of children within the juvenile justice system".

The National Institute of Magistrates is integrating practice and a better understanding of child rights, including international standards on juvenile justice. Progress in terms of reducing the persistent *de facto* discrimination faced by children born out of wedlock remains weak in Algeria. The Committee of child rights in Bahrain stated that the proposal to increase the age of criminal responsibility to 18 years had been refused creating a problem for children. Children between the ages of 16 and 18 were treated as adults before the law.

While Bahrain has prepared a comprehensive Child Rights and Education Bill containing sections on child health care, social welfare, educational and cultural care, alternative care, educational care and rehabilitation for children with disabilities, treatment of juvenile offenders and protection of children from sexual and physical abuse and assault, the Bill has yet to be promulgated. The administration of juvenile justice remains an area of concern. Under the national criminal code, children lose their status of being a child at the age of 15 and the provisions of the Juvenile Law are not applied to them.

Egypt was one of the first signatories of the CRC. It ratified it on 6 July 1990, with reservations on articles 20 and 21 in relation to foster care for children and adoption procedures for children. The Child Law of 2008 represents an important legislative achievement in Egypt in complying national legislation with the principles of the Convention. To ensure alignment with the new Child

Law, relevant articles of the Criminal Code and Civil Status Law were also amended. The Child Law contains specific provision relating to the minimum age of marriage for girls to 18, guarantees the elimination of discrimination against children born out of wedlock, penalizes female genital mutilation (FGM), with a new provision also introduced to the Criminal Code (amendment by Act No. 126 of 2008), prohibits physical abuse. The new law rises the minimum age of criminal responsibility to 12 as part of a new comprehensive judicial system for children based on rehabilitation and reintegration as opposed to punishment.

Egypt has undertaken a number of measures to improve the administration of juvenile justice, particularly through improving detention conditions of children and youth deprived of liberty, in line with UN standards and norms in juvenile justice. In 2007, a National Coordination Committee against Trafficking was set up, and a Child Trafficking Unit was also set up within the National Council for Childhood and Motherhood. Law No. 64 on Combating Trafficking in Persons was adopted in 2010, and the National Plan of Action against Trafficking was developed in December 2010. The 1996 Child Law had prohibited employment of children under the age of 14. There are also shortcomings in legislation, with Labour Code not covering agriculture or domestic work, the two sectors that children are most likely to work in, and the Child Law allowing seasonal employment of children of 12-14 years of age.

Iraq made a reservation with respect to Article 14, "concerning the child's freedom of religion, as allowing a child to change his or her religion runs counter to the provisions" of *Sharia*. While the Government of Iraq had developed a substantive legislative framework, the provisions and principles of the Convention were not fully reflected in law. Labour Law No. 71 of 1987 was amended by the Coalition Provisional Authority (Order 89) in December 2006. One of the amendments made defined and prohibited child labour, providing for punishment of those who violate the law. Although children are protected from abuse under the Minors Act, the Juvenile Welfare Act and the Penal Code, these are not interpreted as prohibiting corporal punishment as a 'disciplinary' form of child rearing. Article 31 of the Iraqi Constitution guarantees the right to health, and Article 32 guarantees care for the "handicapped and those with special needs and ensure their rehabilitation in order to reintegrate them into society. Jordan expressed its reservations to Articles 14, 20 and 21 of the Convention, which grant the child the right to freedom of choice of religion and

concern the question of adoption, due to their variance with the precepts of the Islamic *Sharia*. A number of delegations commended the progress made by Jordan regarding children's rights, including the establishment of the National Coalition for Children established in 2007, the implementation of the 2004-2013 National Plan of Action for Children. Jordan has been implementing a wide array of legislative and programmatic initiatives to protect children from violence, exploitation and abuse. In particular, the Protection from Domestic Violence Law adopted in March 2008 represents an important step in protecting women and children. Corporal punishment is prohibited in schools under the School Discipline Regulation, Instruction No. 4 on School Discipline (1981), issued in accordance with Law No. 16 (1964). In January 2009, the Jordanian parliament endorsed legislation to combat human trafficking. Kuwait expressed a general reservation on all provisions of the Convention that are incompatible with the laws of Islamic *Sharia*. Upon ratification, it expressed declaration on Article 7 and Article 21. The country has not developed a specific legislation to prevent, combat and criminalize human trafficking, including child trafficking.

The Lebanese Code of Civil Procedure states that courts, "shall abide by the principle of the hierarchy of rules" thereby elevating international conventions, such as the CRC, above national law. However, jurisprudence seems to show that the Code of Civil Procedures is not always applied in cases in which there is a contradiction. Lebanese courts rarely refer to international conventions. Despite improvement, there are still a number of areas in which Lebanon may not be fulfilling its obligations under the CRC. Stateless children in Lebanon still face a problem. Lebanon has established progressive protection with persons with disabilities. Discrimination against persons with disability is usually addressed under Law Number 11/73 (31 January 1973), which was amended by Law 243/93. Family Status laws do not adequately include provisions to ensure the best interest of the child. For example, child custody laws, under the Family Status Laws, largely determine custody on age and gender. There is general concern that the judicial structure and protection/criminal laws do not adequately consider the best interest of the child. The best interest of the child Law 422/02 seems to be in direct tension with earlier laws, such as the Penal code, in certain provisions pertaining to children and child protection. Lebanon has made strides in protecting children from abuse, violence, neglect, and exploitation. A draft legislative framework on Child Protection is being finalized, with articles on lowering the minimum legal age requirement for joining associations from 21 to 15, strengthening the

rights of disabled children and their protection by the government, restricting the right of disciplining a child, and demanding introduction of clearer definitions regarding abuses, as well as stricter penalties for sexual exploitation cases, imposing free and mandatory education for children up to the age of 15, and restricting the workforce to persons above that age.

Libya acceded to the UN CRC, without any reservations. Several rights contained in the Convention, for example, non-discrimination, the best interests of the child, rights concerning juvenile justice, were not adequately reflected in the laws, including personal status laws. Libya has made no progress in ensuring a comprehensive ban on corporal punishment in the home and in alternative settings.

Morocco ratified the CRC in 1993. It has one reservation against Article 14, which provides for freedom of religion. Child rights were facilitated in statutes through the adoption of a criminal law procedure containing a section devoted to juveniles in conflict with the law. Morocco lack harmony between national legislation and the CRC and other child rights instruments, the absence of independent monitoring structures with a mandate to receive and assess complaints about violations of child rights, and the absence of a national mechanism for collecting and analyzing data on areas covered by the Convention. amendments have been undertaken in the Personal Status Code increasing the legal age of marriage (Article 209); recognizing children born out of wedlock (Article 147) and reforming the Labour Code by increasing the legal working age from 12 to 15 (Article 130). The child's right to participate in judicial or administrative proceedings affecting the child is recognized in Morocco by some legislation but not all. Morocco has put in place a number of legislative, policy and institutional measures to better protect children from abuse, sexual exploitation, violence and neglect.

In Palestine, violence against children is prevalent, despite national legislation explicitly prohibiting all forms of violence against children. One of the main protection issues facing Palestinian children is juvenile justice.

Oman acceded to the United Nations CRC on 9 December 1996, with reservation to all the provisions of the Convention that do not accord with Sharia or the legislation in force in Oman, in particular to provisions relating to adoption (Article 21). Oman has not made in progress in prohibiting corporal punishment. In the penal system, corporal punishment appeared to be unlawful.

Qatar entered a general reservation by the State of Qatar concerning provisions that are inconsistent with the Islamic *Sharia*. Qatar has implemented a number of legislative and executive measures to promote the protection of children from abuse, violence, neglect and exploitation. Article 22 of the Constitution states that children must be safeguarded and protected from all forms of exploitation. Articles 279 to 297 of the Penal Code n. 11 of 2004 also guarantee children protection from sexual exploitation and abuse, with higher penalty for offenders if the victim is a juvenile under 16 years of age. Qatar has made few legislative advances with regards to corporal punishment. Saudi Arabia expressed a general reservation with respect to all such articles that are in conflict with the provisions of Islamic law. A number of legislative measures have been put in place to better protect children from exploitation, neglect, abuse, and violence. The draft Child Bill to protect children from abuse and neglect, which was welcomed by the Committee in 2006, was finally approved by the *Shoura* Council in January 2011. The Bill includes 26 articles outlining the rights of the children, in particular right to be protected from abuse physical and mental abuse, neglect, sexual exploitation, labour, trafficking, and neglect. Syria made reservations to the provisions of Article 14 (freedom of thought, conscience and religion), and Articles 20 and 21 (which refer to adoption), with the declaration that these provisions are “incompatible with the precepts of the Islamic *Sharia*.”

The Syrian government has implemented a number of legislative measures to better protect children neglect, abuse, violence and exploitation. Modest progress has been made in following up on the Committee's 2003 recommendations of prohibiting corporal punishment.

Tunisia made a number of declarations and reservations to Article 40, Article 2, and Article 7. A comprehensive child protection mechanism has been put in place, including the appointment of Child Protection Officers, able to intervene on behalf of children in danger. The Code also led to reorganization of juvenile courts by having Children's Judges responsible for cases relating to children, as well as including mediation as a reconciliation mechanisms. Tunisia has made significant legislative progress in the protection of children from corporal punishment.

The UAE has not made any progress in implementing the Committee's recommendation to take legislative measures to prohibit corporal punishment. While Yemen has implemented a range of child protection measures since the

Concluding Observations were issued, less progress has been made in terms of eradicating discrimination. Legislative gaps continue to persist, and children continue to be subject to various forms of violence, abuse and exploitation. Despite progress achieved in juvenile justice reforms – including the preparation of amendments to the Juvenile Welfare Act which would increase the minimum age of criminal responsibility from 7 to 10 – the administration of juvenile justice remains problematic.

Paragraph II: The Reservations and Declarations of the Arab States to the CRC

Reservations were common in Islamic countries on CRC due to a sense that there could be conflict with religion based norms, with some exception of some countries such as Libya and Lebanon, with the knowledge that Lebanon is an Arab country but not an Islamic country. This also resulted in the entry of reservations in an area like nationality where Islamic law norms actually harmonized with CRC norms, and a reservation was unnecessary.

The study of various sources of information demonstrated how the concept of 'social responsibility' for children provided a conceptual foundation for harmonizing CRC norms, making the entry of broad reservations unnecessary. On the other hand countries influenced by the Common law tended to adopt a dualist approach – a perception that international law was a separate regime and CRC did not apply in the absence of legislation or a regulatory framework incorporating the standards.

Most of Arab countries apply the civil law system. Though reservations were sometimes entered, common law countries tended not to introduce reservations at the time of ratification. However a dualist approach encouraged passivity rather than an activist approach to incorporation. Monist approaches encouraged courts to use CRC in interpretation, while a dualist approach encouraged legislative and judicial apathy or timidity in internalizing CRC in national systems.⁴¹⁰

Algeria: Algeria ratified the UN CRC in 1993, having issued interpretive declarations with regard to articles 14(1), 14(2), 13, 16 and 17. On Article 14,

⁴¹⁰ UNICEF, Seeking Remedies For Violations of Children's Rights in Diverse Legal Traditions and Systems, PP: 5, available at: www.crin.org

the right of the child to freedom of thought, conscience and religion, the Government of Algeria indicated that “the provisions of paragraphs 1 and 2 shall be interpreted in compliance with the basic foundation of the Algerian legal system”, in particular the Constitutional provisions on the establishment of Islam as the State religion and on freedom of thought and belief and the Family Code provision that “a child’s education is to take place in accordance with the religion of its father⁴¹¹”.

This reservation indeed contradicts the article 14 (1) as it do not provide the right of the child to freedom of religion. The other declarations concerned Article 13 (freedom of expression), Article 16 (right to privacy) and Article 17 (access to information), which Algeria interprets as being subject to the best interests of the child and safeguarding his or her physical and mental integrity, particularly in relation to breaches of public order, public decency and the incitement of minors to immorality and debauchery.

Algeria interprets commitments mentioned in interpretive declaration on article (14/1 and 2) concerning a child's right of thought, conscience and religion, respect of parents rights and duties towards guiding their children, respect of a child's right to act in a manner compatible to his/her developing capabilities, according to its legal systems, especially its constitution which stipulates that Islam is the religion of the state. Article (13, 16 and 17) pertaining to a child's ability to access information and materials from all international sources.

Algeria takes into account a child's interest and the need to protect children, and interprets the commitments mentioned in these articles according to the rules of its national laws.⁴¹²

While this declaration against these articles seems reasonable, there is need to examine how or what constitutes the best interest of the child, because the best interest of the child needs to be taken together with the other general principles (art 2, 3, 6 and 12) of the CRC⁴¹³. Article 2 of the 1976 Constitution establishes that Islam is the religion of the State. The Algerian Code shares many aspects with the Moroccan Code and is generally conservative in character.

⁴¹¹ Law No. 84-11 of 9 June 1984, International Bureau for Children's Rights, Making Children's Rights Work in North Africa, PP: 23

⁴¹² Arab Human rights index, International Conventions, Algeria: Human Rights Profile, available at: <http://www.arabhumanrights.org/>

⁴¹³ President elections, THE CONSTITUTION OF THE PEOPLE'S DEMOCRATIC REPUBLIC of ALGERIA, PP:2-3, available at: <http://aceproject.org/>

There is no separate law for Non-Muslims. The Algerian Family Law is applied to all Algerians regardless of religion.⁴¹⁴

Algeria has agreed to the 'Cairo Declaration on Human Rights in Islam' issued in 1990 by Organization of the Islamic Conference (OIC) foreign ministers, a guiding document that does not require ratification.⁴¹⁵ Algeria also ratified the League of Arab States (Amended) Arab Charter of Human Rights, which entered into force on 15 March 2008. Algeria has also acceded to / ratified in July 2003, the African Charter on Charter on the Rights and Welfare of the Child, the most important instrument for children's rights within the AU human rights system.⁴¹⁶

During the UN Human Rights Council Universal Periodic Review (UPR) of Algeria, which was held in April 2008,⁴¹⁷ the following child rights recommendations were made by delegations to

Algeria: ensure appropriate measures to address violence against children, continue the moratorium on death penalty, pursue efforts in the area of the right to education, adopt a legal framework to protect children from trafficking and define trafficking as a criminal offence under domestic law. Algeria agreed to all the recommendations.

The provisions of paragraphs 1 and 2 of article 14 shall be interpreted by the Algerian Government in compliance with the basic foundations of the Algerian legal system, in particular:

- With the Constitution, which stipulates in its article 2 that Islam is the State religion and in its article 35 that "there shall be no infringement of the inviolability of the freedom of conviction and the inviolability of the freedom of opinion"; While article 14 (3) has provision for state law and if it is necessary to protect the public safety and order and morals. Article

⁴¹⁴ Reunite, Ministry of Justice, ALGERIA, pp:1,4, available at: <http://www.reunite.org/>

⁴¹⁵ OIC, 'Cairo Declaration on Human Rights in Islam', 5 August 1990, <http://www.unhcr.org/refworld/publisher/ARAB,,,3ae6b3822c,0.html>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 78

⁴¹⁶ African Union, 'List of Countries that have ratified/acceded to the African Charter on the Rights and Welfare of the Child', March 2010, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 78,79

⁴¹⁷ For compilation of child rights extracts from the UPR of Algeria, see <http://www.crin.org/resources/infoDetail.asp?ID=17013&flag=report#nn>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 79

35 of the constitution might hinder the right of child to freedom of thought, conscience and religion.

- With Law No. 84-11 of 9 June 1984, comprising the Family Code, which stipulates that a child's education is to take place in accordance with the religion of its father. This statement may contradict article 3 of the CRC, however, the purpose of education should be to empower the child by developing the skills, knowledge, and traits for a successful life.
- Articles 13, 16 and 17 shall be applied while taking account of the interest of the child and the need to safeguard its physical and mental integrity. In this framework, the Algerian Government shall interpret the provisions of these articles while taking account of:
 - The provisions of the Penal Code, in particular those sections relating to breaches of public order, to public decency and to the incitement of minors to immorality and debauchery;
 - The provisions of Law No. 90-07 of 3 April 1990, comprising the Information Code, and particularly its article 24 stipulating that "the director of a publication destined for children must be assisted by an educational advisory body";
 - Article 26 of the same Code, which provides that "national and foreign periodicals and specialized publications, whatever their nature or purpose, must not contain any illustration, narrative, information or insertion contrary to Islamic morality, national values or human rights or advocate racism, fanaticism and treason. Further, such publications must contain no publicity or advertising that may promote violence and delinquency."⁴¹⁸

Bahrain: Respect for the views of the child is restricted by traditional attitudes and there is a need to enhance the understanding of the value of the right to be heard in all institutions attended by children and at all levels of society, especially at the community and school level, including through awareness raising activities, and training for adults and children, reports the United Nations (UN) Committee on the Rights of the Child (Committee)⁴¹⁹.

⁴¹⁸ United Nations, treaty collection, Convention on the Rights of the Child, New York, 20 November 1989, available at: <https://treaties>.

⁴¹⁹ OMCT, 'Rights of the Child in Bahrain', Submitted to the Committee of the Rights of the Child', 29th Session, Geneva, 14 January - 1 February 2002, http://www.omct.org/pdf/cc/Bahrain_Web_GB.pdf, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, August 2011, PP: 85

Sharia governs the social status of children, which is shaped by tradition and religion to a greater extent than by civil law. Public discussion of child abuse is rare and the preference of the authorities has always been to leave such matters within the purview of the family or religious groups. Since public discussion of child abuse is rare and leaves the matter to family and religious group, it will have adverse affect on article 12 (respecting the view of the child) article 13 (freedom of expression) and article 17 (access to appropriate information) besides affecting article 2 (non-discrimination) of the CRC. Thus this could seriously affect article 3 (best interest of the child) since they do not follow the due process of the law. Bahrain acceded to the CRC on 13 February 1992, without any declarative interpretation of reservations. This is a major issue as the country is not providing any interpretation of its reservations on the CRC. This provides them with leeway to interpret or apply the rights of the child to their advantage.

In 2011, the International Baby Food Action Network (IBFAN) submitted an alternative report on the situation of infant and young child feeding in Bahrain.

The Committee issued its Concluding Observations on the initial periodic report in 2002 and its Concluding Observations on the second and third report in June 2011.⁴²⁰ In its 2011 Concluding Observations, the Committee, while welcoming the legislative, institutional, and policy measures undertaken by Bahrain to promote child rights. The country's compiled fourth to sixth report is due on 14 September 2017.

Bahrain has also signed regional treaties. It agreed to the 'Cairo Declaration on Human Rights in Islam' a declaration of the member states of the Organization of the Islamic Conference (OIC) adopted in Cairo in 1990. The declaration is a guiding document that does not require ratification.⁴²¹

It also ratified the (Amended) Arab Charter of Human Rights of the League of Arab States, and delivered the relevant documents to the General Secretariat of the Arab League on June 18, 2006.

⁴²⁰ Committee on the Rights of the Child, 'Concluding Observations: Bahrain' CRC/C/BHR/CO/2-3, Advanced Unedited Version, 17 June 2011, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 85

⁴²¹ OIC, 'Cairo Declaration on Human Rights in Islam', 5 August 1990, <http://www.unhcr.org/refworld/publisher,ARAB,,,3ae6b3822c,0.html>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 85,86

Comoros: In 2005, the Ministry of Justice and Human Rights in consultation with civil society and cooperation agencies, in particular UNDP drafted bills to establish the National Commission of Human Rights and Freedoms, and on the Protection of Human Rights Advocates.⁴²²

Comoros has ratified the major conventions, including the CRC on 22 June 1993 and the African Charter on the Rights and Welfare of the Child (ACRWC) on 16 April 2004. These conventions have allowed the review of domestic laws on family and children to bring them in conformity with international standards.

However, Comoros has neither signed nor ratified the two optional protocols to the CRC, the Optional Protocol on children in armed conflicts and the Optional Protocol on the Sale, Prostitution of Children and Pornography involving Children, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially in Women and Children, the Covenant on Civil and Political Rights and Covenant on Economic, Social and Cultural Rights.

It is difficult to bring Islamic family law applied in Comoros in conformity with international norms as the former allows discrimination against children; and women who are forced to accept polygamy and repudiation; forced marriage of young girls or arranged marriage between families to protect women from sexual relations outside marriage; prohibits Muslim women to marry a non-Muslim. The complexity of the Comorian judicial system and the double competencies of Islamic and civil jurisdictions create a serious problem and this does not help the protection of children's rights.⁴²³

According to Article 99 of the Family Code, a child born outside wedlock bears the name and surname that his mother gives her. It will be noted in the records that this is not the name of the father, which remains unknown.

In general, the name of his maternal grand-father is given. This child who is known as 'a child born of a prohibited relation' (*'mwana haram'*) may not have legal relationship with his biological father. Any attempts to establish the paternity or acknowledge the child will bear no fruit because of the obstacles laid down by the Islamic Law. Islamic Law prohibits any legal relationship from being created between a biological father and a child born outside wedlock, even with the consent of all parties (biological father, the child and

⁴²² Riziki Djabir ,the African child policy forum, Harmonisation of laws relating to children, Comoros, pp: 9-10

⁴²³ Riziki Djabir ,the African child policy forum, Harmonisation of laws relating to children, Comoros, pp: 4,5

mother). The child may not in any way have the name of his biological father or inherits him.⁴²⁴

Besides not being able to give the name of the biological father, if the child can be registered, have a name and a nationality, knows the parents and being cared by them it fulfills article 7 of the CRC as it recognizes the child as a legal personality. However, if it is otherwise then it breaches the article (7) and the child will become stateless.

Comoros has adopted new documents or modified some in its attempt to harmonise pertinent provisions of the customary law, Sharia law and Civil Law to bring them in line with the provisions of the CRC and the ACRWC.

Some documents that were adopted before the ratification are still not modified, whereas some of their provisions need to be amended to be in conformity with the provisions and principles of the CRC and the ACRWC. This includes:

- the Nationality Code issued by the Act No.79-12/PR of 27 July 1980;
- Act No. 84-10 of 15 May 1984 on Civil Status;
- Act No. 97-06/AF on the status of military personnel;
- Public Health Code of 24 June 1995;
- Act of 24 June 1995 on the general protection and promotion of public health;
- Act No.94-016/AF of 17 June 1994 providing the general framework of health system and defining the missions of public health service;
- Act No. 86-066/AF of 30 May 1986 on the Convention of Association;
- Act No 94-035/AF on the Outline of the Education System;
- Act No. 83-19/AF of 14 December 1983 instituting the participation of citizens on the education of children;
- Act No. 80-18 on education of 3 May 1980;
- Act No. 81-29 on the organization of physical activities and sports of 11 June 1987;
- Penal Code;
- Labour Code No. 84-108/PR;
- Information Code issued by Act No. 94-023/AF of 27 June 1994;
- Act No. 94-018/AF of 22 June 1994 on environment, modified by Act No. 95-007/AF of 19 June 1995;

⁴²⁴ Riziki Djabir ,the African child policy forum, Harmonisation of laws relating to children, Comoros, p.15

- Water Code issued by Act No. 94-037 of 21 December 1994.

Laws enacted after the ratification of the Convention aim at providing for human rights, women's rights and child rights. However, it is difficult to bring Islamic Family Law in line with international norms as it incorporates discriminatory provisions against the child. Some of Comorian laws are not in conformity with international conventions. It includes:

- Act No. 05-008/AU on the Family Code adopted on 3 June 2005;
- Act No. 05-021/AU on the protection of children and suppression of juvenile delinquency adopted on 31 December 2005;
- Act No. 05-020/AU on the transitional organization of the juvenile jurisdictions adopted on 31 December 2005;
- Organic law No. 05-016/AU on the organization of the judiciary of the Union and islands adopted on 20 December 2005.

Freedom of thought, conscience and religion: (Articles 14 of the CRC and 9 of ACRWC): In Comoros, freedom of thought is guaranteed by the law. However, the right of freedom of religion is not guaranteed by the Comorian legislation. Articles 228 and 229 of the Penal Code criminalize the teaching and propagation, and divulgation of another religion to Moslems and punish it with three months imprisonment and fine of 50,000 to 500,000 francs.

This hinders the implementation of article 14 (1) as it does not consider the right of the child to freedom of religion. Although article 14 (3) gives provision to the national law, but only if it is necessary for the safety, public order and for honouring the rights and freedom of others. It also punishes the sale, distribution even for free, of books, brochures, magazines, disks and cassettes talking about a religion other than Islam. Comorian children do not also have the right to choose another religion than Islam.⁴²⁵

Egypt: Egypt was one of the first signatories of the United Nations (UN) Convention on the Rights of the Child. It ratified the Convention on 6 July 1990, with reservations on articles 20 and 21 in relation to foster care for children and adoption procedures for children. When ratifying the CRC, the Government of Egypt made reservations to Articles 20 and 21 in relation to alternative care for children deprived of their family environment and adoption. The reservations were unnecessary as the Convention recognizes Islamic

⁴²⁵ Riziki Djabir ,the African child policy forum, Harmonisation of laws relating to children, Comoros, pp:17

fostering traditions, *kafalah*, and does not require a State to provide for adoptions. This is the champion among other countries in the Middle East region and need to put Egypt in the forefront in advocating for the adoption and promotion of article 20 and 21 of the convention by the other states. Although *kafalah* is practiced in the Muslim states and is recognized by the UN, it is however better if they adopt the articles, as the system of *kafalah* may not be as conducive or optimum for ensuring the rights of the child. Egypt announced in 2003 that it had decided to withdraw its reservations.⁴²⁶

Egypt submitted its second periodic report in September 1998 and its consolidated third and forth periodic report in December 2008. Its consolidated fifth and sixth report is due in March 2016. Egypt is signatory to regional treaties. It agreed also to the 'Cairo Declaration on Human Rights in Islam', issued in 1990 by Foreign Ministers of countries members of the Organization of the Islamic Conference (OIC), a guiding document that does not require ratification.⁴²⁷

Egypt also signed the League of Arab State's (Amended) Arab Charter of Human Rights prepared by the Arab Summit in Tunisia in May 2004, but did not ratify it. Egypt is also member of the African Union (AU), and has ratified a number of its treaties. In March 1984, it ratified/acceded to the AU African Charter on Human and Peoples' Rights, and in May 2001, Egypt signed the African Charter on the Rights and Welfare of the Child (ACRWC).

The OIC Commission reminds that the sanctity of human life is highly revered in all religions, and that the Holy Quran teaches that the unjust deprivation of the right to life of an individual is same as the killing of all people. Islam also commands to respect other's freedom of religion. Under international human rights law, no derogation from these universal rights may be permitted.

Whereas it reiterates that it is the obligation of States to promote and protect the rights to peaceful assembly and freedom of expression, the Commission reasserts that the exercise of these rights has to be carried out in conformity with the law at all times, so as to preserve public safety and order as stipulated in the

⁴²⁶ Committee on the Rights of the Child, 'Consideration of reports submitted by States parties under article 44 of the Convention Third and fourth periodic reports of States parties due in 2007 Egypt', CRC/C/EGY/3-4, 4 September 2010, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 92

⁴²⁷ OIC, 'Cairo Declaration on Human Rights in Islam', 5 August 1990, <http://www.unhcr.org/refworld/publisher, ARAB, 3ae6b3822c,0.html>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP:93

International Covenant on Civil and Political Rights. The Commission also reaffirms States' obligation to ensure that no one shall be deprived of his or her liberty except on such grounds, and in accordance with such procedure, as are established by the law. The Commission welcomes the pledge of the Egyptian Interim Authorities to uphold their responsibilities in this regard and to reinstate respect for the rule of law, and it calls upon the latter to ensure the freedom of the media, as well as the early restoration of constitutional democracy.

The Commission also welcomes the recently initiated inclusive dialogue, and encourages all parties and political forces in Egypt to constructively engage in this process, confident that it will enhance peaceful national reconciliation efforts while laying the foundations of a pluralistic society, based on sound democratic institutions, and wherein human rights for all are wholly observed and protected.⁴²⁸

The NGO Coalition on the Rights of the Child submitted an alternative report in January 2001. Suggestions to the Pre-Sessional Working Group and alternative reports were submitted in 2011 by International Disability Alliance and the International Baby Food Action Network (IBFAN). The Committee issued Concluding Observations on the second periodic report of Egypt on 21 February 2001.⁴²⁹ The Committee adopted Concluding Observations on the third and forth periodic report at a meeting held on 17 June 2011.

The Government of Egypt made a reservation upon signing the Convention of child rights and confirmed this reservation upon ratification. The reservation is:

Since the Islamic Sharia is one of the fundamental sources of legislation in Egyptian positive law and because the Sharia, in enjoining the provision of every means of protection and care for children by numerous ways and means, does not include among those ways and means the system of adoption existing in certain other bodies of positive law. The Government of the Arab Republic of Egypt expresses its reservation with respect to all the clauses and provisions

⁴²⁸ The OIC human rights, Human Rights in Islamic Countries, September 10, 2012, available at: <http://oichumanrights.wordpress.com/>

⁴²⁹ Committee on the Rights of the Child, 'Concluding Observations: Egypt', CRC/C/15/Add.145, 21 February 2001, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 92,93

relating to adoption in the said Convention, and in particular with respect to the provisions governing adoption in articles 20 and 21 of the Convention.⁴³⁰

Nevertheless, it can be noticed that some of the provisions of Egyptian law referred to are based upon Islamic personal law. The provisions have been summarized in five paragraphs (46–50), and these are reproduced below:

According to article 2 of the 1996 Children's Code, a child is a person under the age of 18 years. Consequently anyone who has not reached that age is subject to the provisions of the Code. Civil, legal and commercial rights have been brought into line with one another by the legislature and accession thereto set at 21 years.

Under article 57 of Act No. 119 of 1952, any person over 18 years of age may be authorized to undertake commercial activities. The minimum age for marriage is set at 18 for males and 16 for females. This is something that I don't understand as to why the marriage age for female is less and not same as that for male. It also contradicts their definition of the child where they set the age limit to 18 years, thus they are promoting child marriage. This breaches article 34 of the CRC where if a child of 16 marries an elderly man it could lead to sexual abuses (without consent) harassment and violence against the girl, as she is not fully matured mentally and emotionally enough to rationalize, or defend herself. A child under 18 years of age is subject to the provisions of Act No. 118 concerning parental authority over the person and Act No. 119 concerning parental authority over property; both instruments date from 1952.⁴³¹ While parents have the responsibilities over the child, it need to understand the Act NO 118 and 119 how much it infringes on article 3, 12 and 13 of the CRC.

The best interests of the child are contained in a single paragraph: "Article 3 of the Children's Code contains a general provision applicable to all decisions and procedures affecting or relating to children. It reads: 'all decisions and procedures relating to children, by whoever initiated and enforced, must give priority to the protection of the child and to the child's best interests.' All State authorities comply with this legal standard."

⁴³⁰ Status Sheet entitled "Convention on the Rights of the Child" at <http://www.un.org/Depts/Treaty/final/ts2/partboo/ivboo/iv11.htm> (last visited March 20, 2002), Imran Ahsan Nyazee, chief Editor, Faculty of Sharia and Law, International Islamic University, Islamic law and the CRC, 2002, PP: 93 available at: <http://www.scribd.com/>

⁴³¹ These two laws, we believe, pertain to wilayah in Islamic law. We do not have access to these laws.), Imran Ahsan Nyazee, chief Editor, Faculty of Sharia and Law, International Islamic University, Islamic law and the CRC, 2002, PP: 92, 93 available at: <http://www.scribd.com/>

To comply with article 3 of the CRC, there is need to define what constitutes the best interest of the child as the understandings will differ from person to person, region to region and country to country.

Under the Children's Code the minimum age for admission to employment is 14 years. While the CRC leaves the state to come up with minimum age it makes reference to other international instruments and here I would like to make reference to the ILO convention No.138 which allows a state to employment of children as young as 14 years provided the economy and educational facilities are not sufficiently developed, and the state needs to continuously keep up dating the progress, so I feel it doesn't apply to Egypt.

Subject to a decision by the governor of the province concerned and with the agreement of the Minister of Education, it is legal to give children in the 12 to 14 age group training in seasonal employment provided that their physical growth, health and regular attendance at school do not suffer thereby. The minimum age for membership of a workers' trade union is 15 years. The right of direct exercise of political rights, namely, the right to express an opinion during consultations or the election of members of the People's Assembly, is recognized for every person of 18 years or older.⁴³²

Reservation made upon signature and confirmed upon ratification:

Since The Islamic Sharia is one of the fundamental sources of legislation in Egyptian positive law and because the Sharia, in enjoining the provision of every means of protection and care for children by numerous ways and means, does not include among those ways and means the system of adoption existing in certain other bodies of positive law.

The Government of the Arab Republic of Egypt expresses its reservation with respect to all the clauses and provisions relating to adoption in the said Convention, and in particular with respect to the provisions governing adoption in articles 20 and 21 of the Convention.

Notification of withdrawal: On 31 July 2003, the Government of Egypt informed the Secretary-General that it had decided to withdraw its reservation

⁴³² This does not explain the right given by the CRC to children who are under 18 years of age, Imran Ahsan Nyazee, chief Editor, Faculty of Sharia and Law, International Islamic University, Islamic law and the CRC, 2002, PP: 93 available at: <http://www.scribd.com/>

made upon signature and confirmed upon ratification in respect of articles 20 and 21 of the Convention. The reservation read as follows:

Since The Islamic Sharia is one of the fundamental sources of legislation in Egyptian positive law and because the Sharia, in enjoining the provision of every means of protection and care for children by numerous ways and means, does not include among those ways and means the system of adoption existing in certain other bodies of positive law.

The Government of the Arab Republic of Egypt expresses its reservation with respect to all the clauses and provisions relating to adoption in the said Convention, and in particular with respect to the provisions governing adoption in articles 20 and 21 of the Convention.⁴³³

Iraq: The Government of Iraq has seen fit to accept the Convention subject to a reservation in respect to article 14, paragraph 1, concerning the child's freedom of religion, as allowing a child to change his or her religion runs counter to the provisions of the *Islamic Sharia*.⁴³⁴

Iraq has agreed to the 'Cairo Declaration on Human Rights in Islam' issued in 1990 by foreign ministers of countries members of the Organization of the Islamic Conference (OIC)⁴³⁵, a guiding document that does not require ratification. Iraq also signed the (Amended) Arab Charter of Human Rights of the League of Arab States, which was adopted by the Arab Summit in Tunisia in May 2004 and which entered into force on 15 March 2008. The Charter is yet to be ratified by Iraq.

Upon ratification of the Convention on the Rights of the Child, Iraq made one reservation regarding article 14, paragraph 1. It said that the Convention, on this issue, "was applicable only in certain cases. The ongoing conflict and displacement have put the welfare of all children at risk, particularly those orphaned, and children with special needs, who are probably the most vulnerable of all Iraqis, according to the United Nations Child Fund (UNICEF).

⁴³³ Netherlands institute of Human rights, Declarations and reservations by EGYPT made upon ratification, accession or succession of the CRC, available at: <http://sim.law.uu.nl/>

⁴³⁴ United nations, treaty collection ,Convention on the Rights of the Child, New York, 20 November 1989, available at: <https://treaties>

⁴³⁵ OIC, 'Cairo Declaration on Human Rights in Islam', 5 August 1990, <http://www.unhcr.org/refworld/publisher,ARAB,,,3ae6b3822c,0.html>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 103

In addition, while Iraq has put in place legislative measures and programmes for the realization of child rights, a number of recommendations made by the Committee have yet to be implemented. Specifically, Iraq has not withdrawn its reservation to Article 14, and has not undertaken “the systematic collection of disaggregated quantitative and qualitative data on the areas covered by the Convention in relation to all groups of children in order to monitor and evaluate progress achieved and assess the impact of policies adopted with respect to children”, as recommended by the Committee⁴³⁶.

According to Muslim law (*Sharia*), a child born of parents who were not both Muslims could, on attaining his or her majority, choose between the Christian and Muslim religions.” However, having said this if the definition of attaining majority is 18 and above then it become irrelevant.⁴³⁷ “According to the Government, it is not possible for Iraq to lift the reservation as it contradicts the Iraqi Constitution, which affirms that Islam is the official state religion and is a basic source of legislation. Also, children inherit religion from fathers and Muslims are not given the freedom to choose a religion.⁴³⁸

Djibouti: at the time of ratifying the Convention of child rights, the Djibouti Government had stated that it would not be bound by provisions and articles that were incompatible with its religion and traditional values, seemingly with the aim of stripping some of the Convention's provisions of their juridical effects.

Even though no particular provision was mentioned, the statement in effect constituted a vague reservation to all the rights enshrined in the Convention. Furthermore, the reservation rendered the Convention subject to national laws, culture and religion and limited the commitments undertaken by the Government, halting any development of national legislation. Djibouti had stated that it did not consider itself bound by any provision that ran counter to its traditional values, especially religious ones.

⁴³⁶ Committee on the Rights of the Child, ‘Concluding observations of the Committee on the Rights of the Child: Iraq’, CRC/C/15/Add.9426, October 1998, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 102

⁴³⁷ Committee on the Rights of the Child, Summary Record of the 482nd Meeting: Iraq, 13/ 4/ 1999, CRC/C/SR.482, pg 6, § 15., , save the children, Manara network, A Review of the Implementation of the UN Convention on the Rights of the ChildAugust 2011, country profile of Iraq ,pp: 21

⁴³⁸ Iraqi Women's League, “Human Rights plans to submit two reports on the situation of children in Iraq”, in Al sabah newspaper, 14 February, save the children, Manara network, A Review of the Implementation of the UN Convention on the Rights of the ChildAugust 2011, country profile of Iraq , pp: 21
2010, available online at <http://www.iraqiwomensleague.com/news.php?action=view&id=3360> (last accessed 22 January 2011

However, it should also be stated that it did not support traditional or religious values which were not consistent with the Convention and the position expressed in its reports and replies was of a much softer tone than that of the reservation statement. The rights of the child and the family, including inheritance rights, were governed by Sharia law for the Muslim population.⁴³⁹ Djibouti – seems very promising in leading the region towards ensuring the rights of the child as they have withdrawn the blanket reservations against the CRC.

There was a political will to change the situation of children in Djibouti. Djibouti should both quantitatively and qualitatively improve its use of existing resources so that they reached children and families through transparent and evidence-based policies, based on a child rights approach. Better coordination – nationally and regionally – was needed in efforts to formulate and implement childhood and youth policies.

The Government should also adopt the National Plan of Action on Childhood and should strengthen the National Human Rights Commission, ensuring that it was an independent body according to the Paris principles. Djibouti had indicated that it would now take a reservation, saying that it did not believe that it recognized the freedom of children as set out in articles 14 (on freedom of thought, conscience and religion) and 21 (on adoption) of the Convention, which was felt to be against Sharia. State parties could not make new reservations. Moreover, there was trend by Islamic countries towards withdrawing their reservations on articles 14 and 21, as Egypt had done.⁴⁴⁰

Jordan: Jordan signed the UN CRC (Convention) on 29 August 1990 and ratified it on 24 May 1991. Upon signature, Jordan expressed its reservations to Articles 14, 20 and 21 of the Convention, which grant the child the right to freedom of choice of religion and concern the question of adoption, due to their variance with the precepts of the Islamic *Sharia*.⁴⁴¹

Jordan submitted its third report in July 2005. Jordan's fourth and fifth periodic reports are due on 22 December 2011. Alternative reports regarding Jordan's

⁴³⁹ Convention on the rights of the child, Summary record of the 637th meeting: Djibouti. 08/01/2001. Available at: <http://www.bayefsky.com/>

⁴⁴⁰ United Nations Human Rights, Committee on the Rights of the Child examines report of Djibouti, 17 September 2008, available at: <http://www.ohchr.org/>

⁴⁴¹ United Nations Treaty Collection, 'Human Rights: Convention on the Rights of the Child' <http://treaties>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, August 2011, PP: 111

implementation of the Convention have been submitted by Child Helpline International, Human Rights Watch, the Global Initiative to End all Corporal Punishment of Children and the National Centre for Human Rights in 2006. The latest Concluding Observations of the Committee were issued on 29 September 2006.⁴⁴²

In its 2006 Concluding Observations, the Committee welcomed strategies and plans adopted by Jordan to promote child rights, namely the National Plan of Action for Children for 2004-2013, the Early Childhood Development Strategy 2003-2007 and the National Youth Strategy 2005-2009.

The Hashemite Kingdom of Jordan expresses its reservation and does not consider itself bound by articles 14, 20 and 21 of the Convention, which grant the child the right to freedom of choice of religion and concern the question of adoption, since they are at variance with the precepts of the tolerant Islamic Sharia.⁴⁴³

Since there are provisions ensuring the best interest of the child as mentioned above in case of custody, there is possibility to gradually work towards article 14 and since kafalah is recognized by UNCRC and articles article 21 of the CRC gives flexibility to the country to enforce if they recognize or permit the system of adoption, therefore I don't see it as problematic Jordan has also signed regional treaties. It agreed to the 'Cairo Declaration on Human Rights in Islam', a declaration of the member states of the Organization of the Islamic Conference (OIC) adopted in Cairo in 1990, that does not require ratification.⁴⁴⁴ Jordan also ratified the (Amended) Arab Charter of Human Rights of the League of Arab States, which entered into force on 15 March 2008.

Islamic jurisprudence, as well as the Islamic Sharia, emanates from the Islamic civilization. With regards to the implementation of Islamic law, this does not preclude or deprive a non-Muslim spouse from enjoying his/her rights of custody, and in this respect we have values inherent to the monotheistic

⁴⁴² Committee on the Rights of the Child, 'Concluding Observations: Jordan', CRC/C/JOR/CO/3, 29 September 2006, 589-UNICEF 'Jordan', http://www.unicef.org/jordan/resources_2025.html, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, August 2011, PP: 111

⁴⁴³ United nations, treaty collection ,Convention on the Rights of the Child, New York, 20 November 1989, available at: <https://treaties>

⁴⁴⁴ OIC, 'Cairo Declaration on Human Rights in Islam', 5 August 1990, <http://www.unhcr.org/refworld/publisher,ARAB,,,3ae6b3822c,0.html>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 112

religions. With regards to the residence of the spouses it should not be a problem for the child to enjoy his or her rights. The spouse that has custody of the child must benefit from that right and the other parent who does not have custody should also have full access to the child and visitation rights. Therefore the right to custody is provided for so that the rights of the children are taken into consideration and any sacrifices made should not be made to the detriment of the child.⁴⁴⁵

Jordanian laws regarding divorce and custody of minor children are adjudicated in religious courts. If the marriage partners are Muslim, disputes will be resolved before a Sharia court judge who will apply principles of Islamic law. In the case of Christians, the court will be an Ecclesiastical Court composed of clergymen from the appropriate religious community.⁴⁴⁶

Kuwait: The United Nations (UN) CRC (Convention) was signed by Kuwait on 7 June 1990, and ratified on 21 October 1991.⁴⁴⁷ Upon signature, Kuwait expressed a general reservation on all provisions of the Convention that are incompatible with the laws of Islamic *Sharia* and the local statutes in effect.

The State of Kuwait, as it adheres to the provisions of the Islamic Sharia as the main source of legislation, strictly bans abandoning the Islamic religion and does not therefore approve adoption.⁴⁴⁸ Kuwait expressed reservations on all provisions of the Convention that are incompatible with the laws of Islamic Sharia and the local statutes in effect. "Upon ratification, it expressed declaration on Article 7 ("The State of Kuwait understands the concepts of this article to signify the right of the child who was born in Kuwait and whose parents are unknown to be granted the Kuwaiti nationality as stipulated by the Kuwaiti Nationality Laws").

Upon ratification: Declarations: Article 7: The State of Kuwait understands the concepts of this article to signify the right of the child who was born in Kuwait

⁴⁴⁵ Sami Abdullah Ahmed, The Judges' Newsletter on International Child Protection, vol. XVI / spring 2010, available at: <http://www.hcch.net/>

⁴⁴⁶ international family law, JORDAN AND CHILD ABDUCTION, available at: <http://www.international-divorce.com/>

⁴⁴⁷ United Nations Treaty Collection, 'Human Rights: Convention on the Rights of the Child' <http://treaties>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP:120

⁴⁴⁸ United nations, treaty collection ,Convention on the Rights of the Child, New York, 20 November 1989, available at: <https://treaties>

and whose parents are unknown (parentless) to be granted the Kuwaiti nationality as stipulated by the Kuwaiti Nationality Laws.

Article 21(“The State of Kuwait, as it adheres to the provisions of the Islamic *Sharia* as the main source of legislation, strictly bans abandoning the Islamic religion and does not therefore approve adoption”): general reservation on all provisions that contradict Islamic Sharia and Kuwaiti law. Declaration on article (7) concerning the child's right to citizenship affirming that Kuwait grants its citizenship to any baby born in Kuwait to unknown parents in accordance with Kuwait's citizenship law.⁴⁴⁹

Since kafalah is recognized by the CRC and articles article 21 of the CRC gives flexibility to the country to enforce if they recognize or permit the system of adoption and article 20 stipulates alternative care including the kafalah system.

The country submitted its initial report to the Committee on the Right of the Child (Committee) in August 1996. Its second periodic report was due on 19 November 1998, and Kuwait finally submitted the report on 30 July 2010. No alternative report was prepared. The Committee issued its Concluding Observations on the initial periodic report in June 1998.⁴⁵⁰ Upon review of the initial periodic report on the implementation of the Convention, the Committee identified a number of legislative gaps related to the protection of children from violence, abuse, and neglect.

Although a series of legislative measures have been made and programmes put in place in the past decade, the majority of the recommendations of the Committee on child protection have yet to be fully addressed by Kuwait. Since a child born without parents are already given citizen under Kuwaiti Nationality Law there is no need to have any reservation on article 7 and the child is not stateless in any case.

Kuwait agreed to the ‘Cairo Declaration on Human Rights in Islam’, a 1990 guiding document issued by the Organization of the Islamic Conference (OIC).⁴⁵¹ The document, which is not subject to ratification, includes an article

⁴⁴⁹ Arab Human rights index, International Conventions, Kuwait: Human Rights Profile, available at: <http://www.arabhumanrights.org/>

⁴⁵⁰ Committee on the Rights of the Child ‘Concluding Observations: Kuwait’, CRC/C/15/Add.96 26 October 1998, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 120

⁴⁵¹ OIC, ‘Cairo Declaration on Human Rights in Islam’, 5 August 1990, <http://www.unhcr.org/refworld/>

on childcare (“of the moment of birth, every child has rights due from the parents, the society and the state to be accorded proper nursing, education and hygienic and moral care”). Kuwait also acceded to the League of Arab States’ (Amended) Arab Charter of Human Rights which entered into force in March 2008, but did not ratify it.

Lebanon: Lebanon ratified the UN CRC (Convention) on 14 May 1991, without any reservations or declarative interpretations. Lebanon has also signed regional treaties. It agreed to the ‘Cairo Declaration on Human Rights in Islam’ a declaration of the member states of the Organization of the Islamic Conference (OIC) adopted in Cairo in 1990 that does not need ratification.⁴⁵² Lebanon has also signed the League of Arab States’ (Amended) Arab Charter of Human Rights – which entered into force in March 2008 – but did not ratify it. During the UN Human Rights Council Universal Periodic Review (UPR) of Lebanon, held in November 2010, a number of delegations commended Lebanon for progress made in promoting child rights, including initiatives.⁴⁵³ The ministerial circular issued in 2008 and renewed in 2009 and 2010, for mandating all public and private schools to register children holding UNHCR refugee certificates, that has enabled children to better realise their education rights (Situation Analysis Middle East and North Africa Report Commissioned by Save the Children Sweden 2011) needs to be extended to all children and not only those registered with UNHCR. And finally there is need to work on deinstitutionalization of children in the country which is currently one of the highest in the world as a lot of abuse can happen in the institutions⁴⁵⁴.

Child rights recommendations which enjoyed the support of Lebanon include: strengthening legal measures to combat the sale and trafficking of children, creation of additional national mechanisms to promote and protect human rights of vulnerable groups, accelerate plans for the adoption and implementation of a national strategy for children, including strategy to combat child labour, strengthen inclusive education programmes, implement further demining activities to better protect children.

publisher, ARAB,,,3ae6b3822c,0.html, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 121

⁴⁵² OIC, ‘Cairo Declaration on Human Rights in Islam’, 5 August 1990, <http://www.unhcr.org/refworld/publisher, ARAB, 3ae6b3822c,0.html>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 127

⁴⁵³ Human Rights Council, ‘National report submitted in accordance with paragraph 15 (a) of the annex to Human Rights

⁴⁵⁴ Council resolution 5/1: Lebanese Republic’, A/HRC/WG.6/9/LBN/1, 23 August 2010, http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/LB/A_HRC_WG.6_9_LBN_1_E_Lebanon.

Lebanon rejected the following recommendations: raise the minimum age of criminal responsibility to comply with international standards, adopt a comprehensive national strategy to provide street children with official documents and adequate assistance, including recovery and social reintegration services, amend the law on citizenship in such a way that ensures that all Lebanese women can pass on their citizenship to their children, revoke and replace *kafalah* system with regulations in accordance with international standards. Since rights are universal and applicable to all children irrespective of nationality.

The rejection of the recommendations for the protection and services for the street children raises serious concern⁴⁵⁵. It breaches many articles of the CRC, article 4, where the responsibility of the state to undertake all appropriate measures for the implementation of the rights of the child, article 19 (protection from all forms of violence) as they are more vulnerable article 20 (alternative care) unless these street children are taken care by the *kafalah* system, article 24 (right to health and health services), 26 (benefit from social security), 28 (education) and 39 (rehabilitation of child victims) in the absence of any official documents, 27 (adequate standard of living) unless its covered under *kafalah*, 32 (child labour), 34 (Sexual exploitation) and 36 (exploitation from other forms) as they are in street and more vulnerable.

Libya: On 15 April 1993, Libya acceded to the UN CRC (Convention), without any reservations. Libya submitted its initial report on the implementation of the Convention to the Committee on the Rights of the Child (Committee) in May 1996. Libya is party to regional treaties. Libya has agreed to the 'Cairo Declaration on Human Rights in Islam' issued in 1990 by foreign ministers of countries members of the Organization of the Islamic Conference (OIC), a guiding document that does not require ratification. Libya also ratified the (Amended) Arab Charter of Human Rights of the League of Arab States, which entered into force on 15 March 2008.

As member of the African Union (AU), Libya has also ratified in July 1986, the African Charter on Human and Peoples' Rights. It also ratified/acceded to the African Charter on the Rights and Welfare of the Child (ACRWC) in 2000, the

⁴⁵⁵ Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 128

most important instrument for children's rights within the AU human rights system.⁴⁵⁶

Libya seems very promising in achieving the rights of the child as they have even ratified the ACRWC besides many others and made no reservations to the CRC. However, as noted in the child rights situation analysis by save the children Sweden, there is need to work towards the abolishment of corporal punishment in homes and alternative settings also the elimination of discrimination against girls and women in relation to trafficking⁴⁵⁷.

Morocco: The United Nations (UN) CRC (Convention) was signed by Morocco on 26 January 1990 and ratified on 21 June 1993. When it ratified the CRC in 1993, Morocco made a single reservation, in relation to Article 14, the right of the child to freedom of thought, conscience and religion: "The Kingdom of Morocco, whose Constitution guarantees to all the freedom to pursue his religious affairs, makes a reservation to the provisions of article 14, which accords children freedom of religion, in view of the fact that Islam is the State religion".⁴⁵⁸

Morocco submitted the initial report on the implementation of the Convention to the Committee on the Rights of the Child (Committee) on 27 July 1995, and the Second Periodic Report on 4 September 2000. Espace Associatif submitted a supplementary report on the implementation of the Convention. Interpretative declaration of Article 14 was expressed, "in light of the Constitution which provides that Islam, the State religion, shall guarantee freedom of worship for all, and Article 54 of the Family Code which stipulates that parents owe their children the right to religious guidance and education based on good conduct".⁴⁵⁹ On 19 October 2006, the Government of Morocco informed the Secretary-General that it had decided to withdraw the reservation made with regard to article 14.

⁴⁵⁶ African Union, 'List of Countries that have ratified/acceded to the African Charter on the Rights and Welfare of the Child, March 2010, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 137

⁴⁵⁷ Yara Abdul-Hamid., 2011 Child Rights: situation analysis Middle East and North Africa, report commissioned by Save the Children Sweden. P138.

⁴⁵⁸ Meeting between IBCR and the Secretary of State for the Family, Children and People with Disabilities, Rabat, Morocco, November 2006. International Bureau for Children's Rights, Making Children's Rights Work in North Africa, PP:118-145, available at: <http://ibcr.org/>

⁴⁵⁹ United Nations Treaty Collection, 'Human Rights: Convention on the Rights of the Child' http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 144

Since the Committee issued its Concluding Observations on the second periodic review on 10 July 2003, Morocco has made progress in aligning its national laws to the principles of the Convention. Morocco has also signed a number of regional human rights agreements. It agreed to the 'Cairo Declaration on Human Rights in Islam'' issued in 1990 by foreign ministers of countries members of the Organization of the Islamic Conference (OIC), a guiding document that does not require ratification.⁴⁶⁰

Morocco has also signed the (Amended) Arab Charter of Human Rights prepared by the Arab Summit in Tunisia in May 2004, but did not ratify it.

The Government of the Kingdom of Morocco interprets the provisions of article 14, paragraph 1, of the CRC in the light of the Constitution of 7 October 1996 and the other relevant provisions of its domestic law, as follows:

- Article 6 of the Constitution, which provides that Islam, the State religion, shall guarantee freedom of worship for all.

Article 54, paragraph 6, of Act 70-03 (the Family Code), which stipulates that parents owe their children the right to religious guidance and education based on good conduct. Here the qualification of good conduct needs to be understood otherwise it can be detrimental to the best interest of the child.

By this declaration, the Kingdom of Morocco reaffirms its attachment to universally recognized human rights and its commitment to the purposes of the aforementioned Convention.⁴⁶¹

The promotion and strengthening of the rights of the child seems much favourable as the Kingdom has even withdrawn its only reservation on article 14 and have also signed many human and child rights instruments. Morocco's combined third and fourth periodic report were due on 20 January 2009, but as of June 2011 have yet to be submitted.⁴⁶²

⁴⁶⁰ OIC, 'Cairo Declaration on Human Rights in Islam', 5 August 1990, <http://www.unhcr.org/refworld/publisher/ARAB,,,3ae6b3822c,0.html>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 144

⁴⁶¹ United nations, treaty collection, Convention on the Rights of the Child, New York, 20 November 1989, available at: <https://treaties>

⁴⁶² United Nations Treaty Collection, Status of Reporting, <http://www.unhchr.ch/tbs/doc.nsf/NewhvVAllSPRByCountry?OpenView&Start=1&Count=250&Expand=117.8#117.8>

Mauritania: It ratified the CRC on 16 May 1991.

Mauritania is a highly centralized Islamic republic with a president as head of State. Sharia provides the legal principles upon which the law and legal procedure are based; a special court hears cases involving persons under the age of 18.

Children who appeared before the court received more lenient sentences than adults, and extenuating circumstances received greater consideration in juvenile cases. The minimum age for children to be tried is 12 years old. Children between the ages of 12 and 18 who are convicted of a crime are sentenced to detention centres for minors⁴⁶³. The Forum of Islamic Thought and Dialogue between Cultures, whose January 2010 roundtable resulted in a fatwa (Islamic ruling) against Female Genital Mutilation (FGM) in the country, (GIZ). On September 13, at the end of the conference, participants issued a regional fatwa against FGM based on the Mauritanian model. On March 1 and 2, GIZ and the Ministry of Social Affairs, Children, and the Family (MASEF) held an event focusing on raising women's awareness of the harmful impact of FGM.⁴⁶⁴

Upon signature: Reservation: In signing this important Convention, the Islamic Republic of Mauritania is making reservations to articles or provisions which may be contrary to the beliefs and values of Islam, the religion of the Mauritania People and State.⁴⁶⁵

We do believe that such a blanket reservation imposes serious implication on the implementation of the rights of the child. However, it appears that they did not have any reservations to the general principles of the CRC.

The Committee of the rights of the child is concerned that the Penal Code provides for the imposition of corporal punishment, including whipping and amputation of children. Although the minimum age to be tried is 12 years, it is not clear if it applies to the corporal punishments as well? As the penal code allows corporal punishment including amputation of children is a very serious concern. This could have serious implication of child's survival and development (article 6). The Committee notes that corporal punishment is

⁴⁶³ Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 144

⁴⁶⁴ US Department of State, Mauritania, pp: 8, 21-22, available at: <http://www.state.gov/>

⁴⁶⁵ United Nations, treaty collection, Convention on the Rights of the Child, New York, 20 November 1989, available at: <https://treaties>

forbidden in schools by Ministerial order, however is concerned that it is still widely practiced in schools and the family.

“The Committee recommends that the State party revise its Penal Code in order to explicitly prohibit corporal punishment by law and enforce the prohibition in all settings, including in the family, the schools and alternative childcare.

It also recommends that the State party conduct awareness-raising campaigns to ensure that alternative forms of discipline are used, in a manner consistent with the child's human dignity and in conformity with the Convention, especially article 28, paragraph 2, while taking due account of general comment No. 8 (2006) on the Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment. The Committee also recommends that the State party seek technical assistance from UNICEF in order to implement relevant programmes in the school environment. “The Committee recommends that the State Party:

- a) undertake a systematic assessment of the situation of street children, including in particular talibes, in order to obtain a good understanding of root causes, magnitude, links with other factors, inter alia, poverty, the situation of marabouts, corporal punishment, exploitation, lack of parental responsibility, lack of access to schools and health facilities;
- b) develop measures to raise awareness on the harmful effects of corporal punishment and engage in the promotion of alternative forms of discipline in families to be administered in a manner consistent with the child's dignity and in conformity with the Convention; and explicitly prohibit corporal punishment in the family, in schools and in other institutions.”⁴⁶⁶

Occupied Palestinian Territory: No declarations or reservations related to Palestinian children in the OPT were made by Israel when ratifying the CRC or the Optional Protocols. In relation to Israeli children, Israel stated that, in relation to Article 3 (2) of the Optional Protocol on the involvement of children in armed conflict which places limitations on military recruitment of those younger than age 18, the minimum age of voluntary recruitment into the Israeli armed forces is 17, according to Article 14 of the Defence Service Law

⁴⁶⁶ Global initiative to end corporal punishment of children, MAURITANIA – COUNTRY REPORT (UNICEF, 2011), pp: 3,4, available at:<http://www.endcorporalpunishment.org/>

(consolidated version) 5746-1986⁴⁶⁷ while its preferable to have 18 years and above, 17 years for recruitment is comfortable (as required by article 38 as 15 years) provided that they are genuinely voluntary and is done with the informed consent of the parents or the guardians and as long as they are refrained from involving in direct combat.

The country being in a very war torn and constant conflict zone need to focus and strengthen the child protection in emergencies; so capacitating and strengthening the rule of law needs to be undertaken to ensure the rights of the child.

Oman: Oman acceded to the United Nations (UN) CRC(Convention) on 9 December 1996, with reservation to all the provisions of the Convention that do not accord with *Sharia* or the legislation in force in Oman, in particular to provisions relating to adoption (Article 21). In addition, Oman expressed a general reservation that provisions of the Convention should only be applied within the limits imposed by the available material resources. It expressed specific reservations to Article 9 ("The words 'or to public safety' should be added after the words unless the provision of the information would be detrimental to the well-being of the child"), Article 7 (understood to mean that a child born in the Sultanate of unknown parents shall acquire Oman nationality, as stipulated in the Sultanate's Nationality Law) and Articles 14 and 30 (freedom of religion).⁴⁶⁸

The Global Initiative to End All Corporate Punishment and Child Helpline submitted alternative reports on the implementation of the Convention. The Committee issued its Concluding Observations on the second period report in September 2006. In its review of the second periodic report, the Committee on the Right of the Child welcomed.⁴⁶⁹

⁴⁶⁷ State party Declarations and Reservations to the Convention on the Rights of the Child available on-line at http://treaties.un.org/Pages/View-Details.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en and State party Declarations and Reservations to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict available on-line at http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en (last accessed 4 August 2011), save the children, Country Profile of the Occupied Palestinian Territory, august 2011, pp: 22

⁴⁶⁸ United Nations Treatment Collection, available at <http://treatiesno=IV-11&chapter=4&lang=en>. The government of Oman however, in its National Report for the Human Rights Council Universal Periodic Review states that it 2010, it lifted four of its reservations to the Convention and limited its fifth and only remaining reservation. Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 161

⁴⁶⁹ Committee on the Rights of the Child, Concluding Observations Oman, CRC/C/OMN/CO/2, 29 September 2006, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/451/19/PDF/G0645119>.

Oman's efforts to address various recommendations made upon the consideration of the State's initial report through legislative measures and policies. However, it noted that some of the Committee's concerns, for example, relating to withdrawal of reservations on the Convention, and non-discrimination, nationality, violence against children and child abuse, children with disabilities and the administration of juvenile justice, have not been sufficiently addressed. In January 2011, Oman implemented the Committee's recommendation and withdrew four out of five of its reservations to the Convention⁴⁷⁰.

Oman has withdrawn four of the five reservations against the convention. Thus the implementation of the rights of the child is much favourable than in some other states.

The words "or to public safety" should be added in article 9 [paragraph 4] after the words "unless the provision of the information would be detrimental to the well-being of the child.. A reservation is entered to all the provisions of the Convention that do not accord with Islamic law or the legislation in force in the Sultanate and, in particular, to the provisions relating to adoption set forth in its article 21. Since kafalah provides alternative care and article 21 do not mandate for adoption, I feel that this will not have much effect on the child, of course subject to having mechanisms to ensure the right and protection of the children in the kafalah system.

The provisions of the Convention should be applied within the limits imposed by the material resources available.

The Sultanate considers that article 7 of the Convention as it relates to the nationality of a child shall be understood to mean that a child born in the Sultanate of unknown parents shall acquire Oman nationality, as stipulated in the Sultanate's Nationality Law. This is a very good law as it provides nationality to children of unknown parents, as most of the countries would be reluctant to have such a provision in the national law.

pdf?OpenElement. Yara Abdul-Hamid, Save the children, Situation Analysis, Middle East and North Africa, PP:162, available at: <http://mena.savethechildren.se>

⁴⁷⁰ UNICEF, 'Recommendation for funding from other resources without a recommendation for funding from regular resources Oman' E/ICEF/2010/P/L.11, 14 April 2011. This is not confirmed in the United Nations Treaty Collection website.

The Sultanate does not consider itself to be bound by those provisions of article 14 of the Convention that accord a child the right to choose his or her religion or those of its article 30 that allow a child belonging to a religious minority to profess his or her own religion.⁴⁷¹ These reservations are of a concern as they affect the right to freedom of religion, thought and conscience. Thus it violates article 2 of the convention and the very spirit of the rights of the child.

Qatar: The United Nations (UN) CRC(Convention) was signed by Qatar on 8 December 1992, and ratified on 3 April 1995. Whereas the Government of the State of Qatar ratified the 1989 CRC on 3 April 1995, and entered a general reservation concerning any of its provisions that are inconsistent with the Islamic sharia; upon ratification, Qatar entered a general reservation by the State of Qatar concerning provisions that are inconsistent with the Islamic *Sharia*.

- Qatar has acceded to the Convention (182) on Worst Forms of Child Labour (2000), Convention (138) on the Minimum Age (2006), and Convention (105) on the Abolition of Forced Labour (2007). Qatar made reservations on certain provisions of the conventions it acceded to:

- The Convention Against Torture: general reservation on any interpretation of the convention's provisions that contradicts the principles of Islamic law and religion, as well as on the jurisdiction of the committee stipulated in article (21 and 22) of the Convention.

- The Convention on Rights of the Child: Qatar partially lifted its reservations on some articles contradicting the Islamic law in the CRC of 1989. However, Qatar has kept its reservations on article (2) and (14).⁴⁷²

In 2009, the State of Qatar declared its partial withdrawal of its general reservation, and restricted its reservations to Articles 2 (non-discrimination) and 14 (freedom of thought, conscience and religion) of the Convention.⁴⁷³

“Whereas the Council of Ministers decided at its fourth ordinary meeting of 2009, held on 28 January 2009, to approve the partial withdrawal by the State of

⁴⁷¹ United nations, treaty collection ,Convention on the Rights of the Child, New York, 20 November 1989, available at: <https://treaties>

⁴⁷² Arab Human rights index, International Conventions, Qatar: Human Rights Profile, available at: <http://www.arabhumanrights.org/>

⁴⁷³ United Nations Treaty Collection, ‘Human Rights: Convention on the Rights of the Child’ <http://treaties>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 168

Qatar of its general reservation, which shall continue to apply in respect of the provisions of articles 2 and 14 of the Convention⁴⁷⁴;

Now therefore, we declare, by means of the present instrument, the partial withdrawal by the State of Qatar of its general reservation, which shall continue to apply in respect of the provisions of articles 2 and 14 of the Convention”.⁴⁷⁵

Since article 2 is one of the general principal of the CRC and a very essential article, we believe that making a reservation against this Article defeats the whole purpose of all other articles. Therefore, we would like to question how the UN Committee has not objected on such a reservation to such an important article.

Saudi Arabia: Saudi Arabia acceded to the UN CRC(Convention) on 26 January 1996. Upon accession, the government of Saudi Arabia expressed a general reservation with respect to all such articles that are in conflict with the provisions of Islamic law.⁴⁷⁶

The Kingdom of Saudi Arabia agreed, under the terms of Royal Decree No. M/7 of 11 September 1995, to accede to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989, with reservations concerning all articles conflicting with the provisions of Islamic law⁴⁷⁷.

This is because the Kingdom pays considerable attention to child welfare and aims to strengthen its international cooperation through the United Nations and because the provisions set forth in this Convention are in conformity with the teachings of Islamic law concerning the need to fully respect the human rights of the child from the time when the child is an embryo in his or her mother's womb until he or she reaches the age of majority. Thus it would strengthen and minimize the violation of the rights in Sudan gradually.

Saudi Arabia ratified the CRC on January 26, 1996, subject to an especially sweeping Islamic reservation, one that followed a pattern more typical of

⁴⁷⁴ Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 169

⁴⁷⁵ United nations, treaty collection ,Convention on the Rights of the Child, New York, 20 November 1989, available at:<https://treaties>

⁴⁷⁶ United Nations Treaty Collection, 'Human Rights: Convention on the Rights of the Child' <http://treaties>,

⁴⁷⁷ Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP:173, 174

Islamic reservations. The 1980s, which said that it was entering reservations with respect to all such articles as are in conflict with the provisions of Islamic law." This ranks as one of the vaguest of the Islamic reservations, and one cannot begin to ascertain how it will affect Saudi Arabia's commitments under the CRC. The character of this reservation is not surprising, coming as it does from one of the countries.

In the world that is most profoundly estranged from the international human rights system. One might wonder why Saudi Arabia had not chosen to ratify CEDAW subject to a similar reservation. Perhaps it feared that the strongly reaction to Islamic reservations to CEDAW meant that ratifying CEDAW subject to a broad Islamic reservation would become counterproductive, merely provoking negative comments in the CEDAW committee and leading to more bad publicity discriminatory treatment of Saudi women.

In contrast, Saudi Arabia would not need to feel qualms about having its record on children's rights scrutinized, because this record is not a conspicuously bad one. Unlike many poorer lands, Saudi Arabia does not have hordes of starving and homeless children, children denied basic health care, children exploited in factory labour, child prostitution, or other dramatic ills.⁴⁷⁸

In this respect, the Kingdom fully appreciates the wisdom and flexibility with which this Convention was formulated in order to encourage accession thereto by most of the international community and, consequently, ensure that children all over the world enjoy the minimum rights proclaimed in the Convention in a manner consistent with the capacities and regulations of the States parties.

The reservation to the CRC is that all the articles of the Convention will be interpreted in the light of Islamic law, which is the same thing, in our view, as "all articles are conflicting with the provisions of Islamic law." This reservation, however, needs to be read in the light of paragraphs 27 and 28 of the report for a better understanding of the meaning of the reservation.⁴⁷⁹

⁴⁷⁸ Ann Elizabeth Mayer, ISLAMIC RESERVATIONS TO HUMAN RIGHTS CONVENTIONS, A CRITICAL ASSESSMENT, PP: 39,40

⁴⁷⁹ Ref: d., paras 27 and 28 (emphasis added). The emphasized text is apparently some kind of blanket approval for most of the provisions of the CRC. The second para does note that the CRC is to be implemented in accordance with the "capacities and the regulations of the States parties, Imran Ahsan Nyazee, chief Editor, Faculty of Sharia and Law, International Islamic University, Islamic law and the CRC, 2002, PP: 88, available at: <http://www.scribd.com/>

Thereafter, the report focuses on all matters relevant to the CRC as they are implemented in the Kingdom. With respect to the age of the child, the report maintains (in paras 31 to 37) that a child is someone who has attained the age of 18 years. The age of the child, up to 18 years, is divided into four stages from 0–7, 7–10, 10–15, and 15–18. In the last two stages, that is, from 10–18 disciplining is undertaken by the guardian “without harming the child.” If punishment is required it takes the shape of “discipline, guidance, and admonishment” or “placement in a social surveillance centre” for children between 10–15 years of age or “if necessary, the child is placed in a social rehabilitation centre”, for children between 15–18 years of age.

There is no indication of the issue of “puberty” (bulugh) that dominates the issue of majority in Islamic law. Further, the report does not indicate whether these are Islamic provisions, and if so what source or argument has been relied upon to arrive at these ages and rules. The issue is evaded in the case of minimum age of marriage by referring to the “flexibility in Islamic law [which] helps to close loopholes and safeguard the interests of both parties.” The age for military service is 18, that for employment is 18 (but 13 with the consent of guardian) and in certain cases for involvement in narcotics, the age is 20.

The issue of changing one's religion is, therefore, evaded. On the whole, the report is very well organized and well written. From our point of view, it does uphold the principles of Islamic law wherever it deems them relevant. It is, perhaps, the only report that refers to the Cairo Declaration on Human Rights in Islam.

One would like to know the legal reasoning behind certain rules upheld by Saudi law, out of academic curiosity, but that is a separate issue.⁴⁸⁰

According to paragraph 32, “A juvenile is defined in the penal laws set forth in the Detention and Juvenile Homes Statutes of 1975, as every human being below the age of 18 years. The regulations stipulate that a juvenile cannot be detained in a public prison but must be delivered to a surveillance centre.”

Paragraph 57 states: “It is noteworthy that the Islamic law applicable in the Kingdom of Saudi Arabia never sentences persons below the age of majority to capital punishment.”

⁴⁸⁰ Id, Imran Ahsan Nyazee, chief Editor, Faculty of Sharia and Law, International Islamic University, Islamic law and the CRC, 2002, PP: 89,90 available at: <http://www.scribd.com/>

Under the principle of the Best Interest of the Child, the report begins with the Sharia and states that “the child’s interests are furthered by his or her parents’ free choice of spouse.” This appears to be for the child, because paragraph 51 states: “It is a recognized principle in Saudi society that persons marry the spouse of their own choosing.” “Family cohesion “in terms of Islamic law is also mentioned. There are separate courts for dealing with juvenile proceedings which are held in camera.

The system of kafalah is employed in place of adoption, which Islamic law does not permit. “Children normally follow their father’s religion,” but the word “normally” is not explained even by paragraph 121, which says: “Under article 7 (b) of the Cairo Declaration of Human Rights in Islam, ‘parents or legal guardians have the right to choose the form of upbringing they want for their children in a manner consistent with their interests and their future in the light of moral values and the regulations of Islamic law.’”

Saudi Arabia agreed to the ‘Cairo Declaration on Human Rights in Islam’, a 1990 guiding document issued by the Organization of the Islamic Conference (OIC).⁴⁸¹ The document, which is not subject to ratification, includes an article on childcare (‘of the moment of birth, every child has rights due from the parents, the society and the state to be accorded proper nursing, education and material, hygienic and moral care’). Saudi Arabia also ratified the (Amended) Arab Charter of Human Rights of the League of Arab States, after it entered into force on 15 March 2008, Saudi Arabia seem now to be making an effort to interpret the Islamic Law in line with child rights.

Somalia: the law in Somalia is based on Sharia and efforts have been made to harmonize customary law with international human rights standards and Sharia.⁴⁸² A new Punt land Constitution was drafted in 2010 and was due to be put to a public referendum. In January 2011, the Punt land Government reportedly announced that it was breaking its ties with the TFG until a legitimate federal authority is in place in Mogadishu which properly represents Punt land as part of the Federation of Somalia.⁴⁸³

⁴⁸¹ OIC, ‘Cairo Declaration on Human Rights in Islam’, 5 August 1990, <http://www.unhcr.org/refworld/publisher/ARAB,,,3ae6b3822c,0.html>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 174

⁴⁸² UNDP Somalia (2009), Puntland Traditional Leaders Conference, 7-11 February 2009, Garowe: Declaration, Child rights information network, Inhuman sentencing of children in Somalia, march 2011, PP: 1

⁴⁸³ <http://www.puntlandgovt.com/>, accessed 22 February 2011, Child rights information network, Inhuman sentencing of children in Somalia, March 2011

Somalia has signed but not ratified the CRC (in 2002) and the African Charter on the Rights and Welfare of the Child (in 1991). As at March 2010, the process of ratifying the CRC was reportedly under way.

Islamic law, customary law and secular criminal law are applicable in Somalia but there is no coherent, functioning national legal system and no clear prohibition of capital punishment, corporal punishment or life imprisonment for child offenders throughout the country.

The Transitional Federal Government (TFG) is the internationally recognized government of Somalia, and in 2009 the Transitional Federal Parliament voted to implement Sharia as the national law. In Somaliland, the Juvenile Justice Law 2007 puts the age of criminal responsibility at 15 and harmonizes the provisions of secular, Sharia and customary laws. It is surprising and very positive that the age of criminal responsibilities is much higher than most of the countries.

However, the Law has not been fully implemented and much of the work of the lower courts in criminal justice matters, especially involving children, has until very recently been carried out by regional security committees. During the 1980s, sentences handed down by these committees included life imprisonment and the death penalty, though more recently they appear to have been less draconian.⁴⁸⁴ Claims that the committees are lawful under the Public Order Law 1963 are disputed, as is the extent to which that law is still in force.

Under Islamic law, *hadd* offences (for which the punishment is mandatory) punishable with death include apostasy, murder, adultery and armed robbery. Persons typically become liable for such crimes from the age of puberty. It has been reported that crimes such as murder are typically dealt with under Sharia law in Somalia.⁴⁸⁵

With no stable government and not ratifying the CRC this is one country where even if the TFG adopts or ratifies most of the human rights instruments, implementing and enforcing the rights would be quite a challenge. Thus one question would be how to ensure the rights of the child under such

⁴⁸⁴ Human Rights Watch (2009), "Hostages to Peace": Threats to Human Rights and Democracy in Somaliland, New York: Human Rights Watch, Child Rights Information Network, Inhuman sentencing of children in Somalia, March 2011, PP: 1-2, available at: www.crin.org

⁴⁸⁵ Report of the independent expert on the situation of human rights in Somalia, Shamsul Bari, para. 66, Child Rights Information Network, Inhuman sentencing of children in Somalia, March 2011, PP: 1-2, available at: www.crin.org

circumstances? Other possibility is to see whether the Juvenile Justice Law could be strengthened to cover broader child rights?

Sudan: The Sudan, a self-professed Islamic state, and one in the thrall of a regime imbued by an assertive, Islamic fundamentalist ideology, has never ratified CEDAW, but it ratified the CRC in August 1990 without any reservations, Islamic or otherwise. The Sudan's failure to enter an Islamic reservation is intriguing, since the primacy accorded to Islam in the official ideology would have led one to anticipate that the Sudan would enter a broad Islamic reservation to the CRC.

The fact that the Sudan made no Islamic-based reservation suggests that public relations strategies may have driven its response to the Convention. It seems plausible that the Sudan was trying to enhance its reputation by registering as a supporter of the CRC without in anyway qualifying its obligations. Certainly, one has reason to doubt that the Sudan, which has a particularly grim human rights record where children are concerned," was ratifying without reservations because it intended to comply with the treaty⁴⁸⁶.

The failure of the Sudan to enter any reservations might be contrasted with the broad Islamic reservations to the CRC made by Saudi Arabia and Iran countries where Islam plays a similar central role III official Ideologies. Whatever the reason might be for ratifying without any reservation, the fact that they have ratified matters as it becomes legally binding and they can be pressurized to adopt the provisions and enforce the implementation of the rights of the child in Sudan.

Syria: Syria is another country that had refused to ratify CEDAW. Whereas the Sudan had ratified the CRC without any reservations, Syria, a state pervaded by a secular Baathist ideology, entered Islamic reservations. Syria, a rare Muslim country where Islam is not the state religion, that signed the United Nations (UN) CRC(Convention)on 18 September 1990 and acceded to the Convention on 15 July 1993.

Upon ratification, Syria made reservations to the provisions of Article 14 (freedom of thought, conscience and religion), and Articles 20 and 21 (which refer to adoption), with the declaration that these provisions are "incompatible

⁴⁸⁶ Ann Elizabeth Mayer, ref. mentioned earlier

with the precepts of the Islamic *Sharia*, the provisions of the Syrian Personal Status Code, and prevailing Syrian law".⁴⁸⁷

It is interesting to note, that they have made reservation on child rights from an Islamic Sharia perspective, when it is not even their State religion.

Syria submitted its initial report to the Committee on the Rights of the Child (Committee) in September 1995, its second periodic report in August 2000, and its combined third and forth report in March 2009.⁴⁸⁸

Syrian society relies on a patriarchal pattern. Child participation in the familial environment is limited. It is also important to note that Islamic Law (Sharia) is considered as a main source of legislation. It may influence government and community actions in favour of child protection, particularly on the issue of separation. Nonetheless, there is evidence of legislation for non-Muslim citizens (Christians who represent 10% of the population), to regulate matters related to marriage, divorce, child custody among others.⁴⁸⁹

Family-based care is largely preferred to alternative care system. Childcare is provided in accordance with Sharia, which promotes biological links between children and their caregivers. Consequently, alternative care system in Syria is not widespread. Community-based services are not operational either and there is a lack of appropriate residential care centres for children in need (especially children victim of violence). This seriously affects the implementation of articles 27 and 39 of the Convention as they stipulate that children have the right to adequate standard of living and for rehabilitation of the victims⁴⁹⁰.

However, it is worth noting that there are numerous religious structures that provide care and assistance children in need (orphans, unaccompanied children, and school –droppers It is an interesting perspective here, because in Bhutan it is never the intention nor is practiced from the perspective of not giving the freedom of religion or not to allow adoption.

⁴⁸⁷ United Nations Treaty Collection, 'Human Rights: Convention on the Rights of the Child' <http://treaties>,

⁴⁸⁸ Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 181

⁴⁸⁹ Global protection cluster, Child Protection Priority Issues and Responses Inside Syria, 1 February 2013, PP: 3

⁴⁹⁰ Global Protection Cluster, Child Protection Priority Issues and Responses Inside Syria, February 2013, available at http://mhps.net/?get=152/1374219013-Desk-Review_summary-of-CP-needs-and-responses-in-Syria-FINAL.pdf

Thus, Syria has advised the world that it is refusing to be bound by any CRC provisions in conflict with its domestic law or with Sharia law, mentioning specifically its intention not to accord children freedom of religion or to allow adoption. The articles targeted for reservations which, one assumes, were meant to include article 20 rather than article 2 are the same as those singled out by several other Islamic countries as being unacceptable. But Syria also has objections based on secular law, refusing to comply with the CRC where it conflicts with domestic legislation, indicating that Syria's qualifications of its CRC obligations extend well beyond areas covered by Islamic law.⁴⁹¹

The above represents a major challenge in the implementation of the child rights as the interpretation of the rights and their laws could be done towards their likings. Thus it seems very difficult to enforce or implement the rights of the child in Syria with such reservations.

Syria has agreed to the 'Cairo Declaration on Human Rights in Islam' issued in 1990 by Foreign Ministers of countries members of the Organization of the Islamic Conference (OIC). Syria also ratified the (Amended) Arab Charter of Human Rights of the League of Arab States, which entered into force on 15 March 2008.⁴⁹²

The Syrian Arab Republic has reservations on the Convention's provisions which are not in conformity with the Syrian Arab legislations and with the Islamic Sharia's principles, in particular the content of article 14 related to the Right of the Child to the freedom of religion.⁴⁹³

The Syrian Arab Republic has reservations on the Convention's provisions which are not in conformity with the Syrian Arab legislations and with the Islamic Sharia's principles, in particular the content of article (14) related to the Right of the Child to the freedom of religion, and articles 2 and 21 concerning the adoption.

Here again we would like to note that by making reservations against any of the General Principles of the CRC (Articles 2, 3, 6 and 12) they would be defeating

⁴⁹¹ Ann Elizabeth Mayer, ISLAMIC RESERVATIONS TO HUMAN RIGHTS CONVENTIONS, A CRITICAL ASSESSMENT, pp:39

⁴⁹² OIC, 'Cairo Declaration on Human Rights in Islam', 5 August 1990, <http://www.unhcr.org/refworld/publisher/ARAB,,,3ae6b3822c,0.html>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 182

⁴⁹³ United nations, treaty collection ,Convention on the Rights of the Child, New York, 20 November 1989, available at: <https://treaties>

the very purpose of the CRC. So implementation of the rights of the child would be very difficult.

The reservations of the Syrian Arab Republic to articles 20 and 21 mean that approval of the Convention should not in any way be interpreted as recognizing or permitting the system of adoption to which reference is made in these two articles and are subject to these limitations only.

The reservations of the Syrian Arab Republic to article 14 of the Convention are restricted only to its provisions relating to religion and do not concern those relating to thought or conscience. They concern: the extent to which the right in question might conflict with the right of parents and guardians to ensure the religious education of their children, as recognized by the United Nations and set forth in article 18, paragraph 4, of the International Covenant on Civil and Political Rights; the extent to which it might conflict with the right, established by the laws in force, of a child to choose a religion at an appointed time or in accordance with designated procedures or at a particular age in the case where he clearly has the mental and legal capacity to do so; and the extent to which it might conflict with public order and principles of the Islamic Sharia on this matter that are in effect in the Syrian Arab Republic with respect to each case.⁴⁹⁴

We note here a question on whether choosing the religion is referring to the male child (as mentioned above); and if this is true, then it certainly defeats the very purpose of them ratifying the Convention where children are covered irrespective of gender.

The laws in effect in the Syrian Arab Republic do not recognize the system of adoption, although they do require that protection and assistance should be provided to those for whatever reason permanently or temporarily deprived of their family environment and that alternative care should be assured them through foster placement and kafalah, in care centres and special institutions and, without assimilation to their blood lineage (nasab), by foster families, in accordance with the legislation in force based on the principles of the Islamic Sharia.

While kafalah is recognized by the committee and mentioned explicitly in the CRC for the provision of alternative care, it is very essential to develop the SOP

⁴⁹⁴ SYRIAN ARAB REPUBLIC, CRC RESERVATIONS AND DECLARATIONS, available at: <http://www.bayefsky.com/>

and M&E system and complains and response mechanisms to ensure that children's rights are not violated.

Tunis: The United Nations (UN) CRC(Convention) was signed by Tunisia signed on 26 February 1990, and ratified on 30 January 1992. Upon ratification, Tunisia made a number of declarations and reservations In March 2002, the Government of Tunisia informed the Secretary General that it had decided to withdraw the declaration ("its undertaking to implement the provisions of this Convention shall be limited by the means at its disposal") and the reservation to Article 40 paragraph (b) (v).

In its 2002 Concluding Observations the Committee congratulated Tunisia for references to the CRC guiding principles in the Child Protection Code, improved data collection and the enhanced status in the change of the National Council for Children into the Higher Council for Children, under leadership of the Prime Minister, in 2002.

These measures were adopted in conformity with earlier Committee recommendations. Tunisia removed one reservation and one declaration. However, the Committee also noted that some areas remained insufficiently addressed, such as the guarantees of non-discrimination, freedom of expression and civil rights and freedoms. It also again recommended the withdrawal of the remaining declarations and reservations to the Convention.

The right to nationality is more difficult and is the subject of a continuing reservation by Tunisia under the Convention on the Rights of the Child. The law now recognizes Tunisian nationality rights, under specific conditions, for children born abroad to Tunisian mothers and foreign fathers⁴⁹⁵.

Tunisia has agreed to the 'Cairo Declaration on Human Rights in Islam' issued in 1990 by foreign ministers of countries members of the Organization of the Islamic Conference (OIC), a guiding document that does not require ratification.⁴⁹⁶

⁴⁹⁵ Education", Tunisia Online, available on-line at <http://www.tunisiaonline.com/society/society3.html> (last accessed 16 October 2006). International Bureau for Children's Rights, Making Children's Rights Work in North Africa, PP: 150-174, available at: <http://ibcr.org/>

⁴⁹⁶ OIC, 'Cairo Declaration on Human Rights in Islam', 5 August 1990, <http://www.unhcr.org/refworld/> Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 191

Tunisia also signed the (Amended) Arab Charter of Human Rights prepared by the Arab Summit in Tunisia in May 2004, but did not ratify. In March 1983, Tunisia ratified the African Union (AU) African Charter on Human and Peoples' Rights. It also signed in June 1995 – but has not ratified the African Charter on Charter on the Rights and Welfare of the Child, the most important instrument for children's rights within the AU human rights system⁴⁹⁷.

The presence of discrimination, limited freedom of expression and civil rights and freedoms is detrimental in the implementation of the rights of the child and ensuring just and fair treatment.

However, the Tunis government seems progressive as they have removed one reservation and one declaration and have also complied some of the concluding observations. Therefore, if the pressure or lobby group were able to have them sing and ratify the African Charter on the Rights and Welfare of the Child would strengthen the rights of the child.

The other area of concern is the reservation on the right to nationality, which affects article 7, as the child could become stateless, thereby denying all the rights that are being enjoyed by other children.

United Arab Emirates: UAE acceded to the United Nations (UN) CRC(Convention) on 3 January 1997. It expressed reservations to Article 7 (“the acquisition of nationality is an internal matter and one that is regulated and whose terms and conditions are established by national legislation”), Article 14 (“it shall be bound by the tenor of this article to the extent that it does not conflict with the principles and provisions of Islamic law”), Article 17 (“it shall be bound by its provisions in the light of the requirements of domestic statutes and laws and, in accordance with the recognition accorded them in the preamble to the Convention, such a manner that the country's traditions and cultural values are not violated”) and Article 21 (“since, given its commitment to the principles of Islamic law, the United Arab Emirates does not permit the system of adoption, it has reservations with respect to this article and does not deem it necessary to be bound by its provisions”).

⁴⁹⁷ Organisation of African Unity ‘African Charter on the Rights and Welfare of the Child’, OAU Doc. CAB/LEG/24.9/49, 1990,

http://www.africaunion.org/official_documents/Treaties_%20Conventions_%20Protocols/a.%20C.%20ON%20THE%20RIGHT%20AND%20WELF%20OF%20CHILD.pdf, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 192

Making reservation against article 7 marginalizes the child, because if the child cannot get registered as citizen of the country then access to all the social services, protection, development, etc are restricted. The child then becomes stateless unless under the national legislation it covers comprehensively. Distinction must be made between birth certificate and civil registration. The birth certificate is given to all the new born irrespective of nationality; however, it does not guarantee citizenship. Therefore, one needs to be registered again in civil registration to become citizen of the country.

With regard to article 14 it does affect the child freedom of right to religion, however, reservation against article 21 is comfortable as the CRC doesn't mandate and they have not made any reservation against article 20 which provides for alternative measures.

UAE is also Party to regional treaties. It has agreed to the 'Cairo Declaration on Human Rights in Islam' issued in 1990 by foreign ministers of countries members of the Organisation of the Islamic Conference (OIC), a guiding document that does not require ratification.⁴⁹⁸ UAE also ratified the (Amended) Arab Charter of Human Rights' of the League of Arab States, which entered into force on 15 March 2008.

Yemen: Yemen signed the United Nations (UN) CRC(Convention) on 13 February 1990, and ratified it on 1 May 1991, without expressing any declarative interpretations or reservations⁴⁹⁹. Yemen submitted its initial periodic report on the implementation of the Convention to the Committee on the Rights of the Child (Committee) in November 1994, its second periodic report in October 1997, and its third report in May 2003, and its forth report in May 2010.

The Yemen National NGO Coalition has submitted four alternative reports thus far, and the Yemeni children's parliament submitted an alternative report and met with the UN CRC Committee in September 2009.⁵⁰⁰ The latest Concluding

⁴⁹⁸ OIC, 'Cairo Declaration on Human Rights in Islam', 5 August 1990, <http://www.unhcr.org/refworld/publisher,ARAB,,,3ae6b3822c,0.html>, OIC, 'Cairo Declaration on Human Rights in Islam', 5 August 1990, <http://www.unhcr.org/refworld/publisher,ARAB,,,3ae6b3822c,0.html>,

⁴⁹⁹ Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 198, 199

⁵⁰⁰ Yemen National NGO Coalition 'The Third NGOs Alternative Periodic Report On Rights of the Child', 2004, available at <http://www.bettercarenetwork.org/resources/infoDetail.asp?ID=5495&flag=legal>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 205, 206

Observations of the Committee on the implementation of the Convention were issued on 21 September 2005.

Yemen seems very open and receptive towards ensuring child rights and they have also rectified the CRC without any reservations and also being one of the first countries to ratify the League of Arab States' Amended Arab Charter on Human Rights. One of the noteworthy features of Yemen is that they have not only instituted children's parliament but also submitted report to the commission. Therefore, it seems that they are way ahead in the area of child rights implementation than most of the states. Thus such models need to be replicated or highlighted for others to follow or learn from it.

However, as noted in the concluding observation by the committee in 2005 the definition of the child in national legislation needs to be established. Hopefully this will also reduce the discrimination against girl child, Akhdaam children, children born out of wedlock, children with disability, street children and children living in rural areas. Of course continuous advocacy, education and capacity building is required together with provision of services.

Yemen has also signed regional treaties. It agreed to the 'Cairo Declaration on Human Rights in Islam', a declaration of the member states of the Organization of the Islamic Conference (OIC) adopted in Cairo in 1990⁵⁰¹. Yemen was one of the first Arab countries to ratify the League of Arab States' Amended Arab Charter on Human Rights, after its entry into force, pursuant to Act No. 45 of 2008 concerning ratification of the Charter⁵⁰².

General Remarks

Going through the compilation of the brief status of the Child Rights in the Islamic countries most of them have made blanket reservation on any article that is not in line with the Islam Sharia law, which makes it difficult to ensure the right of the child, particularly to those articles as highlighted under each of the countries.

⁵⁰¹ OIC, 'Cairo Declaration on Human Rights in Islam', 5 August 1990, <http://www.unhcr.org/refworld/publisher,ARAB,,,3ae6b3822c,0.html>,

Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 208

⁵⁰² Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 208

However, there are many other laws in the Arab nations that were more closely aligned with child rights or human rights that has been signed or ratified or agreed. This I feel is a good progress and an area to penetrate and work on strengthening the rights of the child, because sometimes it is the terminology or the perception that it is a western concept and that people and states began to resist or question. While in fact some domestic laws can be much better and conducive to the rights.

Since all the countries are hinging on the Islam as their state religion, working persistently and advocating with the religious people in the area seems obvious and providing a conducive environment to the children can become possible.

Particularly now that a lot of young educated one are entering the job market or into religion it should be a matter of time before realization of most of the rights can become a reality. Of course currently since all the laws are overridden by the Sharia law, a sound implementation of the CRC can be quite a challenge.

However, having said that there are few countries like Lebanon, Libya, Iraq and Yemen to name a few as they have progressed much ahead of the rest in ensuring the rights of the child. Therefore, if few of these promising countries can become or promote as champion it will be much easier for others to follow suit.

Paragraph III: The CRC and Islamic Law

The CRC has been ratified by a record number of countries, and it has been ratified by all the Muslim countries (except Somalia, as noted). A majority of the Muslim countries, however, have ratified the Convention with some kind of reservation, with many saying that the Convention would be interpreted in the light of the Sharia. Several countries have objected to this reservation. Only a few countries made such a comprehensive reservation. These reservations can be summarized as follows:

- The provisions of the Convention pertaining to adoption are against the Sharia. This reservation was made mostly by Arab states.
- The provisions concerning the changing of religion is against the Sharia for a Muslim. Some Muslim states have avoided this issue.

- The right to provide education in accordance with Islamic values belongs to parents.
- This reservation has been made mostly by those Muslim countries that are declared secular states or those that have large non-Muslim minorities.⁵⁰³

Countries making the general reservation on the basis of the provisions of the Sharia are: Qatar, Saudi Arabia and Syria. Algeria made a comprehensive reservation that can be split into two parts. The first part dealt with Islamic provisions, while the general part referred to the provisions of its laws, like the Penal Code and other laws. The reservations made by Iraq, Jordan and Morocco were almost identical referring to freedom of choice of religion as well as adoption; while the reservation of Oman went into a little more detail, especially with respect to nationality. The reservation by the United Arab Emirates was similar to that of Oman although it referred to mass media as well⁵⁰⁴.

Ratifications of the CRC by Islamic countries may have been encouraged by the fact that the CRC seems more accommodating of cultural difference than does CEDAW. The CRC preamble does give a nod to cultural diversity, calling for taking into account "the importance of the traditions and cultural values of each people for the protection and harmonious development of the child. To date there have not been major pitched battles between the forces calling for the universality of CRC principles and those claiming that culture justifies their refusal to comply with treaty provisions, which not to say that the Islamic reservations to the CRC have escaped critical review. Many objections have already been entered, not to the use of the Islamic religion per se but to vague character of the Islamic reservations and their according priority to domestic law⁵⁰⁵.

Interpreting, and applying, the CRC is complicated. There are international organizations whose mandate is to interpret the meaning of children's rights and monitor the Convention's application in individual countries. However, the norms and standards set by international bodies are also debated by national

⁵⁰³ Imran Ahsan Nyazee, *Islamic Law and Human Rights*, pp: 43, 44, available at: <http://www.scribd.com/>

⁵⁰⁴ The State of Qatar entered also a general reservation concerning provisions incompatible with Islamic Law."Imran Ahsan Nyazee, *Islamic Law and Human Rights*, pp: 46, 48 available at: <http://www.scribd.com/>

⁵⁰⁵ Ann Elizabeth Mayer, *ISLAMIC RESERVATIONS TO HUMAN RIGHTS CONVENTIONS, A CRITICAL ASSESSMENT*, pp: 7

government officials, civil society activists and intellectuals. Religious leaders often play a pivotal part in this process.

It is important for the worldwide application of child rights to foster deeper understanding about them and Islam. UNICEF has entered into dialogue with Islamic scholars by highlighting congruencies between Islam and international standards. This dialogue started before the adoption of the CRC in 1989. In 1985 a study was undertaken by Al Azhar University in Cairo on child care in Islam.

In 2005 a joint report by the Organization of the Islamic Conference (OIC), the Islamic Educational, Scientific and Cultural Organization (ISESCO) and UNICEF underlined common goals in realizing children's rights. The focus of these studies was mainly on social rights, leaving aside the more controversial areas of civil and political rights. It is not only important that Muslim religious leaders increase their understanding of international child rights standards.

The non-Islamic world needs to benefit more from Islamic thinking on this matter. Therefore there must make the most of opportunities for international dialogue between Islamic and non-Islamic, religious and non-religious thinkers, researchers and practitioners on child rights and on the more difficult issue of women's right.⁵⁰⁶

Who is a child in Islamic law: The meaning of "child" is determined in terms of ages at which a child has the "right" to undertake certain acts or where he will be held fully accountable for his acts. Two of these are civil and criminal liability, while the third is an addition because of religious law. The position taken by Islamic law on the meaning of "child," and the ages for various kinds of liability, goes much further than the Convention of the Rights of the Child, which is willing to acknowledge criminal liability for a child where the laws of the States parties do so. The Convention, therefore, lays down detailed rules for children deprived of their liberty due to criminal or other proceedings. Islamic law does not acknowledge such a state for a child, because it does not assign any criminal liability to a child. Yes, Muslim states are not abiding by the provisions of Islamic law and their laws will need amendment to conform not only with Islamic law, but also to the Convention Islam views childhood with hope and aspiration, seeing it as something to look forward to, seek and long

⁵⁰⁶ Islam, human rights and displacement, Child rights and Islam, pp: 5, available at: <http://www.internal-displacement.org/>

for. When it is achieved, the fruit reaped is happiness of the soul, delight of the heart and elation of the chest.

According to the Quranic text, progeny is a gift from the Almighty Allah to His faithful servants. It is also one of the bounties bestowed upon them by the Almighty Giver of Bounties, as well as being a fulfilment of the hope that sincere servants of God long for. "Unto Allah belongs the sovereignty of the heavens and the earth. He creates what He wills. He bestows female (offspring) upon whom He wills, and bestows male (offspring) upon whom He wills; or He mingles them, males and females, and He makes barren whom He wills.

Hence, it is not surprising that Islamic Sharia(law) pays utmost attention to securing all that is needed to guarantee a wholesome psychological climate for the rearing of children, a climate wherein they learn about the world and formulate their customs and norms.

As such Islam affirms:

- A child's right to health and life.
- A child's right to a family, kindred, name, property and inheritance.
- A child's right to healthcare and proper nutrition.
- A child's right to education and the acquisition of talents.
- A child's right to live in security and peace, and enjoy human dignity and protection under the responsibility of the parents.
- The caring role of society and the state to support all these rights and support families incapable of providing appropriate conditions for their children.

The Islamic Sharia states all of these rights, which are evident in the Quran and the sublime Sunnah of the Prophet Muhammad through his sayings and actions.⁵⁰⁷

The best interest of the child: Islamic law always takes the best interest of the child into consideration. The two institutions of wilayah (parent's authority) and wisayah (guardianship) are based on the principle of "affection" for the child.

⁵⁰⁷ UNICEF, Children in Islam, Their Care, Development and Protection, pp: 2, available at: <http://www.unicef.org/>

Such an affection is only possible in the case of parents, grandparents and those who are appointed as guardians by them. In addition to this, in the cases of divorce and child custody, it is always the best interest of the child that is supreme. As for rights of a child to transactions, in Islamic law, the Hanafis acknowledge a deficient capacity for execution for purposes of some transactions for a person who has attained a degree of discretion, even if his mental faculties are not yet fully developed. Thus, a minor (*sabi*) who possesses discretion, or exhibits “mental maturity” may be assigned such a capacity, for the *khitab* of *muamalat*.

Again, there is no way here of determining whether the minor has actually attained discretion. The Hanafi jurists have, therefore, fixed the minimum age of seven years for assigning such a capacity; anyone over seven years of age who has not yet attained puberty may be assigned such a capacity, but the law makes this dependent on the guardian's will and discretion, who is to ratify a transaction undertaken by a child if it was not harmful for him.

This type of “mental maturity” is only intended for commercial transactions and cannot be extended by analogy or otherwise to the criminal field. Muslim jurists divide legal capacity into three types: complete, deficient and imperfect. The terms *kamilah*, *naqisah* and *qasirah* are used to distinguish between such capacities.

Islamic law recognizes the need of the child to deal in his own wealth even before he attains majority. Keeping him deprived entirely of his wealth is not considered to be in the best interests of the child. Accordingly, any child who has attained a degree of maturity of mind may be permitted to undertake those transactions that are beneficial for him.

For all other transactions, his act will be subject to ratification by the guardian. These provisions are deemed essential for the growth of the potential of the child and for the preservation and growth of his property as well, which may go waste due to neglect while waiting for the child to grow up.⁵⁰⁸

Non-Discrimination and Islamic Law: This is, perhaps, the most problematic area out of all the articles of the Convention. There is no separation between the church and state in Islam, and this is true for certain Muslim countries in the

⁵⁰⁸ Imran Ahsan Nyazee, chief Editor, Faculty of Sharia and Law, International Islamic University, Islamic law and the CRC, 2002, PP: 117, 118, 119 available at: <http://www.scribd.com/>

modern world. There are others that are declared secular states, but they cannot avoid the main provisions of Islamic law. Accordingly, in certain cases, like education and some other areas, there may be occasions where a Muslim child and a child from minority communities may be made to feel different. There is no escape from such situations, unless Muslim countries adopt “establishment” and “religion” clauses in their constitutions, the case with the United States Constitution. This would be against the purposes of the Sharia.

Adoption: objections raised by Muslim countries with respect to adoption are unfounded. The CRC recognizes the rules of adoption that exist in Islamic law. Article 20(3) specifically mentions the institution of kafalah, which may be adopted in place of adoption. Article 21 implies that there are certain states that do not accept adoption as a valid option. Further, adoption in Muslim countries in the case of minorities is valid.⁵⁰⁹

Covenant on the Rights of the Child in Islam (2005)⁵¹⁰

This instrument acknowledges the commitment to the UN human rights regime especially in the field of child rights. Thus in the preamble of the Covenant on the Rights of the Child in Islam, ownership of the CRC is referred to in the following words:

“Proceeding from Islamic efforts on issues of childhood which contributed to the development of the 1989 United Nations Convention on Rights of the Child”;

Secondly, the Covenant on the Rights of the Child in Islam and the UN Convention on Rights of the Child (CRC) have a degree of convergence on definition of what constitutes a child under these instruments which reads thus:

“Article 1 :For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.” (CRC)

The Rights of the Child in Islam defines the child thus:

⁵⁰⁹ See Convention, supra note 4 (see also documents section in this issue), Imran Ahsan Nyazee, chief Editor, Faculty of Sharia and Law, International Islamic University, Islamic law and the CRC, 2002, PP: 119, 120 available at: <http://www.scribd.com/>

⁵¹⁰ Shaheen Sardar Ali, Javaid Rehman, Mamman Lawan, May 2009, Islamic Law and Human Rights: Comparative Perspectives, pp: 45

“Article One, Definition of the Child: For the purposes of the present Covenant, a child means every human being who according to the law applicable to him/her has not attained majority.”

Organization of the Islamic Conference (OIC)⁵¹¹: The Organization of the Islamic Conference (OIC) was founded on 25 September 1969 in Rabat, Morocco. Since its founding, the OIC has expanded from 30 to 57 countries, making it the second largest multilateral organization in the world, after the United Nations (UN)⁵¹². OIC Member States account for a quarter of the world's 2.3 billion children, in nations spanning across Africa, Asia and the Middle East and North Africa (MENA).⁵¹³

In the MENA region, Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, occupied Palestinian territory (oPt), Qatar, Saudi Arabia, United Arab Emirates and Yemen are members of the OIC.⁵¹⁴ The 1994 Declaration on the Rights and Care of the Child in Islam marked the first occasion that an OIC Summit had approved a declaration on children.⁵¹⁵

The Eighth Session of the Islamic Summit, held in Tehran in 1997, reaffirmed OIC's commitment to child issues and called upon the Member States to put in place measures for the protection needs of children, including children in zones of violent and persistent conflicts, refugee and displaced children by meeting their physical and moral needs, paying attention to their education and helping restore them to normal living.⁵¹⁶

⁵¹¹ Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, August 2011, PP: 25,26,27, 28

⁵¹² Unless otherwise stated, information is based on OIC website, <http://oic-info.org/?q=human-rights> , Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, August 2011, PP: 25

⁵¹³ UNICEF Media Centre, 'Conference on Islamic Child', 7, November 2005, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 26

⁵¹⁴ The full list of members is available at http://www.oic-un.org/about_oic.asp#Members, Yara Abdul-Hamid, Save the Children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 26

⁵¹⁵ UN General Assembly 'Report of the Secretary General Cooperation between the United Nations and the Organisation of the Islamic Conference', 17 October 1995, <http://www.un.org/documents/ga/docs/50/plenary/a50-573.htm>, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 26

⁵¹⁶ Resolution N. 14/8-C (IS) on Child Care and Protection in the Islamic World, Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 27

Since then, the OIC has issued a number of declarations and resolutions emphasizing the rights of children, and child welfare and protection have regularly featured on the agenda of the OIC Islamic Summits, including Resolution on Child Care Child Care and Protection in the Islamic World (2000), Child Care and Protection in the Islamic World (2003) the Covenant on the Rights of the Child in Islam (2005) and Rabat Declaration on Children in the Islamic World (2005).

In 2008, the OIC adopted a new human rights based Charter calling for “support for the rights of peoples” as stipulation in international law and the promotion and protection of “human rights and fundamental freedoms including the rights of women, children, youth, elderly and people with special needs as well as the preservation of Islamic family values”. Under Article 15 of the OIC Charter, the OIC is set to establish an Independent Permanent Commission on Human Rights to promote the civil, political, social and economic rights enshrined in the organization's declarations including the 1990 Cairo Declaration on Human Rights⁵¹⁷ and in international human rights instruments.

Launched in 2005, the Ten-Year Programme of Action to Meet the Challenges facing the Muslim *Ummah* in the 21st Century states, amongst others, that “in the social field, it is imperative to focus on the rights of women, children and the family”. One of OIC aims is to strengthen child rights and it specifically mentions the right of children to access free and quality basic education and to enjoy highest possible level of health and to be protected from all forms of violence and exploitation.

A more thorough assessment is needed on the implementation of the plan at the national and regional levels, and mechanisms available for CSO to participate in monitoring and reporting. To mark the 20th anniversary of the Convention, the Cairo Declaration on the CRC(Convention) and Islamic Jurisprudence, was adopted at a 2009 conference in Cairo, co-sponsored by the OIC.⁵¹⁸

⁵¹⁷ The OIC has stated that the Cairo Declaration is not an “alternative” to the 1948 Universal Declaration but “complementary as it addresses religious and cultural specificity of Muslim countries”. A number of human rights organizations have criticized the Islamic Sharia-based Cairo Declaration as eroding rights, particularly right to religion, right to freedom, principle of non-discrimination, specifically of girls, women and non-Muslims. , Yara Abdul-Hamid, save the children, situation Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, august 2011, PP: 26.

⁵¹⁸ Egyptian Ministry of Family and Population and OIC, ‘Cairo Declaration on The Convention and Islamic Jurisprudence Cairo’ 23-24 November 2009, http://srsg.violenceagainstchildren.org/sites/default/files/political_declarations/Cairo_Declaration.pdf

The Conference recognized that the 20th anniversary of the Convention provides an opportunity for OIC members to renew their commitment to the realization of child rights, “for all children without discrimination, including on the basis of gender, to be guided by the best interests of the child, to ensure children’s survival and development and to involve children meaningfully in decision-making processes with special emphasis on the contribution of principles of Islamic *Shari’ah* in fostering the purposes and objectives of this Convention”.

Specifically, the Declaration calls upon OIC countries to withdraw all reservations to the Convention, given the compatibility between *Sharia* and Convention principles, and to ratify the two Optional Protocols to the Convention. As per the recommendations of the Committee on the Rights of the Child (Committee), the Declaration also called upon countries to make expenditure on the rights of the child visible in their annual national budget, to promote the principle of non-discrimination, including of children born out of wedlock, to urgently review and reform their legislation to ensure the prohibition of all forms of violence against children, to raise the age of marriage of girls to 18, to criminalize all harmful acts against children, including female genital mutilation (FGM), and to reform juvenile justice system.

In June 2011, the establishment of an independent human rights commission was high on the agenda of the OIC meeting of foreign ministers in Kazakhstan.

The commission’s role and means of operations will be defined as will be modes of working with CSOs in delivery of humanitarian assistance. Concrete mechanisms for CSO participation in decision-making process or mechanisms to monitor steps taken by member states on the implementation of Ten-Year Programme or the recently launched Cairo Declaration, have not been clearly outlined.

OIC member states have committed to achieving the Millennium Development and ‘World Fit for Children’ goals, and by ratifying the CRC they have affirmed the principles of children’s rights. Much progress has been made in these areas, but much remains to be done. In OIC countries, about 4.3 million children under five die each year from preventable diseases and malnutrition — over 60 per cent of them before reaching their first birthday. About 6 million children under five suffer from malnutrition in the form of stunting, with low height for their age. About 23 per cent of the total population has no access to safe drinking

water, and 45 per cent lack adequate sanitation. Children in sub-Saharan Africa, in particular, are facing a life-threatening crisis as a consequence of armed conflict, HIV/AIDS and poverty.⁵¹⁹

Treaty formulations entail protracted debate and controversy and the CRC was no exception. What is relevant for purposes of our discussion is the fact that those controversial provisions became the subject of reservations and impinge on the universality of child rights norms espoused in the CRC.⁵²⁰ All countries that have ratified the CRC are required to submit periodic reports to the Committee of the Rights of the Child, recording and explaining the progress they have made to meet the requirements of the Convention.⁵²¹

The first issue in question was definition of the minimum age of the child (whether childhood started at conception or at birth). The existing formulation of Article 1 was a compromise to get over this difficulty. The second problem area was the extent and scope of Article 14 regarding freedom of religion. Initially modeled on Article 18 of the ICCPR, which included 'the freedom to have or to adopt a religion . . . of his choice,' this article was reworded to address the strong objections articulated by representatives of Muslim jurisdictions. They pointed out that in the Islamic tradition, a child who is born to Muslim parents, does not have the right to change his/her religion. Another area where Muslim States Parties raised objections was the institution of adoption as conceptualized in the "Western" legal tradition. The final example of controversial issues was the age at which children should be permitted to take part in armed conflict.⁵²²

An impression has been created that Islamic law is against human rights and is not prepared to support them. The defective implementation of certain laws is taken to be a defect in Islamic law itself and charges of discrimination are levelled freely against this law. Part of the problem lies with the attitude of the

⁵¹⁹ The United Nations Children's Fund (UNICEF), 2005 INVESTING IN THE CHILDREN OF THE ISLAMIC WORLD, pp: 2, available at: www.unicef.org

⁵²⁰ Shaheen Sardar Ali, Javaid Rehman, Mamman Lawan, May 2009, Islamic Law and Human Rights: Comparative Perspectives, pp: 47

⁵²¹ Imran Ahsan Nyazee, chief Editor, Faculty of Sharia and Law, International Islamic University, Islamic law and the CRC, 2002, PP: 87, 88, available at: <http://www.scribd.com/>

⁵²² Ali, S. S. "A Comparative Perspective of the Convention on the Rights of the Child and the principles of Islamic law. Law reform and Children's Rights in Muslim Jurisdictions" in Goonesekere, S. (ed.) *Protecting the World's Children. Impact of the Convention on the Rights of the Child in Diverse Legal Systems* (2007) Cambridge: Cambridge University Press pp. 142-208 at pp.174-175. Shaheen Sardar Ali, Javaid Rehman, Mamman Lawan,

May 2009, Islamic Law and Human Rights: Comparative Perspectives, pp: 47, 48

Muslims towards their own legal system. As the bulk of this law is not implemented, they discuss it in vague terms. Thus, they discuss human rights in the most superficial manner, when they should be showing how these rights are actually enforced and made justifiable within the Islamic legal system after reconciling the priorities among conflicting rights. The maximum that they do is to quote some relevant verses and traditions, believing that the problems of implementation will take care of themselves.⁵²³

Analysis and criticism on Rabat Declaration on Child Issues in the Islamic World (2005)

The capital of the Kingdom of Morocco hosted the 1st Mediterranean Forum on Violence against Women organized by the State Secretariat in charge of Family, Children and the Disabled, in the Government of Morocco in partnership with United Nations Fund For Population (UNFPA) and the Canadian International Development Agency (CIDA). Delegations representing governmental institutions concerned by this issue, NGOS, legislative bodies, associations, NGO's involved and working on this issue from the Mediterranean civil societies, attended the forum: Algeria, Egypt, Greece, Jordan, Lebanon, Libya, Morocco, Palestine, Spain, Syria, Tunisia, and Turkey, in addition to Canada, as well as international and national experts. Participants enunciate and endorse the following declaration entitled as "Rabat Declaration on Violence against Women and Young Girls /Gender-based-Violence": First: The participants stress the following principles⁵²⁴:

- Women's and girl's human rights are part and parcel of Human Rights, and GBV constitutes a serious violation of HR and is an obstacle to human development
- The ratification of UN conventions related to women through life cycle, especially the Convention on Elimination of all forms of Discrimination Against Women (CEDAW), and the Declaration for Eradication of all forms of Violence against Women, constitute the main platform for the struggle against GBV but also covenants as regards to trafficking on women and children, women political rights as well as rights in

⁵²³ Imran Ahsan Nyazee, chief Editor, Faculty of Sharia and Law, International Islamic University, Islamic law and the CRC, 2002, PP: 66, 67, available at: <http://www.scribd.com/>

⁵²⁴ Women UN report Network, Violence Against Women and Young Girls Gender-based-Violence, November, 2005, available at: <http://www.wunrn.com/>

workplace International Labour Organization (ILO) in addition to regional charter on Human Rights of individuals and societies

- The adhesion to international agreements on Human Rights will remain limited in their scope as long as they are not coupled with international policies and the adoption of gender-based legislative and institutional measures, which address and protect the human rights of Women. o The Gender mainstreaming Approach is a prerequisite to integrate women in the process of political, economic, social and cultural development and a main tool for the achievement of the Millennium Development Goals (MDGs).

Second: The participants noted that:

- Despite being considered against humankind, the GBV phenomenon, is till prevalent at all levels and under its different material, psychological and moral forms;
- Despite the growing interest in this issue in most of the two-side Mediterranean countries in the recent years, and despite major achievements in some of these countries, and the positive indicators as regards to the legislative, political and programmatic change in addressing this issue, obstacles are still facing the implementation of the principle of gender equality and the eradication of gender-based discrimination in the economic, social, and cultural areas.
- Despite the integration of the principle of equality between men and women in the private and public sector within the legislation framework of many countries, these countries still face shortcomings reflecting women's inferior position at many levels and domains; which is in contradiction with international agreements including for those having ratified them.
- According to some laws in force in some of the Mediterranean countries, Gender-based discrimination is still consolidated and still do not recognize woman as human being entitled to all her rights;

- Despite the adoption of Gender Mainstreaming Approach in several countries, there are still some constraints to the integration of this approach in the national policies and plans as well as programs.
- The discrepancy between certain countries where progress has been achieved in terms of concrete results in certain key areas in the field of fight against GBV, and other countries which are just trying to find their way in such a process, and in other countries women suffer from all forms of violence under the occupation, Armed Conflicts, political violence including religious extremists. The Israeli occupation in Palestine was particularly raised;

The Arab-African Forum against the Sexual Exploitation of Children was held in Rabat, from 24 to 26 October 2001. The Rabat Meeting set as its principal objectives: the reaffirmation of the political commitment of the states; the revision of progress since the World Congress of Stockholm (1996); The five years post-Stockholm highlight the following challenges, and lack of changes, for the countries of the region⁵²⁵:

- The subject of sexual exploitation remains a taboo in many countries.
- There continues to be a lack of situational analysis and qualitative and quantitative data
- Collection mechanisms at both local and regional levels.
- There continues to be an absence of multi-sectoral, multi-disciplinary approaches and
- Coordination mechanisms in the field of prevention and combating of sexual exploitation of children.
- There continues to be a lack of training in human resources in required disciplines, most
- Notably in the areas of justice, policing, tourism industry, transport, social work, health care and education.
- There is a paucity of programs for the rehabilitation and reintegration of child victims of sexual exploitation.

⁵²⁵ World congress against women sexual exploitation of children, ARAB-AFRICAN FORUM AGAINST SEXUAL EXPLOITATION OF CHILDREN ,RABAT, MOROCCO, 24-26 OCTOBER 2001, PP:2-3, available at: <http://www.csecworldcongress.org/>

- The root causes of this calamity are poverty, illiteracy and inadequate educational systems, gender discrimination, cultural practices prejudicing children, such as mutilations, and the attitude of many men.
- A great number of the countries in the group are victims of armed conflicts, war, military occupation and blockades generating situations dominated by violence, which dramatically increases the vulnerabilities that facilitate the sexual exploitation of children.
- The sexual exploitation of children is closely linked to HIV/AIDS and sexually transmitted diseases, with HIV/AIDS being a cause and a consequence of sexual abuse and sexual exploitation of children

Recommendations included:

- a) Ratify and implement (a) the CRC and the two additional protocols, notably the one related to the sale of children, child prostitution and child pornography and the involvement of children in armed conflicts, (b) the ILO Convention 182 on the worst forms of child labor and Recommendation 190.
- b) Harmonization of national legal texts with the provisions of the CRC and ensuring their enforcement
- c) Adapt legal provisions intended to protect children from sex tourism.
- d) Devise national programmes and projects of prevention, for capacity building (through integrated multi disciplinary training), and detection and treatment of any form of physical and sexual abuse of children
- e) Encourage and support the creation of a National and regional observatories to combat sexual exploitation of children.

Follow-up of actions already undertaken, such as:

- Situation analysis and studies, investigations on the question of sexual exploitation of children;
- Raising awareness of national decision-makers of all levels on the problems related to the sexual exploitation of children.
- Foster the conscience awareness of adults and children of the rights of the child and the CEDAW, in particular the girl child, for the purpose of changing attitudes and modes of behaviour and hence prevent the occurrence of the phenomenon.

- Develop strategies and mechanisms for encouraging the participation of the juveniles in order to better protect and defend themselves, notably through sexual education.
- Involve travel agencies and tourism ministries of various countries in programs that combat the sexual exploitation of children.
- Ensure and strengthen security services, especially at the borders.
- Promote peace education in order to prevent armed conflicts, which favor the proliferation of the practice of sexual exploitation.
- Promote the strategy of establishing child and girl-friendly schools.
- Introduce mechanisms for the collection of quantitative and qualitative data, and its recording, including processing, at the level of the concerned departments, the judiciary and para judiciary, health, education, social services.
- Strengthen inter-ministerial coordination within the framework of an adequate response to the complex character of the problem of sexual exploitation of children.
- Strengthen partnerships with the United Nations system, international institutions and organizations, NGOs (national and international), parliamentarians and the private sector.
- Allocate human and financial resources to national programs for combating the sexual exploitation of children.

Every 20 November, the world celebrates the Universal Children's Day as a day of worldwide fraternity and understanding between children, following the United Nations General Assembly's adoption of the CRC as a component of the international law system by virtue of Resolution 44/52, dated 20 November 1989. On this occasion, the Islamic Educational, Scientific and Cultural Organization (ISESCO) has issued a communiqué in which it states that based on the principles and values enshrined in the CRC, the World Declaration on the Survival, Protection and Development of Children, the United Nations Millennium Declaration, and the "A World Fit for Children" document; and in accordance with the teachings of Islam which advocate that children should receive due care, the Covenant on the Rights of the Child in Islam, and the Declaration on the Rights and Care of the Child in Islam, ISESCO pursues its efforts devoted to advance the situation of children in the Islamic world and ensure their protection."

The communiqué reminds that, since more than two decades, ISESCO has implemented programmes and activities dedicated to children in the Islamic world, in a bid to improve their conditions, noting that on top of such efforts and achievements is the organization of four sessions of the Islamic Conference of Ministers in Charge of Childhood respectively in Morocco (2005), the Sudan (2009), Libya (2011) and Azerbaijan (2013). In the same vein, ISESCO urged the OIC Member States to honour the commitments made in the declarations issued by the Islamic Conference of Ministers in Charge of Childhood, namely the “Rabat Declaration”, the “Khartoum Declaration”, the “Tripoli Declaration” and the “Baku Declaration, which are all aimed at protecting children and ensuring their safety and stability in the Islamic world.

The communiqué also underlines that “while acknowledging Member States’ notable achievements and measures in terms of addressing the challenges facing children in the Islamic world, ISESCO notes with concern that the progress made in this connection still falls far short of expectations, particularly as regards the phenomena of street children and child labour, along with the various forms of violence, abuse, deprivation and violations affecting children, and the lack of health, educational and social services and other basic needs which are among their legitimate rights.

ISESCO expressed deep concern over the situation of children exposed to death and displacement because of occupation, terrorism, violence, armed conflicts and natural disasters in a number of the Islamic world’s countries such as Palestine, Iraq, Syria, Somalia and Syria whose children are enduring all forms of suffering as a result of displacement and all associated hardships caused by the ongoing conflict in the country. ISESCO appealed to Member States to further work on the realization and enforcement of child rights as recognized by international and Islamic instruments as a frame of reference for safeguarding the interests of children and promoting their rights⁵²⁶.

⁵²⁶ ISESCO, In a communiqué on Universal Children's Day Appeal to Islamic world's countries to enforce child rights as per international instruments, 2013, available at: <http://www.isesco.org.ma/>

Paragraph IV: Compatibility of the Sharia with the CRC

A. General Overview

In the Muslim world, most constitutions mention that Islam is the religion of the state and that the principles of Islamic law (the Sharia) are the foundation of legislation. The legal effects of these clauses vary, but it is clear the Islam in such states occupies a privileged position. Now, with the growing secularism in the West, the political and legal position of Islam in the Muslim world has come under attack in the Western media. Muslims regard the Sharia as an expression of God's will. This notion is very different from the idea of the origins of modern Western law, which is regarded as a purely human phenomenon, created by the state that is the legislature or the judiciary. The classical texts of Islamic jurisprudence define the Sharia as: "The rules given by God to His servants as set forth by one of the prophets, may God bless them and grant them salvation."

The term *Sharia* is used to describe the path ordained by Allah, which, if followed by the faithful, can lead them to the attainment of perfection, worldly well-being, and access to paradise. The general meaning of this notion becomes clearer in light of the fact that its root '*sha-ra-'a*' is found more than once in the Qur'an in the sense of to 'legitimize' or to 'decree' something as being binding.

The general description of the *Sharia* as an aggregate of precepts established by Allah and transmitted to people via the Prophet has become established in Islamic literature.

Various trends of Islamic thought and Muslim law schools differ with regard to the contents of the *Sharia*. According to the prevalent view, the *Sharia* is comprised of three main parts – religious dogmas, Islamic ethics and the so-called practical norms. The latter are further divided into worship instructions establishing procedures of the observance of religious duties, and norms regulating all the other aspects of Muslims' conduct and their secular relationships.

It should be underscored that the norms aspect is no mere supplement to Islamic dogmas and ethics, but it is its most important part – to all intents and purposes its core. It is no accident that some authoritative researchers believe that

theology is subordinate to law in the *Sharia*,⁵²⁷ or they generally attribute to the *Sharia* instructions that regulate the individual's behaviour but have no direct bearing on his religious conscience and inner motivations.

The *Sharia* is a religious law which consists of two features: the fact that the basis of its validity is God's will, and the fact that the *Sharia* also contains rules of a purely religious character. In order to inform mankind of His commands, God, according to Islam, has sent down revelations to successive prophets, the last of whom was Muhammad, to whom the Koran was revealed. The contents of the Koran were supplemented by the Prophet's exemplary sayings and behaviour, the *Sunna*, transmitted in the form of thousands of reports by generations of Muslims and, ultimately, compiled in the collections.

These are the divine sources of the *Sharia* and, therefore, the foundation of its authority. *Sharia*'s compatibility with human rights standards is an anachronistic operation. Islamic jurisprudence was created and developed in pre-modern times, before the existence of a civil or human rights doctrine. Like other pre-modern legal systems, there are many rules conflicting modern human rights. *Sharia* is not meant to be judgmental but rather regarded as a method that may help us find conflicts with human rights in modern *Sharia* inspired legislation.⁵²⁸

Islam, in fact, is an attributive title. Islam is the continuation of divine guidance and direction. It is the most advanced form of collective conscience of human society. It sanctified the most exalted customs and usages of human beings. According to the Qur'an (the Holy Book of the Muslims), among every people and in all ages there have been good and righteous people who possessed this attribute. The literal meaning of the word Islam is 'peace' and this signifies that one can achieve real peace of body and mind only through submission and obedience to Allah. Such a life of obedience brings with it peace of the heart and establishes real peace in society at large.⁵²⁹

The general theory of Islam begins with a consideration of application of Islamic *Sharia*(Law) in daily life. Interpretation of the sacred text by humans could lead to gaps in understanding or interpreting to one's own advantage particularly on provisions related to children, which is considered the main

⁵²⁷ Schacht, J., *Islamic Religious Law*, The Legacy of Islam, Oxford, 1979, p. 392. CA& CC press, SHARIAAND MUSLIM-LAW CULTURE, available at: <http://www.ca-c.org/>

⁵²⁸ Ruud Peters (University of Amsterdam) (In)compatibility of religion and human rights : The case of Islam, PP: 1-3, 5, available at: <http://www.academia.edu/>

⁵²⁹ Sayyid Abul ala Mawdudi, Towards understanding Islam, PP: 5, available at: www.islambasics.com

concern in our research paper (like article 14, 20 and 21 of the CRC to name a few) and because religion is power (even from the early civilization where they have ruled and people follow religion blindly).

Unlike natural order, which follows its predetermined laws, mankind has the freedom to rebel and follow its own "man-made" laws, which is, however, a form of unbelief (shirk). Non-submission to the will of Allah is not only an act of ingratitude (kufr) for divine mercies, but also a choice for evil and misery in this world and punishment in the life hereafter.

Islam is simultaneously a creed, a set of ethical norms, a social order, and a way of life. Wherever they are, Muslims are expected to actively contribute to the common good and to show solidarity with their brothers and sisters in faith, worldwide. Islamic Sharia commands its followers to observe the local legal order. Al-'Adl, justice, is a term that means "situation or position in the middle", or intermediateness commonly known as fairness.

According to the Holy Qur'an justice is a precondition for peace: Without justice between human beings there can be no peace in the world.⁵³⁰ This is very much favourable and in line with the child rights, where full justice needs to be given to the children so that their rights are not violated (particularly article 14, 21 etc. of the CRC).

CRC sets universal norms on child rights, seeking enforcement and remedies must address the reality of diverse legal traditions embedded in national systems. A national system's approach can be influenced by a single homogenous tradition like the Common law, the Civil law or Islamic law, or a combination of them, and be shaped by these influences in determining both the legal norms and the institutions and procedures that provide remedies for infringement of rights.

This reality must be understood and addressed if our work on enforcement and remedies is to impact and achieve results. By ratifying CRC almost all States have recognized their obligations to bring universal children's rights home, and incorporate them at the national level.

State accountability and the CRC obligation of the community and stake holders to monitor and partner in that initiative can be facilitated or restricted by the

⁵³⁰ Imam Dr Abduljalil Sajid, Human Rights in Islam, available at: <http://www.uk.upf.org/>

nature of the legal traditions and system. Many of the standards of CRC reflect the influence of Western jurisprudence on human rights in general, and child rights in particular.

Our analysis therefore found that the Common law derived from English law and the Civil law derived from Roman law already provided a legal context that facilitated the recognition of individual participation, rights of children, and the concept of autonomy as a child acquired evolving capacity. These concepts were more difficult to accommodate in legal traditions derived from Islamic law or plural legal traditions where Common law and Civil law had fertilized the legal system, and there was also a body of customary legal traditions, and Islamic law. Nevertheless there were spaces for promoting CRC norms.

B. Nature and Sources of Islamic Law

A characteristic of Muslim law, as indeed of any legal system, is the specific nature of the interplay between its three main manifestations – rules, legal conscience and conduct. Muslim law is remarkable for the three being especially close to each other where a legal rule is perceived by the faithful as an expression of their own sense of propriety and justice, which is why they are also prepared to submit their behaviour to rules.

Obviously, legal conscience is the most important of the three manifestations of law: the doctrine that embodies its top level is not only the leading source of law but it also guarantees that it corresponds with the prevailing mass sense of justice. At the same time, the conclusion about the religious nature of the Islamic philosophy of law and sense of justice as a whole, that lend legitimacy to Muslim law, cannot be extended unreservedly to Muslim law itself.

Close cooperation with religion defines not so much the nature of Muslim law as the special nature of its perception, efficiency and special ideological role. It would be therefore a mistake to confuse the *Sharia* with Muslim law. The *Sharia*, not infrequently termed 'divine law', is generally a religious rather than a legal phenomenon. It serves as a common ideological foundation of Muslim law as a relatively independent phenomenon linked to religion, primarily via the Islamic sense of justice. The correlation between religion, doctrine and law in Islam can be outlined as follows: the Qur'an and the

sunnah – religious precepts – comprise the contents and source of the Sharia which, for its part, is the foundation of the doctrine (fiqh) that plays the role of the leading source of Muslim law.

The nature of Muslim law, however, does not consist in being subordinated to divine revelation but, first and foremost, in the reflection in it of the idea of law. Interpreted by the law doctrine, the precepts of the *Sharia* become, as it were, detached from its general contents and gain relative independence while taking on legal trappings. More accurately, the doctrine invests some *ayats* in the Qur'an and the *hadiths* with legal sense, whereas others provide the basis, source, and point of departure for the formulation of legal conclusions.

The doctrine's decisive role as legal interpreter of the *Sharia* is most graphic in the general principles of law formulated in the Middle Ages. Their prestige was strikingly revealed by the official inclusion of 99 of them in the law, known as the Mecelle, promulgated by the Ottoman Empire in 1869–76, the code of Muslim legal rules on matters of civil and judicial law⁵³¹.

Legal principles of the *Sharia*, reflect and translate its religious and ethical directives into legal language. For example, the characteristic of the Sharia inclination not to burden people with excessively rigid obligations finds expression in such legal principles as 'difficulty entails facilitation', or 'necessity makes permissible what has been prohibited'.

A number of principles indicate the desire to rule out damage or lighten it if possible: 'damage should be made up for', 'damage cannot be made up for by doing harm', 'it is permissible to do partial harm so as to avoid total harm', 'of two evils the smaller one is to be chosen', 'prevention of harm is more preferred than any gain'.

This favours the promotion of the rights of the child particularly article 12 of the convention, because only through listening and understanding the child, they can prevent harming the child. The attention paid to protecting individual interests and rights, especially property, as one of the values protected by the *Sharia*, underlies the principles: 'An order to take charge of someone else's property is invalid', 'No one has a right to take charge of some other person's

⁵³¹ Muslim Law, The *Sharia* and Court, Translation of the Civil Code (Mecelle) used in the Ottoman Empire (Translated into Russian from the Turkish, Tashkent, 1911–12), Vols 1–3. CA& CC press, SHARIA AND MUSLIM-LAW CULTURE, available at: <http://www.ca-c.org/>

property without permission from the latter' and 'No one can appropriate the property of another person with no legal basis.

At the same time, as part of man's privilege, Islam, through the Qur'an, invites man to discover the laws of nature and the ways in which the universe exists. "Nature exists for man to exploit for his own ends, while the end of man himself is nothing else but to serve God, to be grateful to him, and to worship him alone" (Rahman). If the holy scripts are translated and written by humans and if it is not translated correctly or favourable towards the rights of the child then it becomes very difficult to ensure the rights of the child as they will believe in the translated version and follow.

Islam suggests that nature was created by Allah specifically for mankind's use and so must be recognized and respected as a gift for which man must be grateful. There are three reasons for creation: (1) "to serve as a collection of signs, or ayat, of the power and goodness of Allah"; (2) "to serve Allah and to be submissive to God's will"; and (3) "for the use of humans" (Timm).⁵³² Man is invited to question, discover, explore, and manipulate the world around him and use it for his benefit. I see this as a very positive principle and can be applied to child rights. This will enable them to understand the principles of child rights and adapt or enforce accordingly.

There are three types of learning encouraged in Islam, all of which will (or should) inevitably lead to acknowledgement and recognition of Allah's power. These are: (1) the discovery of nature, its laws, and how it can be used for the benefit of mankind; (2) the exploration of the history and the geography of the physical world and its peoples; This learning encouraged in Islam is a good opportunity, as this can also lead to learning of the evolution of the rights of the child and acknowledge them. Since more and more people are getting educated in western education it could in the future create a conducive environment and strengthen the rights of the child and (3) knowledge of oneself (Rahman). God as it were, purchases a believer's life and property and promises, in return, the reward of paradise in the life after death.

A person who voluntarily renounces his freedom to accept *Allah's* supremacy and acknowledges his sovereignty, and, in so doing, 'sells' his 'autonomy'

⁵³² Nehal El-Hadi, Islam and the Nature of the Universe, available at: <http://evans-experientialism.freewebspace.com/>

(which, too, is a gift from *Allah*) to *Allah*, will get in return *Allah*'s promise of eternal bliss in Paradise. A person who makes such a bargain is a Mu'min (Believer) and *Man* (faith) is the Islamic name for this contract; a person who chooses not to enter into this contract, or who, after making such a contract, does not keep to it, is a *Kafir*. The avoidance or abrogation of the contract is technically known as *Kufr*.

It is a principle of Islamic law that *Man* consists in adherence to a certain set of doctrines and anyone who accepts those doctrines becomes a Mu'min. No one has the right to call such a man a disbeliever or drive him from the fold of Ummah, unless there is clear proof that faith has been abandoned. This is the legal position. But in the eyes of the Lord, *Man* is only valid when it entails complete surrender of one's will and freedom of choice to the will of *Allah*. It is a state of thought and action, coming from the heart, wherein man submits himself fully to *Allah*, renouncing all claim to his own supremacy.

A man may recite the *Kalimah*, accept the contract and even offer Prayers and perform other acts of worship, but if in his heart he regards himself as the owner and the master of his physical and mental powers and of his moral and material resources, then, however much the people may look upon him as a Mu'min, in the eyes of *Allah* he will be a disbeliever.

He will not really have entered into the bargain which the Qur'an says is the essence of *Man*. If a man does not use his powers and resources in the way *Allah* has prescribed for him, using them instead in pursuits which *Allah* has forbidden, it is clear that either he has not pledged his life and property to *Allah*, or has nullified that pledge by his conduct.⁵³³

Islamic ethics begins in much the same way as Islamic law, operating on the premise that the most fundamental relationship in the life of human beings is their relationship with God and arguably, because of that relationship, the inevitable conclusion is that Islamic ethics are embodied and coextensive with Islamic law. Said another way, at the core of Islamic ethics is the understanding of the nature of the relationship between humanity and God, which are the very contours of a discussion about Islamic law.

While Muslims acknowledge a natural tendency to adhere to Islamic law (especially concerning ritual practices), positions, such as classical notions

⁵³³ Abul Ala Maududi, *The Islamic Concept of Life*, available at: <http://www.islam101.com/>

about the treatment of women, for example, need to be reformed. Second, contemporary Muslims also remain concerned that even if assuaged of classical (or even pre-classical) positions being acceptable, those now Islamic laws, with an imprimatur of divinity, remain subject to the enforcement of politically minded nation-states and, therefore, subject to possible abuse.

Thus, unless institutions within their respective governments can be assured of their adherence to the rule of law, the preferable approach is to adhere to a set of generalized Islamic ethics which can be reflected in the understanding, application, and enforcement of otherwise secular, generally applicable laws.

It is appropriate to clarify that the Islamic tradition - like other major religious traditions - does not consist of, or derive from, a single source. Most Muslims if questioned about its sources are likely to refer to more than one of the following: the Holy Qur'an or the Book of Revelation which Muslims believe to be God's Word transmitted through the agency of Angel Gabriel to the Prophet Muhammad; Sunnah or the practical traditions of the Prophet Muhammad; Hadith or the oral sayings attributed to the Prophet Muhammad; *Fiqh* (Jurisprudence) or *Madahib* (Schools of Law); and the Sharia or code of law which regulates the diverse aspects of a Muslim's life. While these "sources" have contributed to what is cumulatively referred to as "the Islamic tradition", they are not identical or considered to be of equal weight. Of all the sources of the Islamic tradition, undoubtedly, the most important is the Holy Qur'an which is regarded by Muslims in general, as the primary, and most authoritative, source of normative Islam.

In the eighth century, a difference in legal approach arose amongst Islamic thinkers in two prevailing schools of legal thought. The traditionalists (ahl al-hadith) relied solely on the Quran and the sunna (traditions) of the Prophet as the only valid sources for jurisprudence, such as the prevailing thought emanating from Medina. The non-traditional approach (ahl al-ra'y) relied on the free use of reasoning and opinion in the absence of reliable ahadith, which was heralded in Iraq.

The reason for the difference in technique is that in Medina, there was an abundance of reliable ahadith that scholars could depend on for forming legislation, since the Prophet lived the last ten years of his life during a period of legislation in the young Muslim community. In Iraq, the sources that were available were not as reliable as in Medina and so the jurists had to turn to analogy because of their circumstances.

Therefore, a hadith may have been accepted by Malik (from Medina) and not by Abu Hanifa (from Iraq) who had to use analogy in the absence of reliable hadith. A challenge that jurists had to reconcile was which of the Prophet's actions and decisions were religiously binding and which were merely a function of personal discretion of the Prophet?

In general, ahl al-hadith eventually lent legislative significance to much of the Prophet's decisions, whereas other schools tended to distinguish between the various roles that the Prophet played in his life. If possible, an approach to segregate or differentiate between the religiously binding and function of personal discretion of the Prophet needs to be assessed regarding the reservations that the Muslim communities have made against the CRC.

So that they may be able to withdraw the reservation or make it more favourable towards child rights. Muhammad ibn Idris al-Shafi'i (d. 819) was concerned about the variety of doctrine and sought to limit the sources of law and establish a common methodology for all schools of Islamic law. His efforts resulted in the systemization of *usul al-fiqh*, and the sources of Islamic law become as follows:

1. the Quran;
2. the sunna or tradition of the Prophet;
3. *qiyas* or analogies;
4. *ijma'* or unanimous agreement.

Throughout history these sources were used in descending order by Muslim jurists in determining the legality of an issue. The Quran could be interpreted differently, some traditions of the Prophet were questioned for their authenticity and to what extent they were religiously imperative, the use of analogies was greatly debated and there was little unanimous agreement among scholars in Islamic history about inexplicit issues.⁵³⁴

As mentioned above, this questioning or interpretation of the tradition of the Prophet is an important aspect, particularly if they are contrary to the rights of the child. There could be due to misinterpretation of the scriptures or the traditions and the like⁵³⁵.

⁵³⁴ Muslim Women's League, September 1995, Intellectual Background: Islamic Sources of Information and their Development into Islamic Law, available at: <http://www.mwlusa.org/>

⁵³⁵ On Islam, Muslims and the 500 most influential figures, Shariiah, available at: <http://hitchhikersgui.de/>

By interpreting the Sharia, we realize that it prescribes directives for the regulation of individual as well as collective lives. These directives affect such varied subjects as religious rituals, personal character, morals, habits, family relationships, social and economic affairs, administration, the rights and duties of citizens, the judicial system, the laws of war and peace and international relations.

They tell us what is good and bad; what is beneficial and useful and what is injurious and harmful; what are the virtues which we have to cultivate and encourage and what are the evils which we have to suppress and guard against; what is the sphere of our voluntary, personal and social action and what are its limits; and, finally, what methods we can adopt to establish a dynamic order of society and what methods we should avoid. The Sharia is a complete way of life and an all-embracing social order.

The "*Ahkām al-Sharī'a*" or "Islamic law" are reached through the process of human juristic effort called "*Fiqh*". That is, human juristic understanding of the divine sources using different well defined classical and post-classical jurisprudential methods and principles formulated by Muslim jurists over time. These legal rulings of the classical Islamic jurists, unlike the *Sharī'a* itself, are neither divine nor immutable, but have become accepted by Muslims as established legal treatises of Islamic law in different parts of the world today.

In that regard, Islamic law as derived rulings from the *Sharī'a* can be perceived either in a historical or evolutionary sense. Perceived in a historical sense, Islamic law is often restricted to the traditional rulings of the classical jurists as if those rulings were immutable, like the *Sharī'a* itself. However this is not how Muslims understand Islamic Law; for them, it can and does change in accordance with the needs of society.

This evolutionary perception of Islamic law is the opposite of the historical perception, and it is to the effect that while the legal rulings of the classical jurists provide a rich source of jurisprudence they do not stop the continual development of Islamic law based on modern jurisprudence (*Fiqh*) through the process of legal reasoning (*Ijtihād*). In essence, the evolutionary perception represents Islamic law as a system that evolves in necessary response to the dynamic nature of human life. Thus many legal scholars, Muslim or otherwise, see no problem in the incorporation of elements of Islamic civil law, those aspects relating to resolving marriage disputes, or those prohibiting transactions

based on interest or usury—from being incorporated into the laws adhered to by Muslims in the West.

Some writers have described *usul al-fiqh* as the methodology of law, a description which is accurate but incomplete. Although the methods of interpretation and deduction are of primary concern to *usul al-fiqh*, the latter is not exclusively devoted to methodology. To say that *usul al-fiqh* is the science of the sources and methodology of the law is accurate in the sense that the Qur'an and *Sunnah* constitute the sources as well as the subject matter to which the methodology of *usul al-fiqh* is applied.

The Qur'an and *Sunnah* themselves, however, contain very little by way of methodology, but rather provide the indications from which the rules of *Sharia* can be deduced.. The main difference between *fiqh* and *usul al-fiqh* is that the former is concerned with the knowledge of the detailed rules of Islamic law in its various branches, and the latter with the methods that are applied in the deduction of such rules from their sources.

Fiqh, in other words, is the law itself whereas *usul al-fiqh* is the methodology of the law. The relationship between the two disciplines resembles that of the rules of grammar to a language, or of logic (*mantiq*) to philosophy. *Usul al-fiqh* in this sense provides standard criteria for the correct deduction of the rules of *fiqh* from the sources of *Sharia*. An adequate knowledge of *fiqh* necessitates close familiarity with its sources. This is borne out in the definition of *fiqh*, which is 'knowledge of the practical rules of *Sharia* acquired from the detailed evidence in the sources'. [Amidi, *Ihkam*, I,; Shawkani, *Irshad*, The knowledge of the rules of *fiqh*, in other words, must be acquired directly from the sources, a requirement which implies that the *faqih* must be in contact with the sources of *fiqh*.

Consequently a person who learns the *fiqh* in isolation from its sources is not a *faqih*. Abu Zahrah, *Usul* the *faqih* must know not only the rule that misappropriating the property of others is forbidden but also the detailed evidence for it in the source, that is, the Qur'anic ayah (2:188) which provides: 'Devour not each other's property in defiance of the law.' This is the detailed evidence, as opposed to saying merely that 'theft is forbidden in the Qur'an'⁵³⁶.

⁵³⁶ - M. H. Kamali, Principles of Islamic Jurisprudence, PP: 13, available at: <http://www.tayseerulquran.com/>

At the same time, there are Muslims and non-Muslim commentators on Islamic law who advance a strict historical perception of Islamic law. There is, however, abundant theoretical and practical evidence to establish that, Islamic law as “*Ahkām al-Sharī’a*” (i.e. rulings derived from the *Sharia*) through *Fiqh* has not actually been inherently static or immutable, but has responded and adjusted to the factors of time and circumstances since its inception.

There are, indeed, many established jurisprudential principles and maxims of Islamic law depicting its evolutionary and flexible nature both in theory and practice. A relevant Islamic legal maxim in that regard is that Islamic legal rulings may change with relevant changes in time and place within the context of the *Sharī’a*.

Contrary to a strict historical perception, the evolutionary nature of Islamic law is currently reflected in the practices of most Muslim States and communities as well as in the views of contemporary Muslim jurists and scholars in the Muslim world and amongst Muslim communities in the West generally. While there are Muslim and non-Muslim commentators who do advance a strict historical perception of Islamic law, current trends clearly demonstrate that the humane objectives of the *Sharia* can be better realized through the evolutionary perception of Islamic law in a continually changing world⁵³⁷.

Imām Shatibi shed light on „*urf* and “*ādah* and discussed their status in Islamic law. The arguments advanced by him clarify the issue and its status as a source of law. His arguments are summarized below:

- There are texts, quotes of the Companions, evidences and arguments which prove mutual relation between causes and effects. They, in *sharī’a*, are indications of the proof of „*urf* and „*ādah*.
- As all the laws and injunctions of *sharī’a* are identical, they point to the fact that the lawgiver did not turn away from the customs and usages of the people.
- It is an undeniable and agreed upon fact that *sharī’a* laws are based on the beneficial purposes of people. It requires that „*urf* and „*ādah* should be relied on.
- If the customs and usages of people had not been regarded in Islamic law, it would have caused unbearable problems. If people were forced to

⁵³⁷ Mashood Baderin, Historical and Evolutional Perceptions of Islamic Law in a Continually Changing World, available at: <http://www.the-platform.org.uk/>

behave against their habits and practices, it would have pushed them to great disturbance, as jurists have explained:

“There is a great harm in disengaging people from their habits.”⁵³⁸

There is a legitimate correlation between religion, *fiqh* and law. With the dominance of religious ideology in the Muslim world, the orientation of the Muslim law doctrine towards Islam's fundamental dogmas is inevitable.

Islamic Law is closely bound with both religion and doctrine. Indeed, the doctrine has remained for centuries its main source (outward form), for objective reasons: the doctrine proved the most acceptable form in which the religious idea can interact with the legal principle.

However, proceeding from its original postulates, assessing the doctrine as religious calls for some explanation. The point is that a patently religious orientation is characteristic of its top level – that can be termed the philosophy of Muslim law – designed to prove that the origins of Muslim law lie in divine revelations.

In particular, the Islamic sense of justice proceeds from the premise that in principle law is not the creation of man or state but the expression of Allah's will. People are only in a position to find legal solutions within the general framework of the *Sharia*. This is not about creating laws in the proper sense of the word but about powers of regulation given to Muslim jurists versed in the *Sharia*.

Such peculiarities of the Islamic sense of justice have also lent religious character to Muslim law proper, whose orientation toward the *Sharia* is the absolute prerequisite of its legitimacy.

Its attachment to the *Sharia* and religious background add prestige to Muslim law in the eyes of Muslims, who perceive it as a reflection of the divine light and an embodiment of the postulates of their faith. In the absence of these qualities, the law would have been unable to function in Islamic society in conditions of pervasive social and religious control.

⁵³⁸ Hafiz Abdul Ghani, 'Urf -o-Ādah (Custom and Usage) as a Source of Islamic law, September 2011, PP:2,3, available at: <http://www.aijernet.com/>

Generally speaking, the *Sharia* is a pervasive and extremely detailed system of rules of conduct, regulating every step that Muslims take, a system that prescribes everything in advance and leaves them no choice.

A contrary approach to the problem prevails in the works on the *Sharia* by authoritative Islamic scholars. According to them, the normative side of the *Sharia* is made up of several varieties of precepts. The first is comprised of Qur'an tenets and the *sunnah* that have a clear sense and are understood in no unclear terms. They include all the concrete rules of observance of religious duties, but there are very few precise norms regulating person-to-person relations (with the notable exception of matters of marriage, family and inheritance). These rules are strictly religious in character and the observation of many of them is regarded as mandatory for Muslims and comprises part of their religious status. It is no accident that Muslims' religious freedom is interpreted not only as their right to unhindered performance of their religious ceremonies but also to the observance of *Sharia* norms with regard to marriage and family relations.

Those Qur'an tenets and *sunnah* that have different implications, that only suggest general boundaries and guidelines instead of prescribing precise rules of conduct with regard to concrete matters, are also of a religious nature. The main distinction of this group of *Sharia* norms lies in the fact that it is interpreted dissimilarly by different schools of Muslim law and schools of thought.

The Islamic way of life is absolutely unthinkable without these rational modes of assessing human behaviour. It is no accident that many authoritative thinkers are regarded as an important element of the *Sharia*.

The search for rules of conduct based on rational interpretation of the most general postulates or polysemous provisions of the Qur'an and the *sunnah*, or when these sources do not cover the problems, has come to be called *ijtihad* (literally, zeal, diligence, perseverance). The vast majority of norms regulating human relations are formed on this basis. Of course, this liberty to assess secular problems 'at one's discretion' is not absolute and is granted to far from one and all. The essence of *ijtihad* lies precisely in finding the answer to a problem that has no ready solution that would correspond with the *Sharia*. It is for this reason that Muslim jurists believe that *mujtahids* (those versed in the *Sharia* and vested with the right to *ijtihad*) do not create new rules of conduct but only look for them and 'derive' them, and discover solutions that

are contained in the *Sharia* from the start – contained in its polysemous precepts, original postulates and general principles if not in its precise provisions.

Objectives and guidelines of the *Sharia* reside as it were between religion, morals and law. They indicate that the *Sharia* is not only a religious phenomenon but also a sufficiently flexible system that addresses down-to-earth problems in real life. It is therefore justifiable that, in solving purely secular problems, the religious and ethical principles generally interact with strictly legal principles whose analysis is especially important in precisely defining the nature of the *Sharia* in its correlation with Muslim law.

C. Sharia compatibility with Human Rights conventions

To many Muslims the Holy Qur'an is the Magna Carta of human rights and a large part of its concern is to free human beings from the bondage of traditionalism, authoritarianism (religious, political, economic, or any other), tribalism, racism, sexism, slavery or anything else that prohibits or inhibits human beings from actualizing the Qur'anic vision of human destiny embodied in the classic proclamation: "*Towards Allah is thy limit*"⁵³⁹ In Islamic philosophy, one must always seek knowledge, ignorance is an unfavourable state of being, as the process of acknowledging the existence and power of Allah is one of enlightenment through knowing.

It is claimed in the West that Islam is essentially incompatible with human rights. Nevertheless, many Muslims writers assert that Islam respects human rights and quote in support Islamic source texts such as the Koran and the Hadith (reports relating the Sunna, i.e. sayings and exemplary behaviour of the Prophet Mohammed), without, however, expounding how these principles are to be transformed to enforceable law. Both claims are rather generalizing and informed by political and cultural assumptions⁵⁴⁰.

Discussions aroused as cultural relativists expressed the belief that the tenets of Islam were not compatible with human rights. Some said human rights are a Western phenomenon with imperialist roots in Christianity. Because of its roots

⁵³⁹ Imam Dr Abduljalil Sajid, Human Rights in Islam, available at: <http://www.uk.upf.org/>

⁵⁴⁰ Ruud Peters (University of Amsterdam) (In)compatibility of religion and human rights: The case of Islam, PP: 1-3, 5, available at: <http://www.academia.edu/>

in liberalism and individualism, some claimed that human rights could not be applied in Islamic states where the role of the family and the duties an individual owes to his or her family are of fundamental importance to society.⁵⁴¹

However, in their counterargument, Universalists advocate that Islam should be an active participant in the human rights debate precisely because the modern discourse on human rights is universal and not limited to Western views. Although CRC has been accepted and is widely ratified HR internationally, however, it is challenged in the Islam states (with most of the states making blanket reservations on any provisions that are not in line with Islamic religion.

Therefore, involving them actively in the discourse on HR would be a good strategy to educate or sensitize them on the principles of Human Rights as most of the abuses and violation of the rights do happen in these countries (unfortunately). Thus such engagements could lead to change in their perception and revision or amendments to some of their legislations or practices. The preamble of the December 10, 1948, Universal Declaration of Human Rights (UDHR), emphasizes the fact that rights are universal, “a common standard of achievement for all peoples and all nations,” and, in Article 1 of the declaration, that “all human beings are born free and equal in dignity and in rights.”

Therefore, it is important within the context of Islamic human rights discourse to distinguish between non-derogative rights,⁵⁴² which assert that all human beings are equal before God, and equitable rights toward society – in which people are equal in weight but different based on specific circumstances.

Even though Article 1 of the Aug. 5, 1990, Cairo Declaration on Human Rights in Islam calls for equal rights for all, without discrimination on any grounds, there is no mention of gender until Article VI of the same convention. By and large, liberal Muslims approach the idea of Islam in the human rights debate as that of assimilatory universalism. While there may be differences between both Islam and human rights, this view seeks to define rights as they exist within the Universal Declaration of Human Rights and make them truly universal while respecting existing religious cultures.

Much has been written on Islam and human rights. What today is referred to as human rights has roots. However, it has been known under other names, such as

⁵⁴¹ jumana shehata, *Islam and Human Rights: Revisiting the Debate*, pp: 1-2

⁵⁴² Such as the right to life, respect, justice and freedom, Jumana Shehata, *Islam and Human Rights: Revisiting the Debate*, pp: 3

"natural rights" or "the rights of Man". In Western scholarship, the distinguishing characteristic of human rights is that of laws, which are enacted to confer the same right on all people in a state.

Specifically, the rights to protection of life, property and honour, were contained in this early pact. In Islamic law, these are basic human rights, along with protection of your mind – from anyone imposing doctrines and beliefs on you - and protection of your freedom to practice your religion. Islamic law established the idea of universal rights from the outset, specifying that justice requires that everyone be treated equally before God's law. In addition to these rights, further social rights, including rights of maintenance, inheritance etc., can be established within each religious community, in their own way, as is consistent with their religious teachings. In the Islamic civil society, each recognized religious community maintains its own law making institutions. Those laws are binding on the members of that community. This is a great degree of freedom of religion, which has been removed in the secular states of today, where freedom of religion generally means freedom from religion.

A perception exists amongst many scholars and writers of Western orientation that Islamic law, and indeed the religion of Islam in its entirety, are antithetical to the protection of international human rights. According to this view Islamic law is a formidable impediment to the universal realization of the norms of international human rights law. This notion is particularly pronounced in matters pertaining to women, children and other vulnerable groups. The criticisms levelled against Islamic legal precepts, particularly in the aftermath of post-Cold War terrorist activities and in the face of new age fundamentalism, have further compounded the task of a constructive evaluation of the underpinning ideas of humanism, social justice or dignity in Islamic juristic thought.

So engrossed with the gloomy presentation of an Islamic legal stance on human rights was Rhoda Howard that she vehemently asserted that “Islamic conception of justice is not one of human rights.”⁵⁴³, notwithstanding the endorsement of international human rights treaties by Islamic nations, the promise of such endorsement is prone to erosion through the operation of Islamic law.

⁵⁴³ Howard R Human rights and the search for community Boulder CO: Westview Press (1995) 94, DEJO OLOWU, Children's rights, international human rights and the promise of Islamic legal theory, pp: 1 available at: <http://www.saflii.org/>

Western human rights theory is a product of a peculiar set of political, religious and economic circumstances that have attended the history of the Western civilization. The advent of Christianity was marked by a separation of the spiritual and temporal realms. Jesus was not the founder of a state - in sharp contrast to Muhammed, the Prophet of Islam and therefore did not bequeath a system of law to regulate the affairs of the state. For a long time Christians were a persecuted sect that survived through a combination of dissimulation and clandestine activity in different parts of the Roman Empire. The conversion of Constantine did elevate Christianity to the position of state religion, but the church maintained its separate identity from the state.⁵⁴⁴

On other hand, the scheme of life which Islam envisages consists of a set of rights and obligations, and every human being, everyone who accepts this religion, is enjoined to live up to them. Broadly speaking, the law of Islam imposes four kinds of rights and obligations on every man: (i) the rights of God which every man is obliged to fulfil; (ii) his own rights upon his own self; (iii) the rights of other people over him; and (iv) the rights of those powers and resources which God has placed in his service and has empowered him to use for his benefit. In this case Islam is gender biased as it refers only to man.

This could have serious consequences on the rights of the child as the female child can be marginalized and their rights violated; although all children irrespective of sex should be treated equally (article 2 of the CRC).

These rights and obligations constitute the corner-stone of Islam and it is the bounden duty of every true Muslim to understand them and obey them carefully. The Sharia discusses clearly each and every kind of right and deals with it in detail. It also throws light on the ways and means through which the obligations can be discharged - so that all of them may be simultaneously implemented and none of them violated or trampled underfoot. Islamic way of life and its fundamental values may be formed by the Rights of God that is based on the following:

- First studying the ground on which Islam bases the relationship of man to his Creator. The primary and foremost right of God is that man should have faith in

⁵⁴⁴ ISHTIAQ Ahmed, WESTERN AND MUSLIM PERCEPTIONS OF UNIVERSAL HUMAN RIGHTS, PP: 3, available at: <http://www.gap>

Him alone. He should acknowledge His authority and associate none with Him. This is epitomised in the Kalimah: La- ilaha illallah (there is no god but Allah).

- The second right of God on us is that man should accept whole-heartedly and follow His guidance (Hidayah) - the code He has revealed for man and should seek His pleasure with both mind and soul.
- The third right of God on us is that we should obey Him honestly and unreservedly: the needs of this right are fulfilled by following God's Law as contained in the Qur'an and the Sunnah. Islam allows only for the minimum essential sacrifice of life, property, and other people's rights in the discharging of God's rights. The minimum essential sacrifice of other people's rights seriously affects the fundamental principle of rights, where to enjoy ones rights they need to respect others rights" or put it other way, ones rights ends where it infringes on others rights. Thus minimum essential sacrifice could jeopardize the fulfilment of the rights of the child. It is eager to establish a balance between the different demands of man and adjust different rights and obligations so that life is enriched with the choicest of merits and achievements. Islam stands for human welfare and its avowed objective is to establish balance in life. That is why the Sharia clearly declares that your own self also has certain rights upon you. This certain right guaranteed by the Sharia law is favourable towards strengthening the rights of the child or women for that matter. A fundamental principle of it is: "there are rights upon you of your own person." ⁵⁴⁵

The relationship between human rights and Islam/Islamic law has become an important subject of international discourse. The discourse is not only theoretically relevant to the universalization of human rights generally, but particularly relevant to the practical realization of human rights in the Muslim world. This is due to the general universal appeal of human rights on the one hand, and the legitimizing influence of Islam/Islamic law in Muslim-majority States and amongst Muslims generally, on the other hand. ⁵⁴⁶

The Universal Islamic Declaration of Human Rights (19 September 1981), presented as 'a declaration for mankind, a guidance and instruction to those who fear God', based on the Quran and the Sunnah, sets the human rights each

⁵⁴⁵ Sayyid Abul ala Mawdudi, Towards understanding Islam, PP: 90, 92, 93, available at: www.islambasics.com

⁵⁴⁶ Prof. Mashood Baderin, School of Law, SOAS, University of London ,HUMAN RIGHTS AND ISLAMIC LAW, <http://www.soas.ac.uk/>

Muslim government must implement. But the very limit, which every law can have, due to the principles of Sharia, introduces many constraints to the inviolability of human rights, because it makes them relative instead of absolute, and therefore inviolable.

The Cairo Declaration on Human Rights in Islam of 5 August 1990 and the Arab Charter on Human Rights (adopted on 15 September 1994 by the Council of the League of Arab States by its resolution 5437) envisage a privileged protection for the family, motherhood and infancy (besides elders) but always within the limit of the respect of the Sharia.

The Arab Charter, while recalling the death penalty for extremely severe crimes, states that execution cannot be carried out on minors below 18.⁵⁴⁷ This is a very positive clause and supports article 37 of the rights of the child. Therefore, this needs to be enforced in many of the states that enforce the death penalty to a person below 18 years of age.

Even a casual inspection of the Cairo Declaration, the IDHR, and other IHR literature shows that in general, IHR schemes “have consistently used distinctive Islamic criteria to cut back on the rights and freedoms guaranteed by international law, as if the latter were excessive” (Mayer 2007, 3). For instance, Article 22 of the Cairo Declaration states “Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Sharia.”

This Article permits limitations on freedom of expression that clearly are not permitted by the UDHR, whose Article 19 simply states, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” This also counters article 12 and particularly article 13 of the CRC and would limit expression of opinion. The Cairo Declaration mentions Sharia fifteen times, mostly in order to qualify various rights by stipulating that they must be exercised within the limits of Sharia.

All well-developed legal systems of rights provide for limitations of certain of those rights under specified circumstances; for example, to protect national

⁵⁴⁷ OMBRETTA FUMAGALLI CARULLI, THE RIGHTS OF CHILDREN AND MINORS IN INTERNATIONAL CHARTERS, pp: 16,17, available at: www.pass.va.com

security or public order. The question arises whether the limitations placed on international human rights by IHR are defensible under the standards of international law. The ICCPR permits derogations from guarantees to certain rights in case of public emergency. The framers of the ICCPR attempted to delineate the permissible derogations in a manner that is precise, principled, and transparent. The derogations permitted do not include limitations imposed by any system of religious duties.

For example, the ICCPR states that freedom of movement “shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals, or the rights and freedom of others, and consistent with the other rights recognized” (Article 12.3).

Finally, the Covenant states that certain rights are absolute and may not be limited in any event. These include the right to equality in dignity and rights. Insofar as the Sharia law denies equal treatment to women and non-Muslims, then limitations based on Sharia will run afoul of this absolute, non-derogable right (Mayer2007,78). The derogations allowed under the system of international human rights law are not arbitrary, but rather are guided by established law: “such limitations are governed by law, not by the whim of the state. Whether a particular limitation on a right is permissible under the Covenant is a question of international law and the state’s action can be scrutinized and challenged as a violation of the Covenant” (Henkin 1981, 21-22). Here, IHR instruments are particularly problematic, because of the vague manner in which they invoke Sharia.

This vagueness invites arbitrariness and abuse of power because there is no clear, generally accepted legal system governing qualifications on rights; just the claim that a certain rule or interpretation is legitimate because it is “Islamic.” There has been no serious effort, comparable to the effort by the framers of the ICCPR and other international human rights instruments, to present permissible limitations in a precise, principled, and transparent way.⁵⁴⁸

Provisions of the Arab Charter, according to Article 43, should be interpreted in light of international law⁵⁴⁹ ... A similar condition appears in the CRC, giving

⁵⁴⁸ International center for inquiry, Islam & human rights, PP: 17,18, available at: <http://www.centerforinquiry.net/>

⁵⁴⁹ Mohamed Y. Mattar, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, PP: 32 available at: <http://harvardhrj.com/>

priority in case of a conflict to provisions that “are more conducive to the realization of the rights of the child⁵⁵⁰”.

A mechanism for resolving tensions between national, regional and international standards is the savings clause written into Article 43 of the Arab Charter. Savings clauses are aimed at ensuring that treaties do not abridge rights and are commonplace in international and regional human rights instruments. For instance, Article 30 of the Universal Declaration of Human Rights states that “nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedom set forth herein.”⁵⁵¹

To establish the landmarks for external or international relations, the Islamic system provides for manifold rules. The most important of them are:

- **Human brotherhood:** Muslims are committed to Almighty God's guidance, as expressed in the Qur'an, when He confirms the unity between creatures and the Creator, the unity of the human race, and fully fledged human brotherhood. Almighty God is the Creator and people are His creation, and His will and wisdom require that people be disparate in their intellectual faculty, opinions, ideas, beliefs and doctrines. People are free to choose what is in their best interest, in light of the divine revelation and the messages of reformist prophets and messengers from ancient times to the era of the Seal (the last) of the Prophets. The word “free to choose what is in their best interest” is a very welcoming statement as they can enhance the child rights environment, however, they need to see that strengthen the rights of the child ensures a better future for the children and a productive citizen in the future.
- **Honouring the human being and preserving human rights:** To honour the human being, to protect each person's existence and to preserve their rights, regardless of their attitude or behaviour, are considered by the Holy Qur'an as basic elements in the perception of humankind. God says

⁵⁵⁰ Convention on the Rights of the Child art. 41, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC] (“Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the right of the child and which may be contained in: (a) The law of a State party; or (b) International law in force for that State.”) Mohamed Y. Mattar, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, PP: 33 available at: <http://harvardhrj.com/>

⁵⁵¹ See, e.g., U.N. Charter art. 103, Mohamed Y. Mattar, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, PP: 32 available at: <http://harvardhrj.com/>

“We have honoured the sons of Adam, provided them with transport on land and sea, given them for sustenance things good and pure, and conferred on them special favours, above a great part of Our Creation.” The rights of the human being, whom God created and for whom He ensured a basic and permanent livelihood, namely the right to life, freedom, equality, justice, consultation and ethical conduct, are the essential and fundamental principles that should be preserved. Relations with other human beings should be governed by those principles, under all circumstances, in dialogue and debate, in peaceful coexistence, in peace and in war. Thus, in God's legislation and religion it is prohibited to harm or inflict injury on any human being because of their religion. Nor should they be coerced into changing their religion. Their dignity should be inviolable; they should not be tortured in a way that offends their dignity. Their honour should not be attacked, nor should their modesty be violated. They should not be oppressed, nor should they be subjected to any practices that contravene morality and codes of ethics. These are the fundamental principles to which Muslims or pious people of any religion are committed. This is the very spirit of the child rights and the respect to the dignity of the child as a human being. Thus the question remains as to how much of these are actually translated in practice.

- **Justice and equality in rights and duties:** Justice in dealing with others is a natural right; it is also the basis for the survival of the governmental system. Oppression is a harbinger of the destruction of civilizations and prosperity, and of the collapse of the system. Hence, Almighty God says: “God commands justice, the doing of good”,⁵⁵² whereby the doing of good is added to justice to eradicate any rancour from people's minds and foster friendship among them.⁵⁵³

The Constitution of Human rights gave the Constitutional Council the prerogative of control over three types of legal rules, namely: treaties, laws and regulations. It is the sole Arab Constitution that provided for the control of the constitutionality of treaties. It also adopted the system of constitutionality

⁵⁵² Qur'an, 16/90. - Sheikh Wahbeh al-Zuhili, Islam and international law, available at: <http://www.icrc.org/>

⁵⁵³ - Sheikh Wahbeh al-Zuhili, Islam and international law, available at: <http://www.icrc.org/>

control, previous and subsequent, which is a system that hadn't been adopted by any other Arab Constitutions⁵⁵⁴.

On the other hand, Islam and International Law explores the complex and multi-faceted relationship of international law and Islam both as a religion and a legal order. Current debates on Sharia, Islam and the "West" often suffer from prejudice, platitudes, and stereotypes on both sides.⁵⁵⁵ At the time the Universal Declaration of Human Rights was adopted by the UN General Assembly in 1948, few Islamic States raised any serious objection to the rights it contained.

On the eve of the Declaration's 65th anniversary however, many Islamic States have raised fundamental objections to the trajectory of international human rights law and have at times been held to be in violation of some basic tenets of this system. Muslim minorities in non-Islamic States have also made claims requesting their beliefs to be respected and protected by these States. There are also a number of human rights documents issued by Islamic States and Organizations that may be construed as subjecting some human rights to *Sharia*, raising concerns among human rights scholars and activists on the possible relativist implementation of human rights in such States.⁵⁵⁶

The Islamic experience with the concept of constitutionalism which traces its origins to the Prophet Muhammad's Constitution of Medina in the seventh century and for which the concept of constitutional authority (i.e., that governments can and should be legally limited in its powers) continued in an unwritten form, but has evolved into an entirely new and different approaches given that unlike prior adherents, Muslims today live among nation-states, where political authority rests within the hands of governments.

Importantly, some have argued that Islamic constitutionalism, while reflective of a broad-based sentiment that since Islam plays an integral role in the lives of believers that so should it play a role in the state, is actually anti-constitutional. In other words, a state can have a written constitution that is against the spirit of constitutionalism.

For some, the concept of including a provision or provisions which reflect the sentiment that a state must be in conformity creates an arena in which there are no limits and certainly any limits would be subject to an authority outside the

⁵⁵⁴ Samia Bourouba, Jurisprudence, In the Application of Human Rights Standards in Arab Courts, PP: 26

⁵⁵⁵ Marie-Luisa Frick and Andreas Th. Müller, Islam and International Law available at: <http://www.brill.com/>

⁵⁵⁶ Movassagh, Hooman, human rights and Islam, available at: <http://www.law.virginia.edu/>

scope of limiting powers. Muslim-majority states have taken a variety of different approaches to making Islam part of their constitutional structures.

States have taken different approaches to making Islam part of their constitutional structures. Some Muslim-majority states remain avowedly secular and do not mention Islam in their constitutions, but those that do incorporate Islam into their constitutions can be identified as one of three types:

- States that see themselves as manifestations of Islam. Specifically, states in which Islam is the state religion; Islamic law has supremacy over other laws; and the state itself is structured to reflect its Islamic identity—for instance, Islamic adherence is used to define who can occupy positions of authority.
- States that declare Islamic law to be the supreme law of the land. Their constitutions may stipulate that Islamic law is a principal or the singular source of legislation, or they may contain “repugnancy clauses” designed to ensure that promulgated laws conform to Islamic law and that courts and legislatures are empowered to oversee adherence to that law.
- States that declare Islam as the official religion or as one of the official religions of the state. These states have endorsed the role of Islam within the state but have not gone so far as to declare that religion shall rule the state's affairs. even states that clearly avow adherence to Islam and Islamic law still find themselves having to include in their constitutions various provisions regarding individual rights; the need to impose institutional limits on states, and especially their governments, is novel in the history of Islamic law and poses unique challenges⁵⁵⁷.

Proponents of equality argue that human rights concentrate on political justice by setting up basic standards and do not intend to replace religious values. However, they are political means of identifying human dignity in a legally binding way. Even though the scope of rights is limited, its influence goes beyond politics and laws and this is where it can clash with culture or religion. In fact, codifying rights into law makes equal rights and freedom accessible to all, perhaps even more on the individual level than those attained through

⁵⁵⁷ -See Noah Feldman, “Islamic Constitutionalism in Context: A Typology and a Warning,” *University of St. Thomas Law Journal* 7 (2010): 444. Hamid Khan, J.D. International network to promote the rule of law, INPROL, Islamic law, July 2013, PP: 57-60 available at: <http://inprol.org/>

tradition or religion.⁵⁵⁸ Despite the importance and influence of rights and the overlapping consensus concept, it is still commonly argued that even if this is not a notion rejected by Islam *per se*, it is a challenge to achieve human rights in Islamic countries because the pre-conditions of human rights are lacking.

While Islamic states are pressured into accepting international human rights norms, without domestic dialogue or internal changes, a situation arises whereby the supposed beneficiary of rights – humans – may fall into an area where they are not protected by Islamic law or human rights law. And since human agency⁵⁵⁹ has been historically involved, and Islam does not in fact mean the same thing for different people at different times, there is no reason why scholarly *ijtihad* (the process of making a legal decision by independent interpretation of the legal sources) cannot take place from classical text to include the modern human rights context.

The point made above regarding the need to enhance the understanding than simply obliging makes more sense. Even from the countries that have made general reservation and some specific reservations to the child rights conventions like article 14, 20, 21 etc. initially and have later withdrawn most of the reservations by few states indicates the need for time to process and understand the true spirit of the convention. Therefore, as mentioned above there is a need to continuously engage them in the dialogue or discourse on the rights of the child.

Islamic laws governing business dealings comply substantially with international law and are conducive to being utilized in arbitration agreements, regardless of the secular character of state laws. Thus, Muslims seeking to implement a comprehensive Sharia-based arbitration scheme in a predominantly non-Muslim jurisdiction should first pursue the modest objective of achieving governmental acceptance of Islamic commercial law before lobbying for official recognition of controversial Islamic family law principles.⁵⁶⁰

⁵⁵⁸ Freedom, according to Kant is "the only original right belonging to every man by virtue of his humanity." Quoted in Heiner Bielefeldt, "Muslim Voices in the Human Rights Debate," *Human Rights Quarterly* 17, no. 4 (1995): 587-617. , jumana shehata, Islam and Human Rights: Revisiting the Debate, pp: 8,9

⁵⁵⁹ An-Naim talks of people's understanding and practice of their religion and not the religion as an abstract notion. Abdullah an-Naim, "The Best of Times, and the Worst of Times: Human Agency and Human Rights in Islamic Societies," *Muslim World Journal of Human Rights* 1, no. 1 (2004): article 5. , jumana shehata, Islam and Human Rights: Revisiting the Debate, pp: 9

⁵⁶⁰ Khan, Almas, The Interaction between Sharia and International Law in Arbitration, available at: <http://www.questia.com/>

The Islamic family law is based on the principles of Sharia or principles of Islamic law derived from the Quran, Hadith and secondary sources like Ijma, Qiyas, Ijtihad and other juristic techniques.

Child rights and the social and legal position of a child were an integral component of Islamic Family law that included family relations such as marriage, divorce, custody and guardianship of children.⁵⁶¹

Child rights, for example, in relation to custody and guardianship, minimum age of marriage, inheritance rights of the girl child, were perceived by jurists, as part of a wider network of legal and social relations.

Children were ordered to obey their parents or guardians and parents also had duties towards their children. The patriarchal social set up prescribed those children 'belonged' to families.

While this is compatible with article 20 of the convention, there is need to ensure that children born out of wedlock and orphan also enjoy the same rights or care as those children born to lawfully wedded couples.

From an international human rights perspective, the controversial nature of the Cairo Declaration lies in its claim of adherence to Islamic law. The document's preamble affirms that "fundamental rights and universal freedoms are an integral part of Islam and that these rights and freedoms are "binding divine commandments" revealed to the Prophet Muhammad in the Quran. Yet Sharia is invoked in the Declaration in ways that many interpret as constraining universal rights. Article 22 states that "everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of Sharia," while Article 12 affirms that "every man shall have the right, within the framework of Sharia, to free movement." Articles 24 and 25 further solidify the supremacy of Sharia by asserting that the body of Islamic law is the Declaration's "only source of reference."⁵⁶²

⁵⁶¹ Ali, S.S.(2007). A Comparative Study of the Impact of the Convention on the Rights of the Child and the Principles of Islamic law: Law Reform and Children's Rights in Muslim Jurisdictions. Protecting the World's Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems, Cambridge, NY: UNICEF. Prof. Asha Bajpai, UNICEF Legislative Reform in Support of Children's Rights Curriculum Framework, PP: 5, available at: <http://www.unicef.es/>

⁵⁶² TURAN KAYAOGLU , A RIGHTS AGENDA FOR THE MUSLIM WORLD? PP: 9, available at: <http://www.brookings.edu/>

For critics of the Declaration, such cursory use of Sharia to justify sweeping limitations on universal human rights indicates four important shortcomings.

First, it renders the document too restrictive and undermines the universality of the rights it describes. Secondly, the Declaration – perhaps understandably – fails to specify what exactly constitutes sharia, meaning that its restrictions of the rights mentioned are ambiguous.

Further, the state's role in defining and applying Sharia means that the Cairo Declaration empowers governments over individuals. In most cases, the integration of Sharia into the domestic legal systems of Muslim-majority states gives the state a degree of control over the definition and application of sharia.⁵⁶³

In the absence of an international authority to define Sharia, the Cairo Declaration effectively diminishes the universality of human rights by relegating them to the interpretations of national governments.

Many human rights scholars argue that the Cairo Declaration – largely through its alignment with Sharia - directly contradicts certain international human rights. Most traditional interpretations of Sharia accept the legitimacy of slavery, grant only subordinate status to religious minorities, circumscribe women's rights, and prohibit conversion from Islam. This is not to say that Sharia by necessity contradicts ideas of international human rights; numerous reform-minded scholars have offered new interpretations of Islamic law that seek to reconcile the two.

Even more traditionally oriented scholars – as well as some Islamist groups – have increasingly turned to notions such as *maqasid al-Sharia* (higher objectives of the law) and *maslaha* (public interest) to endorse interpretations of Sharia that minimize contradictions with international human rights norms.⁵⁶⁴

Still, the Cairo Declaration is the product of OIC member states with centralized, conservative interpretations of Islamic law that include Iran and Saudi

⁵⁶³ Sami Zubedia, *Law and Power in the Islamic World* (New York: I. B. Tauris, 2010), 153-56. See also Frank E. Vogel, "Saudi Arabia: Public, Civil, and Individuals Shariain Law and Politics," in *ShariaPolitics: Islamic Law and Society in the Modern World*, ed. Hefner, 55-93. ⁵⁶³ TURAN KAYAOGLU, A RIGHTS AGENDA FOR THE MUSLIM WORLD? PP: 10, available at: <http://www.brookings.edu/>

⁵⁶⁴ For more on *maqasid al-Sharia* and *maslaha*, see Jasser Auda, *Maqasid al-Sharia as Philosophy of Islamic Law* (Herndon, VA: International Institute of Islamic Thought, 2008). For an example of its application to human rights, see Baderin, *International Human Rights and Islamic Law*. TURAN KAYAOGLU, A RIGHTS AGENDA FOR THE MUSLIM WORLD? PP: 10, available at: <http://www.brookings.edu/>

Arabia. As such, the Declaration fails in itself to reconcile conflicts between Sharia and ideas of human rights.

These 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 OIC Secretary-General Ekmeleddin İhsanoğlu largely ignore the Declaration in their discussions of Islam and human rights.⁵⁶⁵ 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.

The Cairo Declaration is recognized as a so-called “regional instrument” by the United Nations, but rarely, if ever, used or referred to. It is thus functionally redundant, yet its approval creates an unneeded and potentially dangerous ambiguity in the formal definition of the human rights. For Sharia is incompatible with democracy and fundamental human rights, as stated in 2003 by the European Court of Human Rights, and thus the Cairo Declaration is equally incompatible with any meaningful definition of human rights, as well as with several OSCE(Supplementary Human Dimension Meeting) commitments.

It is interesting to note that the UN has recognized the Cairo Declaration despite the fact that it still hinges on the Islamic law which is not compatible with the human rights instruments. However, having said this I began to wonder if the UN is trying to encourage the Arab nations to further develop or strengthen the rights in the coming years, even though they are aware that it is just another instrument that is in line with the Sharia law. Encouraging and supporting is very essential in achieving the desired result in the long run than direct confrontation and criticisms, which can end the process all together.

Thus, to avoid wilful misinterpretations of what “human rights” refer to, it would be good for the protection of human rights defenders to have the Cairo Declaration explicitly repudiated by those OSCE Party States that also hold membership of the OIC. If they do not do so, they should provide a detailed

⁵⁶⁵ Katrina Dalacoura, *Islam, Liberalism, and Human Rights*(Third Edition), (New York: I.B. Tauris, 2007); Mahmood Monshipouri ed., *Human Rights in the Middle East* (New York: Palgrave Macmillan, 2011); İhsanoğlu, *The Islamic world in the New Century*, 181-188. TURAN KAYAOĞLU, A RIGHTS AGENDA FOR THE MUSLIM WORLD? PP: 10, available at: <http://www.brookings.edu/>

justification for keeping this declaration on the books, and the intended use of it, ICLA thus recommends that:

- OSCE makes a statement that the Cairo Declaration has no relevance to its understanding of human rights.
- OSCE that are also members of OIC explicitly repudiate the Cairo Declaration as being of no relevance, now or in the future, for the interpretation of “human rights”⁵⁶⁶.

A considerable and increasing number of member states of the 57-member Organization of Islamic Conference (OIC) have ratified the relevant international human rights treaties: ICCPR, ICESCR, ICERD, CRC, CEDAW and CSR. The ratification record of the 22-member League of Arab States is instructive: 13 states are party to the ICCPR; 13 states are party to the ICESCR 18 states are party to the ICERD; and 13 states are party to CEDAW (International Commission of Jurists 2003). All 22 states are party to the CRC.

Through these ratified treaties, Muslim states have also assumed specific human rights obligations with respect to housing and land rights (for a chart, see OHCHR 2004; Inter-rights 1996). Mayer (1999a; see also Baderin 2001) argues that Muslim states are bound by these treaties either as a consequence of their formal acceptance through ratification or because customary international law has absorbed some of the key human rights principles and is binding on all states. She further argues that derogation from these obligations is only possible on very narrow grounds, which do not include any appeal to particular religious values or doctrine. However, there may be a deep reluctance on the part of many Muslim countries to engage with and participate fully in the international human rights system, masked to a degree by their formal ratification record.

Despite assertions to the contrary, Muslim societies are pluralist, exhibiting a range of religious and secular ideals, and the experience of Muslim countries cannot be generalized. Nevertheless, it is intended here to attempt an exploration of problematic aspects of the relationship between international human rights norms and Islamic critiques, as a way of understanding difficulties in implementing human rights principles with respect to access to land and security of tenure. Muslim and non Muslim countries face similar kinds of human rights and development issues.

⁵⁶⁶ The OIC human rights, Human Rights in Islamic Countries, September 10, 2012, available at: <http://oichumanrights.wordpress.com/>

There is, however, a heightened concern over human rights abuses in a number of Muslim countries due to socio-cultural practices perceived as hostile to human rights, some instances of repressive regimes, and resistance to the universal human rights movement emerging from vocal quarters within Muslim communities.

A number of Muslim countries ratifying international human rights treaties have entered reservations (exemptions) against some of the provisions of those treaties, usually in the name of religion. It is intended here to examine the relationship between international human rights and Islamic conceptions of human rights in theory and practice⁵⁶⁷.

D. Sharia compatibility with the CRC

Since the end of the First World War (1914-1918), the protection of children had emerged as a central concern on the political agenda of the international community. The Geneva Declaration on the Rights of the Child, adopted in 1924, that for the first time employed the language of "rights" when dealing with the protection of children.

Among others, the United Nations (UN) Declaration on the Rights of the Child and the UN CRC⁵⁶⁸ stand out as the most significant global instruments in the field of children's rights.

As elaborate as all the foregoing instruments might appear, their efficacy within municipal jurisdictions do not match the level of their widespread recognition by States.

Even though it is readily acknowledged that children's rights, particularly as encapsulated in the CRC, have gained almost universal acceptance by states, it is incontrovertible that there exists marked disparity in the attitudes of States

⁵⁶⁷ Siraj Sait and Hilary Lim, *Land, Law and Islam*, PP: 96,97,98, available at: <http://www.masshousingcompetition.org/>

⁵⁶⁸ As of 14 July 2006 there were 192 States Parties to the CRC: see OHCHR, "Status of ratifications of the principal international human rights treaties", <<http://www.ohchr.org/english/bodies/docs/status.pdf>> (accessed 15 October 2007). See also Children's Rights Information Network, "Human rightsbased approaches to programming: children", <<http://www.crin.org/hrbap/index.asp?action=theme.subtheme&subtheme=14>> (accessed 15 October 2007), observing that the massive number of States Parties to the CRC "provides a powerful endorsement to the significance of children's rights." DEJO OLOWU, *Children's rights, international human rights and the promise of Islamic legal theory*, pp:4 available at: <http://www.saflii.org/>

towards their effective domestic implementation. One formidable obstacle to the realization of children's rights in numerous States has been the question of cultural relativism. While this article will not re-open the cultural relativism debate on the rights of children, or human rights in general,⁵⁶⁹ it nevertheless aims at advancing the otherwise unexplored province of Islamic legal theory as it relates to the rights of children in line with the widely accepted principle that rights are interdependent and indivisible. It will do so, not by engaging in detailed comparison of the provisions of international human rights treaties relating to children's rights and their equivalents in Islamic law, but by examining the attitude of Islamic law towards the provision of legal safeguards for the rights and welfare of children and, second, identifying and commenting on the approach that Islamic law and prominent international legal instruments have adopted in this regard. For example, Child adoption in Islam is formally governed by the Compilation of Islamic Laws (Kompilasi Hukum Islam/KHI).

Article 171 (H) of the KHI provides that an adopted child is a child whose responsibility for daily care and bringing up, education and so on is transferred from their original parents to their adoptive parents by way of a court order. It appears that there are provision for adopting the child under the Islamic Law, however, majority of them have made reservation to article 21 (adoption) of the CRC. Therefore, it is interesting as to why they would make such a reservation? In terms of the inheritance rights of adopted children, Article 209 paragraph (1) and (2) of KHI provides that adopted children and the adoptive father have the right to an inheritance portion in the form of wasiat wajibah (compulsory bequeathment). It means that when the adopted children die, adoptive fathers will automatically have the right for the wasiat wajibah of the adopted children's inheritance.

On the other hand, when the adoptive fathers die, adopted children will automatically be entitled for the wasiat wajibah. Wasiat wajibah is the compulsory be queathment where the adoptive father or adopted⁵⁷⁰.

Islam perpetuated the inheritance laws of the Jahiliyah, a temporary system based on kinship and Hijrah. The system was then overruled and replaced by the

⁵⁶⁹ See Ibhawoh B "Cultural tradition and national human rights standards in conflict" in Kirsten Hastrup (ed) *Legal cultures and human rights: the challenge of diversity* The Hague: Kluwer Law International (2001) 85 at 89-93. DEJO OLOWU, Children's rights, international human rights and the promise of Islamic legal theory, pp: 2,3,4 available at: <http://www.saflii.org/>

⁵⁷⁰ International development law organization, STATUS OF ADOPTED CHILDREN IN ISLAM, pp: 1-2, available at: <http://www.idlo.int/>

inheritance distribution by will system (wasiat) to parents and kinsfolk based on verse 180 from Surah al-Baqarah. At the final stage, all previous systems were abolished and replaced with the current Islamic Inheritance Law. The law was derived from the commandments of Allah s.w.t. based on the Mawarith verses which are verses 11, 12 and 176 of Surah al-Nisa.

The Islamic Inheritance Law today is a complete and comprehensive system for the rightful beneficiaries, the portions for each beneficiary and all non-rightful beneficiaries to the inheritance using al-Hajb doctrine or method. The Islamic Inheritance Law is a comprehensive inheritance distribution system similar to other fields of Islamic law.

The comprehensive manifestation of this law can be seen in several aspects such as reasons for inheritance, liabilities and rights of inheritance, the determination of rightful beneficiaries and the portion they should receive, the filtering of the beneficiaries using the al-hajb doctrine, the apportion of inheritance to a foetus, khuntha and mafqud, takharuj doctrine and so forth.⁵⁷¹

It is surprising that out of much misunderstanding and dogma, contents of the Child Rights Act passed into law by the National Assembly have come under severe criticism for an assumed incompatibility with Sharia and Islamic principles. One major impediment to appreciating the Islamic reverence for human rights is the prejudice which derives from fixed, hard line interpretations of the Sharia and the non-application of traditional Islamic jurisprudence to aspects of modern events and situations.

As mentioned above there are provision for interpretation of the Sharia law as it has been mostly kept broad to cover many issues. Therefore, strengthening or educating the young lawyers or religious leaders on the western concept and philosophy can lead to interpretation of the provisions of the law in favour of child rights. Often, upon a close perusal and exhaustive elaboration of the position in Islamic law on these matters, however, these rigid postulations cannot be sustained, not being justifiable even within the Sharia.

This problem has resulted in a discourse by Islamic scholars that is either reproachful or defensive, depending on the nature of the discussants. Islam recognizes the need for special protection to be accorded to children due to their

⁵⁷¹ Mohd Ridzuan Awang, THE ISLAMIC INHERITANCE LAW (FARAID): THE MANIFESTATION OF COMPREHENSIVE INHERITANCE MANAGEMENT IN ISLAM PP: 1,7-8, available at: <http://www.islam.gov.my/>

vulnerability. Since there are many cases of abuses of children especially orphan, street and refugee children in the Arab countries.

These countries can be encouraged to enforce this Islamic principle of special protection which is also the child rights as reflected in the CRC so that children are safe and their rights entrusted. The Qur'an describes children as 'the comfort of our eyes', while several verses and traditions (of the Prophet) remind parents and guardians of their responsibility towards children.

Children are deemed to have been born innocent and Muslims are urged to undertake measures to ensure that they are not contaminated by the conflicts and viciousness of adults.

Indeed, several rights have been identified as belonging to the child in the context of the Qur'an and the Hadith, by Omran A R, in 'Family Planning in the Legacy of Islam, 1992,' which include; 'The rights to genetic purity, to life, to legitimacy and a good name, to breastfeeding, shelter, maintenance and support (including healthcare and nutrition), to future security, religious training and good upbringing, education (irrespective of gender and other factors), training in sports and self defence, to equitable treatment, and to the fact that all funds utilized in their support derive only from legitimate sources.' This aptly covers article 19 of the CRC besides articles 6, 24, 27, 7, and 28 of the convention.

Thus the states that have not yet enforced or implemented these articles can be encouraged or pressured to implement from the perspective of Islamic Law as well. Islam requires the Muslim community to find guardians for children who do not have parents or other legal guardians because "when there is no guardianship, children are more vulnerable."

The duty of guardianship is a duty of the broader community in which the children live. This principle of Islam is very much in line with article 20 of the CRC where alternative care is given to the children (I think mostly under the kafalah system) however, there is need to put mechanisms in place to ensure that no abuses happens.

According to Islam, a mother has been created with characteristics of love, mercy and care that are required for the sound development and rearing of children. "A mother, in 43 other words, has all the qualities to provide full custody to children. This is why the mother has primacy in the right of custody

[over the father]" in accordance with Islam, especially the Prophet's teachings, when a mother meets all the conditions for custody, no one can take this right from her.

In Islam, maturity, freedom and proper mentality are essential for child custody. Anyone who takes custody rights for children must have good morals, intelligence and all other capacities required to rear a sound, healthy child for society. No one who has bad morals and is a negative model for the child has the right to take custody of a Muslim child. The other condition for child custody, he said, is the ability to afford child custody. A wife who takes custody should not be married to someone else unless the other husband is mahram to the child; that is, someone who the child can legally live within the same house.

Another aspect of child custody is the father's responsibility to make alimony payments in order to provide for the child's needs for food, shelter, clothing, etc. in Egypt, the age limit for the mother's custody is seven for boys and nine for girls. But, he added, a judge and the government can extend this age to nine for boys and eleven for girls if that is in the best interests of the children and society⁵⁷².

These provisions ensure the best interest of the child (article 3 of the convention), especially in case of the custody of the child or in the case of a divorce. The provision should also be applied to the guardians of the children (also article 20 and 21) who are orphan and the like, thus it ensures the survival and development (article 6) article 5 (parental guidance and the child's evolving capacities).

Generally, the importance of family and the protection of the institution of marriage is well-established under Islamic Law. There exists abounding evidence in Islamic history, of the practical demonstration by the Prophet and the early Caliphs, that it is the State's duty to protect and support the family and especially its more vulnerable members. Since it is the State, as the ultimate guardian of all, that is responsible for protecting and promoting children's rights, surely the time has arrived for the State Governments to determine a particular age as the age of responsibility, especially in view of the tragedy of

⁵⁷² Rights and democracy, June 2010, "Family Law Reform and Perspectives and Lessons Learned" Seminar Report 3rd International Conference Family Law Reform and Women's Rights in Muslim Countries: Perspectives and Lessons Learned", PP: 42,43

the VVF and unfortunate implications of numerous emerging child mothers in our various jurisdictions, as a developing society.

The inception of its formulation, the contents of this very important legislation was subjected to the scrutiny of a Committee comprising persons that included Islamic scholars of repute, who approved its compatibility with the principles of Islamic law. Indeed, before Jigawa State (a State that has passed the criminal aspects of Sharia into law) enacted the Law in its jurisdiction, it engaged the services of experts to ensure compliance with Islam, which the modified copy was finally approved by the Government of that State.

The issues that were highlighted, such as adoption, etc, were adjusted to reflect the position of Islam on such matters, and that document is available for consideration and adoption in the jurisdictions that would require it. It surely would be a great disservice to the future of our children, for such a significant, comprehensive and much-needed legislation to be rejected because of a few issues which may appear contentious to some of our public officers.

The argument that is often made against the enactment of the Law in many Sharia States is to the effect that since Islam already amply provides for the protection of children, there is no need for a Law for the same purpose. Unfortunately, there is no codified law in place that can be accessed for the children in those jurisdictions, and the rights and protections available in this sphere, if any, are left to the knowledge (or lack of it), and the whims and caprices of whichever judge is seized with the matter, at any given time.

It is critical that these States are able to provide a clear, formal, public document to ensure consistency, accountability and accessibility, together with the structures, mechanisms and institutions for monitoring and sustainability, to enable the effective implementation of the contents, otherwise many children in these domains would remain bereft of the necessary protections and rights that other.

Most importantly, we must acknowledge that its compatibility with human rights norms becomes especially more visible in the area of the protection and promotion of child rights. I agree with the statement, since the definition of protection can vary from place to place, region to region and people to people, there is need to come up with a standard understanding of what constitutes as

protection of children under the Islamic Law, so that everyone can implement the same.

Indeed, considering the antecedents of Islamic history and the foregoing arguments, it would certainly be ironical and atrocious were the 'incompatibility with Islamic precepts' argument to be used as the excuse for not passing the Child Rights Act into Law in the Sharia-implementing States, whose Governments should surely be in the forefront of the campaign for the promotion and protection of child rights.

The provisions of the Child Rights Act must be viewed from this perspective, as the overall objectives of the Sharia, the verses in the Qur'an and the traditions reflected in the Hadith amply justify and support the contents of the Act, in true essence.⁵⁷³

A comparison of the place of Sharia in the Covenant on the Rights of the Child in Islam and the Cairo Declaration reveals some notable differences. While both texts have several references to Sharia, the Covenant does not establish it as a guiding force in interpreting the document. In an apparent contradiction of the Declaration, the Covenant does not restrict children's rights to those specified in the body of Islamic law.

Moreover, there is language in the Covenant that could be construed as a challenge to practices which are sometimes justified through Sharia. Article 4, for instance, urges member states to make efforts to "end action based on customs, traditions, or practices that are in conflict with the rights and duties stipulated in this Covenant." Female genital mutilation could be one example of a cultural practice – linked erroneously to Sharia– that the Covenant would push states to curtail⁵⁷⁴.

The Covenant consists of 26 articles with an insufficient list of children's rights. Furthermore, even the shortened list of rights enumerated has been limited by resorting to Sharia and domestic legislation. The Covenant in its preamble has not affirmed the principles stipulated in international human instruments but instead relied on the principles stipulated in OIC documents, i.e. Dhaka

⁵⁷³ Maryam Uwais, The Compatibility of the Child Rights Act with Islamic Legal Principles, PP: 1,2-3, 8, 12, 14th April, 2009, available at: www.iwei-ng.org

⁵⁷⁴ Nasrin Mosaffa, "Does the Covenant on the Rights of the Child in Islam Provide Adequate Protection for Children Affected by Armed Conflicts," *Muslim World Journal of Human Rights* 8, Issue 1 (2011): 1-21, TURAN KAYAOGLU, A RIGHTS AGENDA FOR THE MUSLIM WORLD? PP: 11, available at: <http://www.brookings.edu/>

Declaration on Human Rights in Islam⁵⁷⁵, the CDHR, and the Declaration on the Rights and Care of the Child in Islam⁵⁷⁶.

When the Covenant tries to ignore areas of inconsistency between problematic traditions and human rights standards it refers them to the domain of Sharia or national legislation. This approach is problematic and counterproductive as most principle or approach of Sharia is contradictory to the principles of child rights. This approach can be seen in Article 1 on the definition of the child, Article 5 on equality, Article 9 on personal freedom, Article 12 on education and culture, Article 13 on rest and activity times, and Article 20 on parents' responsibilities and protection from detrimental practices.

Also the scopes of some other child rights that do not necessarily overlap with problematic traditions, such as Article 14(1) on right to social security and Article 21 on the child refugee, have been left to the domain of national legislation.

Some provisions, however, are of a progressive nature in addressing the problems of children in developing countries. For example, Article 18 (2) on child labour considers sanctions against states that do not change their legislation: "Domestic regulations of every state shall fix a minimum working age as well as working conditions and hours. Sanctions shall be imposed against those who contravene these regulations" Also article 4(3) obliges states to "end action based on customs, traditions or practices that are in conflict with the rights and duties stipulated in this covenant."

As the first experience of the OIC in establishing a monitoring human rights body, the Covenant in its Article 25, though in a sketchy way, predicts the establishment of an "Islamic Committee on the Rights of the Child". According to this article "the Committee shall be composed of the representatives of all the states parties to the present Covenant and shall meet every two years, starting from the date of entry into force of this Covenant, to examine the progress made in the implementation of this Covenant." Interestingly "the Rabat Declaration on Issues of children in the Muslim World" (The Rabat Declaration), which was

⁵⁷⁵ Dhaka Declaration , (note 47), Kamran Hahsemi, *Islamic Culture in Support of Humanity: Formation of Regional Human Rights Mechanisms in the Muslim World*, PP: 16

⁵⁷⁶ The Declaration on the Rights and Care of the Child in Islam, adopted by the Seventh Islamic Summit Conference under resolution No. 16/7-C (1994). Kamran Hahsemi, *Islamic Culture in Support of Humanity: Formation of Regional Human Rights Mechanisms in the Muslim World*, PP: 16

adopted in November 2005 a few months after the adoption of the OIC Covenant on Children, is a far more progressive and comprehensive document about children⁵⁷⁷.

The need for identifying legal frameworks to promote and protect the rights and welfare of the child is not only born out of the conviction that the child, like anyone else, is a human being, but also the recognition, as the core international instruments assert, that the child "by reason of his physical and mental immaturity, needs special safeguard and care."⁵⁷⁸

It will, however, be wrong to assume that the recognition of this special vulnerability of the child and the creation of legal safeguards for the child is an exclusively modern phenomenon. More than a thousand years ago this noble cause of safeguarding the welfare of children was espoused by Islamic law and in pursuit of that commitment certain inalienable rights and legal safeguards were promulgated for the benefit of all children.

The Holy *Qur'an* itself, the primary source of Islamic law, initiated this unprecedented venture by declaring certain basic rights for the protection of children that have acquired universal validity in Islamic juristic thought. In addition to children, there are other persons in society who, because of natural or cultural disabilities, similarly require special protection. This matter was considered of such importance that a whole chapter, *Surat al Nisa* (the Women) was enacted in the Holy *Qur'an* to deal with some of the peculiar matters affecting such persons. Among the rights of children that the Holy *Qur'an* gives particular attention to are the child's right to life, sustenance, property and freedom of conscience. These are, of course, rights to which every human being is entitled, but because of certain special needs of children and prevailing inimical customary practices the Holy *Qur'an* considers it necessary to deal with them particularly in relation to children.

Also, when the Declaration speaks about problematic traditions it denies the relation of those traditions to Islam and calls for "overcoming difficult challenges, including many of the harmful traditional practices that are often

⁵⁷⁷ It was the outcome of the 1st Session of the Islamic Conference of Ministers in charge of Children's Affairs (ICMC), held in Rabat from 7 to 9 November 2005, which was co-organized by the Islamic Educational, Scientific and Cultural Organization (ISESCO), UNICEF and the OIC. Kamran Hahsemi, *Islamic Culture in Support of Humanity: Formation of Regional Human Rights Mechanisms in the Muslim World*, PP: 16.

⁵⁷⁸ See UN Declaration of the Rights of the Child (fn 10 above), Preamble para 3 CRC (fn 11 above), Preamble para 9; African Children's Charter, Preamble (fn 17 above) para 6. DEJO OLOWU, *Children's rights, international human rights and the promise of Islamic legal theory*, pp: 5, 6 available at: <http://www.saflii.org/>

falsely associated with Islam, including child marriage, female genital mutilation/cutting and gender discrimination in education." It is interesting that the declaration do show certain impact of the shaming (probably by international community) of the traditional harmful practices and denies any relation to the Islam, thus this is a good entry point to work on and further strengthen article 19, 28 and 2 of the CRC.

The OIC Covenant on Children is open to ratification and will enter into force upon 20 ratifications, though; no single state has ratified it as yet. In fact more than being complimentary to the CRC, the OIC Covenant on Children is restricting children's' rights and its several failures have made it an impractical instrument.

On the other hand, the deficient Covenant reveals that a compromise on sensitive and controversial issues such as the conflicting matters between problematic religious traditions and human rights within the OIC meetings is not an easy task. However, the compromise of the OIC members evident for the first time in agreeing a binding human rights instrument and particularly a first human rights monitoring body within the Organization, can be evaluated as a step forward. There is a very good indicator and provides way for building the momentum and extend coverage to monitor the violation of the rights of the child as well.

A measure favoured by Islam, which has also been adopted by some of the key international human rights instruments relating to children, is the articulation of children's rights and entitlements in clear, unequivocal, mandatory legal rules and safeguards. According to this approach, it is not enough to merely acknowledge in principle that children are vulnerable and entitled to certain special considerations. The law must make a positive declaration of such rights and provide detailed safeguards.

This is the position taken by the *Sharia* from the very beginning; that is, mere religious and social commitment is not sufficient but must be expressed in detailed legal provisions⁵⁷⁹. This also appears to be the approach of international human rights instruments in so far as they set out not only the rights to which a

⁵⁷⁹ Malik SH "Sharia: a legal system and a way of life" in Abdul-Rahmon I Doi (ed) "Sharia: the Islamic law" Ibadan Nigeria: Iksan Islamic Publishers (1990) 25-41, DEJO OLOWU, Children's rights, international human rights and the promise of Islamic legal theory, pp: 9 available at: <http://www.saflii.org/>

child is entitled but also the safeguards which should be enacted by the state in order to ensure that these rights are enforceable.

It is instructive to note that an ancient instrument known as the Madinah Charter, made between Prophet Mohammed (SAW) and the inhabitants of the city of Madinah in 622 CE⁵⁸⁰, which has been referred to as “the first written constitution in Islam and arguably the first constitutional law in society”, incorporated human rights notions that could be inferred from the Holy Qur'an.

The articulation of children's rights in legal instruments is considered by the *Sharia* as only one among many measures to be employed. The resort to legal sanctions is viewed as a last and necessary measure. In Islam, law goes hand in hand with religion, education and ethical orientation.⁵⁸¹

While this sounds progressive and reasonable, how much of leeway or provisions are considered or recognized in adapting to the changing context in line with children's rights in particular and human rights in general (through education in particularly). Because if it is dynamic then its matter of time before it becomes compatible with the child rights principles. It is, therefore, considered that rules of law will find expression in society through the concerted action of all these influences on personal behaviour.

Although all Muslim States have ratified the CRC many of them have entered reservations in respect of a few matters, the primary issue being adoption, since Islamic Law provides for its own guardianship system of 'kafalah' to provide care for children deprived of natural parental care. Muslim States generally opine that:

‘Provisions set forth in the (Children's) Convention are in conformity with the teachings of Islamic Law concerning the need to fully respect the human rights of a child.’

We agree on the kafalah system in providing alternative care for the children which is also recognized by UNCRC, therefore, it is similar to article 20 of the

⁵⁸⁰ Madinah Charter 622 CE reprinted in Maimal Ahsan Khan “Human rights in the Muslim world: fundamentalism, constitutionalism, and international politics” Durham NC: Academic Press (2003) 444. Also available at <http://www.constitution.org/cons/medina/con_medina.htm> (accessed 15 October 2007). DEJO OLOWU, Children's rights, international human rights and the promise of Islamic legal theory, pp: 9 available at: <http://www.saflii.org/>

⁵⁸¹ See Oba (fn 31 above) 822,). DEJO OLOWU, Children's rights, international human rights and the promise of Islamic legal theory, pp: 10 available at: <http://www.saflii.org/>

Convention, however, the system needs to be understood well to ensure that the rights of the children are not violated or have mechanisms that ensures the rights of the child are upheld.

Furthermore, Article 7 (a) of the OIC Declaration of Human Rights in Islam specifically provides that: "As of the moment of birth, every child has rights due from the parents, society and the State to be accorded proper nursing, education and material, hygienic and moral care. Both the foetus and the mother must be accorded special care."

In the light of Sharia; some of the rights of the children are as follows⁵⁸²:

Right To Noble and Charactered Parents: This right of the child to have parents who are affectionate and of noble and righteous character. The Prophet of Islam taught us to choose righteous spouses. Thus, a man chooses beforehand who shall be the mother of his children. By choosing a good mother for his children, he fulfils a right of his children even before they are born. Islam also discouraged marriage within very close family members, today it is proven medically that marriage within close family members often cause different genetic problems for the child and the child suffers developmentally with respect to physical and intellectual health.

While this is good principle, we wonder how much freedom is actually there for both men and women to choose as per their liking, as it can so happen that in the name of this principle couples can be forced to get married based on the understanding and thinking of their parents or other senior adults in the society. Again, care should be taken that this principle should not promote child marriages because either the male or female is of noble and a good character.

Rights of the Unborn Child: After conception, the rights that Allah has prescribed for unborn children, in the Islamic Law, then take effect. Allah, subhanahu wa ta'ala, describes the persons who kill their children, prior or after their birth, as lost, misguided and ignorant, "Indeed lost are they who have killed their children, from folly without knowledge and have forbidden that which Allah has provided for them, inventing a lie against Allah.

⁵⁸² Shabina Arfat, ISLAMIC PERSPECTIVE OF THE CHILDREN'S RIGHTS: AN OVERVIEW, pp: 2-8, available at: www.ajssh.leena-luna.co

They have indeed gone astray and were not guided" (Al-Qur'an: 6:140). This is a clear prohibition against aborting the unborn.

Surely, the killing of them is a great sin" (Al-Qur'an: 17:31). The father should also do everything in his power to preserve the life of the unborn child, Allah says, "And if they are pregnant, then spend on them till they deliver" (Al-Qur'an: 65:6). Doing well to the expectant woman is mandatory, even if the mother had committed a crime or an offense against society. Her guardian should delay her punishment so that the unborn will not be affected by it. The evidence used here is the order given by the Prophet to the guardian of the woman, who had committed adultery and was pregnant, to be kind with her (Ibn Majah).

The manner of the child's birth is not his sin, "And no soul shall bear the sin of another" (Al-Qur'an: 35:18). No matter how a child comes into the world, all of his rights, including rights for sustenance remain valid under Islamic Law; as mentioned above this is very favourable and in line with article 6 of the convention and also ensuring the development of the child. However, if a pregnant mother is sentenced to death and given time till birth, then this principle needs to be more conducive or favourable to the child and the best interest of the child needs to be taken into consideration (article 3 of CRC) because the child needs to be fed with mother's milk for instance till the child attains full power and strength (as mentioned below "Right to Nurture"). Also the Islamic religion (as commanded by Allah) as mentioned above ensures the protection of the child.

Right to Nurture "No mother shall be treated unfairly on account of her child. Nor father on account of his child, an heir shall be chargeable in the same way Islam has prescribed breast-feeding and commanded that children be breastfed until they attain their full power and strength, for breastfeeding has a great impact on the growth and development of the child. If the mother is not divorced, she should breastfeed her child as a religious obligation and not because she is the natural mother. If she is divorced then nursing is dealt with as nafaqah (financial support). This is established within the Sharia. The nafaqah of the child is the responsibility of the father. The father has to give the mother compensation for her nursing. If she refuses to nurse then it becomes incumbent upon the father to find and hire a wet-nurse for the child. This is a very good principle, where the mother is allowed to breastfed till the child attains their full

power and strength and this should be applied to the above principle on pregnant women who are guilty of a crime, so that the child's right to survival and development is met (article 6 of the CRC).

Right to Life: As a fundamental principle, Islam has guaranteed the right to life for all human beings except for clearly defined crimes in the Sharia due to which a person loses his/her right to live. The defined crimes in the Sharia is a serious issue if it applies to human being below the age of 18 years. Therefore, this could potentially violate the right of the child as stipulated in article 37 of the CRC and they need to take into consideration article 40 of the CRC on the administration of the Juvenile Justice.

Under Islamic law it is the father who responsible to provide maintenance to his children, whether in his own custody or in the custody of someone else. The extent of his liability depends on his financial position and the situation of the child. The daughters are entitled to be maintained till they get married; even if the marriage takes place after attainment of puberty. A male child can claim maintenance from father until he attains puberty. The father is liable to maintain the child even when the child is in the custody of divorced mother. The fathers liability ceases only when he is refused the custody of the child for no justifiable cause. Where the child's separate living is justified the father continues to be liable.

During the days of ignorance, some people used to kill their children due to superstitions and fear of poverty. Especially a female child was considered a sign of weakness and humiliation for the family, so they used to bury their female children alive. Allah (SWT) has prohibited and condemned this evil practice. Parents and others used to discriminate between male and female children, with their favours showered on the former. The Quran disproved of this discrimination and admonished parents to receive their infants, male or female, joyfully as the gift of Allah. It reproached those who were disposed to gaiety upon the birth of the baby boy but prone to depression, anxiety or shame if the infant was a baby girl (Al-Qur'an, 16:56-62; 42:49-50; 43:15-19). The Prophet showed in words as well as in practice that the birth of the child should be a festive occasion marked with joy, charity, and thankfulness while this is a good principle and in line with article 2 of the CRC, it needs to be applied universally including education, as some countries does discriminate against girl child in the education settings.

The Child's Right to General Care: To take good care of child and show compassion toward children is one of the most commendable deeds in Islam. Interest in and responsibility for the child's welfare is question of first priority. According to Prophet's instructions, by the seventh day the child should be given a good name and its head should be shaved, along with all other hygienic measures required for healthy growing.

This should be made a festive occasion. At any rate the child's right to care is so inalienable that not even a mother, the closet person to jurists contend that it is the mother's right to take care of the child, if she surrenders this right, the child shall be placed where its own rights are best safeguarded. Responsibility for and compassion toward the child is a matter of religious importance as well as social concern whether the parents are alive or deceased, present or absent, known or unknown, the child is to be provided with the optimum care.

Whether there are executors or relatives close enough to be held responsible for the child's welfare, they shall be directed to discharge this duty. But if there is no next of kin, care for the child becomes a joint responsibility of the Muslim community, designated officials and commoners alike.

This is very favourable and in line with article 6 (right to survival and development) taking care of the child, article 7 (right to name and nationality) giving name to the child after 7 days and article 3 (best interest of the child) where if the mother abandons the child then the child is kept where its rights are ensured.

Right to Lineage: Islam not only designates rights of children after they are born, but also they have rights before their birth. It is their right to have a legitimate birth (being born from parents who are legally married). Those who give birth to children outside of wedlock deprive these children from that right of theirs and commit a heinous act of oppression upon them. When the child's parents are unknown, no other parent(s) may claim parenthood of the child by way of direct or indirect adoption. An orphan or other vulnerable children are never to be denied their original identity. By hiding the lineage of the Kafalah child through fictive paternity denies the child the right to know the biological parents and the choice to maintain a relationship with them.

As stated earlier, since lineage is considered to be the backbone and most fundamental organizing principle in and of Muslim society, arguably the

knowledge of one's lineage contributes towards the prevention of incestuous relationships unknowingly developing with a biological sibling.

This seriously violates article 2 (non-discrimination) of the convention as children who are born out of the wedlock are not given the same rights with those children born to lawfully wedded couples. And since rights are universal, inalienable and indivisible it is a serious violation of the rights of the child (particularly born out of wedlock). This also breaches article 7 as they have the right to know their biological parents and the kafalah system does not allow children to know their biological parents. Since Muslim tradition forbids incestuous relationships, denying the right of the child to know their biological parents in fact promotes the possibilities of such incestuous relationships later in life as they will not have any knowledge of their lineage.

Child's Right To Socialization: A family environment is almost universally recognized to be in the best interests of the child. According to a 2005 report entitled "Children in Islam: Their Care, Development and Protection," issued by UNICEF and the International Islamic Center for Population Studies and Research at Al-Azhar University, "children deprived of parental care should be sponsored and provided for by people acting as if they were their parents." The Islamic principle of protection of family perhaps most obviously argues for adoption of orphaned children. The earliest bonds formed between children and their caregivers (or lack thereof) have a tremendous impact on relationships throughout an individual's life. Research shows that children who grow up without the nurturing and love necessary for proper development have difficulties forming stable unions of their own, experiencing unhealthy marriages and early pregnancies. This is because substandard care-taking arrangements can result in serious attachment disorders with lifelong consequences⁵⁸³.

Further, childlessness can put a strain on marriages, leading to unjust polygamous arrangements or divorce. Adoption can therefore strengthen marriages and prevent divorce, thus furthering the public interest.

Child's Right to Just and Equal Treatment: The right to life is both a universal human right and one of the main principles of Islam. Taking in and

⁵⁸³ Jude Cassidy and Phillip R. Shaver, eds. *Handbook of Attachment: Theory, Research, and Clinical Applications* (New York: The Guildford Press, 2008). Muslim Women's Shura Council (August, 2011), the American Society for Muslim Advancement (ASMA), *Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child*, PP:14, available at: <http://www.wisemuslimwomen.org/>

caring for a parentless child is so esteemed in Islamic sources that it is considered an act of worship. If the act of taking in and caring of parentless child is so revered and considered as worshiping Allah, then they should not have reservation on adoption (article 21 of CRC), because this act is like adopting a child.

Thus probably there is need to study the adoption that is being understood in the Muslim context and taking care as mentioned above. Early jurists used the Quranic edict on saving a life to sanction the care of abandoned children and orphans: "Whoever gave life to one person, it will be as if he gave life to all of humanity" (Quran 5: 32). Adoption of children protects and promotes life. Street children and children in institutions are at a greater danger of abuse and exploitation than children who are being raised in a stable family environment. In fact, as classical jurists have observed, taking in an orphan can literally mean saving a human life. Beyond necessities like food and shelter, children need affection and nurturing for proper development.

Poor development caused by inadequate touch, stimulation, and bonding is a serious medical condition called "failure to thrive"⁵⁸⁴. Children are entitled to just and equal treatment. No child should be given priority or any type of preference over the others in terms of gifts, grants, ownership or inheritance. Similarly, all children must be equally treated in terms of kind treatment and good behaviour. An unfair treatment to children may result in bad behaviour towards either or both parents in old age. Any unfair treatment to children may also cause hatred towards one another.

Right to Basic Education: Allah states in the Holy Quran: "Say: Are those equal, those who know and those who do not. It is those who are endured with understanding that receive admonition" (39:9). "Children have the right to education. A saying attributed to Prophet Muhammad relates: "A father gives his child nothing better than a good education". Education in the Islamic society is not a mere right for its individuals. In fact, an Islamic government is required and demanded to prepare and provide, when possible, all means that help individuals in the Islamic society to earn a better education".

⁵⁸⁴ Elizabeth J. Palumbo, ed. "Failure to Thrive," The Merck Manuals Online Medical Library, <http://www.merckmanuals.com/professional/sec19/ch286/ch286b.html>, Muslim Women's Shura Council (August, 2011), the American Society for Muslim Advancement (ASMA), Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child, PP:13, available at: <http://www.wisemuslimwomen.org/>

From the above it is clear that it is the basic right of every child to get beneficial education.

Therefore, it is the duty of parents to educate their wards. So far as the parentless or neglected children are concerned, Islamic state is under an obligation to provide every possible facility for the same.

This is very much in line with article 28 of the CRC, however the purpose of education as stipulated in article 29 should be taken into consideration because if children are indoctrinated into or through a religious perspective then it could prove counterproductive in promoting the rights of the child.

The Protection and Promotion of Religion: Religious education and worship in a family environment is preferable to haphazard information provided in unstable environments. Children without guardians may fall prey to extremists and cults who promise a sense of belonging and use their recruits for their harmful political agendas.

According to the OIC Covenant on the Rights of the Child in Islam, parents and guardians must “develop the personality, religious and moral value, and sense of citizenship and Islamic and human solidarity of the child and to instil in him/her a spirit of understanding, dialogue, tolerance, and friendship among peoples.”⁵⁸⁵

In addition, parents and guardians must respect the child's right to form his or her personal views in all matters and allow the child to express these views freely. The Shura Council recognizes the desirability of ethnic, cultural, and religious continuity in a child's life, as dictated by international conventions and state laws. However, the Council considers the spirit, dignity, and compassion of a human being as essential factors to consider when adopting, rather than the general strictures of one's faith tradition. If it were not for Assiyya, the wife of Pharaoh who adopted the infant Moses, saving him from Pharaoh's decree, we might not have had the blessing of the being of the Prophet Moses.

In the Qur'an, she is remembered as an example of one who is faithful (66:11); it was not an issue that she was not of the same faith as Moses when she decided to care for him. It was the compassion of her heart and her ability to

⁵⁸⁵ Article 11, Organization of the Islamic Conference, Covenant on the Rights of the Child in Islam, June 2005, OIC/9-IGGE/HRI/2004/Rep.Final, available at: <http://www.unhcr.org/refworld/docid/44eaf0e4a.html> [accessed 13 January 2011]. Muslim Women's Shura Council (August, 2011), the American Society for Muslim Advancement (ASMA), Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child, PP:14, available at: <http://www.wisemuslimwomen.org/>

stand with Truth, recognizing the need for his well-being and the joy he might bring that were of greater importance. While the religion is protected and promoted, it needs to take into consideration article 14 of the convention as most of the Islamic states have made reservation towards the freedom of religion.

Rights of Orphans: In the Islamic faith, all children have various rights. This is fundamentally wrong as children should have the same rights. As mentioned above rights are universal, inalienable, and indivisible. Thus this breaches article 2 of the convention. These rights don't end when children become orphans, whose caregivers are primarily responsible for protecting orphans and instilling the values of the Qur'an and an appropriate reverence for Allah. In the sense that the key posture toward orphans should be kindness, orphans belong to the entire community, and everyone takes responsibility for their welfare.

In addition to above mentioned rights of the children, Sharia prescribes certain directives upon Muslim Ummah which in turn are special rights of orphans. The Qur'an has referred to the welfare of the orphans and to the attitude of kindness and affection that should be adopted towards them at various places. This lies in the fact that guardians of the orphans should return their wealth to them and should not think of devouring it themselves. Protecting the orphans' wealth and safeguarding their rights are significant responsibilities, knowing that wealth is a means of sustenance and subsistence for people. It should not be wasted, and that Orphans, poor and needy people are entitled to a fair right and share of the Islamic treasury adoption of children can further the protection and promotion of healthy minds. Research shows that children raised in institutions are more likely to experience neglect and abuse, severe emotional and behavioural problems, and cognitive and physical development setbacks. A study of Romanian state orphanages found that early neglect in institutional settings often led to severe disabilities, resulting in lifelong institutionalization.

Research indicates that adopted children growing up in a stable family environment are less susceptible to mental health issues than children who are reared in institutional environments or in foster care in regard to educational attainment.⁵⁸⁶

⁵⁸⁶ John Triseliotis and Malcolm Hill, "Contrasting Adoption, Foster Care, and Residential Rearing," in *The Psychology of Adoption*, eds. D. Brodzinsky and M. Schechter. New York: Oxford University Press, 1990, 107, Muslim Women's Shura Council (August, 2011), the American Society for Muslim Advancement (ASMA),

In addition to protecting mental health, this principle promotes intellectual development at all levels of society and includes the right to education. Adoptive parents, therefore, must encourage their children's education and support them in developing their unique talents. According to the Organization of the Islamic Conference's (OIC) Covenant on the Rights of the Child in Islam, parents and guardians must "encourage the child to acquire skills and capabilities to face new situations and overcome negative customs and to grow up grounded in scientific and objective reasoning."⁵⁸⁷

Some scholars discussed that childhood in Islam is characterized by the lack of formed reasoning ability, and Islamic theory depends on both mental maturity and physical development in determining the various stages of childhood. Below a certain age the child is considered incapable. Thereafter, when of 'perfect understanding', he or she can assume responsibility and participate in legal acts. The age for the attainment of majority differs with the varying schools of theology and while there is doubt over the physical signs of puberty (which under Islamic formulations represents the end of childhood) Imam Hanifa, and some scholars of Imam Malik, prefer the threshold of eighteen years. Some later scholars agree on fifteen years, while others prescribe the ages of fifteen, sixteen or seventeen for female, and eighteen for male, as signalling the arrival of sexual maturity. Lowering the age of the child below 18 years (as stipulated in the CRC) will affect all other rights of the child that is being prescribed for children below 18 years and below by the convention and since the Islamic states take the age of maturity as adult and will wave off all the rights as enshrined in the CRC.

The process prescribed by CRC as a whole and particularly in Article 4 for realizing children's rights constitutes a departure from the traditional practices of law making. Setting standards to harmonize with international standards is a process that links to effective implementation through involvement of different stake holders. A human rights based approach to legislative reform supposes

Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child, PP:13, available at: <http://www.wisemuslimwomen.org/>

⁵⁸⁷ Article 11, Organization of the Islamic Conference, Covenant on the Rights of the Child in Islam, June 2005, OIC/9-IGGE/HRI/2004/Rep.Final, available at: <http://www.unhcr.org/refworld/docid/44eaf0e4a.html>. Muslim Women's Shura Council (August, 2011), the American Society for Muslim Advancement (ASMA), Adoption and the Care of Orphan Children: Islam and the Best Interests of the Child, PP:13, available at: <http://www.wisemuslimwomen.org/>

that reforms are conducted in a participatory manner(including vulnerable and marginalized stakeholders) that pays particular attention to the views of women and children in all stages of developing legal frameworks.

Furthermore, the systematic involvement of all sectors of society and government is an important step to ensuring that legislation in compliance with the CRC and CEDAW is both adopted and implemented. The review process will vary depending on the nature of the political and legal system. There are four basic legal systems operating around the world- civil law, common law, Islamic law and plural legal systems.

Within each system, there are different roles played by the legislature, the executive, the judiciary. The review process will vary depending on the characteristics of each of these systems and their effect on the creation, adoption and enforcement of laws relating to children. The process of harmonization also requires an examination of the social and cultural contexts in which laws are implemented.⁵⁸⁸

Conclusion and Recommendations

Islam regards the Sharia as an expression of God's will, and children are enormous blessings from Allah. It regards safeguarding children's rights as important because all human life is sacred to Allah.

Although all Muslim States have ratified the CRC, many of them have entered reservations in respect of a few matters, the primary issue being adoption, since Islamic Law provides for its own guardianship system of 'kafalah' to provide care for children deprived of natural parental care. The concept of "social responsibility" for children in Islamic law, and community rights responsibility and familial assistance to children, reinforced CRC's socio-economic rights of survival and development and basic needs as basic rights. Child rights and the social and legal position of a child were an integral component of Islamic Family law that included family relations such as marriage, divorce, custody and guardianship of children.⁵⁸⁹

⁵⁸⁸ Prof. Asha Bajpai, UNICEF Legislative Reform in Support of Children's Rights Curriculum Framework, PP: 14, available at: <http://www.unicef.es/>

⁵⁸⁹ Ali, S.S.(2007). A Comparative Study of the Impact of the Convention on the Rights of the Child and the Principles of Islamic law: Law Reform and Children's Rights in Muslim Jurisdictions. Protecting the World's

Child rights, for example, in relation to custody and guardianship, minimum age of marriage, inheritance rights of the girl child, were perceived by jurists, as part of a wider network of legal and social relations. Children were ordered to obey their parents or guardians and parents also had duties towards their children. To the Holy Qur'an justice is a precondition for peace: Without justice between human beings there can be no peace in the world⁵⁹⁰. This is very much favourable and in line with the child rights, where full justice needs to be given to the children so that their rights are not violated (particularly article 14, 21 etc. of the CRC).

Provisions of the Arab Charter, according to Article 43, should be interpreted in light of International Law⁵⁹¹. A similar condition appears in the CRC, giving priority in case of a conflict to provisions that "are more conducive to the realization of the rights of the child"⁵⁹².

Although CRC has been accepted and is widely ratified internationally, however, it is challenged in the Islam states (with most of the states making blanket reservations on any provisions that are not in line with Islamic religion).

Interpretations of the sacred text by humans could lead to gaps in understanding or interpreting provisions related to children (like article 14, 20 and 21 of the CRC) and because religion is power (even from the early civilization where they have ruled and people follow religion blindly).

It is claimed in the West that Islam is essentially incompatible with human rights. Knowing that the very concept that children possess rights has a far older tradition in Islamic law than in international law, where the notion did not emerge until the twentieth century."⁵⁹³ It has even been suggested that child-

Children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems, Cambridge, NYUNICEF. Prof. Asha Bajpai, UNICEF Legislative Reform in Support of Children's Rights Curriculum Framework, PP: 5, available at: <http://www.unicef.es/>

⁵⁹⁰ Imam Dr Abduljalil Sajid, Human Rights in Islam, available at: <http://www.uk.upf.org/>

⁵⁹¹ Mohamed Y. Mattar, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, PP: 32 available at: <http://harvardhrj.com/>

⁵⁹² Convention on the Rights of the Child, art. 41, *opened for signature* Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC] ("Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the right of the child and which may be contained in: (a) The law of a State party; or (b) International law in force for that State.") Mohamed Y. Mattar, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, PP: 33 available at: <http://harvardhrj.com/>

⁵⁹³ Geraldine Van Bueren, The Best Interests of the Child- International Cooperation on Child Abduction, Program on the International Rights of the Child (QMWC, London , 1993),51. Kamran Hahsemi, Islamic Culture in Support of Humanity: Formation of Regional Human Rights Mechanisms in the Muslim World, PP: 5

rearing practices in medieval Islamic societies revealed a greater concern for the child's needs than in recent European societies⁵⁹⁴.

Despite this, Islam and International Law explores the complex and multi-faceted relationship of international law and Islam both as a religion and a legal order. Current debates on Sharia, Islam and the "West" often suffer from prejudice, platitudes, and stereotypes on both sides. Islam should be an active participant in the human rights debate precisely because the modern discourse on human rights is universal and not limited to Western views.

We can consider the International Human Rights Law as one of the important legal branches of International Law. It is a legal guarantee protecting individuals and groups including children.

The UN CRC covers the specific rights of people under the age of 18 years. Children are recognized as holders of rights and as social actors both in their own lives and in society.

On the other hand, Islamic law is considered to offer the most liberal and humane legal principles available anywhere in the world. To establish the landmarks for external or international relations, the Islamic system provides for manifold rules. The most important of them are: Human brotherhood, honouring the human being and preserving human rights, Justice and equality in rights and duties. Knowing that some Muslim-majority states remain avowedly secular and do not mention Islam in their constitutions and some do incorporate Islam into their constitutions. On the other hand, the OIC establishment of a monitoring human rights body, the Covenant in its Article 25, though in a sketchy way, predicts the establishment of an "Islamic Committee on the Rights of the Child".

The compromise of the OIC members evident for the first time in agreeing a binding human rights instrument and particularly a first human rights monitoring body within the Organization, can be evaluated as a step forward. This is a very good indicator and provides way for building the momentum and extends coverage to monitor the violation of the rights of the child as well.

⁵⁹⁴ See Anver Giladi, , Concept of Childhood and Attitudes towards Children in Mediaeval Islam, 32 Journal of the Social and Economic History of the Orient (1989). Kamran Hahsemi, Islamic Culture in Support of Humanity: Formation of Regional Human Rights Mechanisms in the Muslim World, PP: 5

Based on the different issues discussed in this Chapter, we can come up with the following recommendations:

- Islamic traditions do not derive from a single source, there could be due to misinterpretation of the scriptures or the traditions and the like. This leads to the different interpretations of Islam towards Human and child rights. Hence, Islam should create a unified source. Interpretation of the tradition of the Prophet is an important expects, particularly if they are contrary to the rights of the child.
- Engaging Islamists as activists in defending human rights especially in the area of child rights is important. This shall face the claim of the West that Islam is essentially incompatible with human rights.
- Islam should be an active participant in the human rights debate precisely because the modern discourse on human rights is universal and not limited to Western views.
- Continuous engagement in the dialogue or discourse on the rights of the child between Islamic activists and human rights actors.
- Examining the attitude of Islamic law towards the provision of legal safeguards for the rights and welfare of children and identifying and commenting on the approach that Islamic law and prominent international legal instruments adopted in this regard.
- Strengthening or educating the young lawyers or religious leaders on the western concept and philosophy can lead to interpretation of the provisions of the law in favour of child rights
- The importance of distinguishing between non-derogative rights,⁵⁹⁵ which assert that all human beings are equal before God, and equitable rights toward society – in which people are equal in weight but different based on specific circumstances.
- Interpretation of Provisions of the Arab Charter, according to Article 43, in light of International Law.

“The very concept that children possess rights has a far older tradition in Islamic Law than in International Law, where the notion did not emerge until the twentieth century.”⁵⁹⁶ It has even been suggested that child- rearing practices

⁵⁹⁵ Such as the right to life, respect, justice and freedom, jumana shehata, Islam and Human Rights: Revisiting the Debate, pp: 3

⁵⁹⁶ 4Geraldine Van Bueren, The Best Interests of the Child- International Cooperation on Child Abduction, Program on the International Rights of the Child (QMWC, London , 1993),51. Kamran Hahsemi, Islamic Culture in Support of Humanity: Formation of Regional Human Rights Mechanisms in the Muslim World, PP: 5

in medieval Islamic societies revealed a greater concern for the child's needs than in recent European societies⁵⁹⁷.

Turning from the attempt to reconcile Islamic law with universal human rights, some would instead claim that IHR are distinct from but no less valid than universal human rights. This is one way to construe the claim that the Cairo Declaration is "complementary" to the UDHR. Human rights are relative to cultures. As such, they may be appropriate to "Western" cultures while Islamic human rights are appropriate to "Islamic" cultures.

From a legal standpoint, this argument from cultural relativism fails. The subjects of international treaties and covenants are nation-states. Virtually all of the OIC states involved in the IHR movement have in fact endorsed the UDHR and the covenants, together referred to as an "International Bill of Rights."

In doing so, these states have undertaken obligations to guarantee to their citizens the rights stipulated in the International Bill of Rights. The permissible derogations from these obligations are governed by international law, which presently provides for no general limitations on the basis of religious legal systems.

Legally speaking, countries backing the IHR movement must either withdraw entirely from the International Bill of Rights, or be prepared to acknowledge the universality of those rights.

The failure of relativism as a moral doctrine: The argument from cultural relativism also fails from a moral standpoint. Most experts on international law and ethics would agree that international standards of human rights are ultimately justified by moral standards explicated in terms of right action, justice, or the good of individual persons. Most observers would concede that genocide is a moral abomination not just because it is illegal, but rather that genocide is illegal because it is a moral abomination.

The debate between universal and culturally-specific human rights schemes is not merely an intellectual hobby of academics and diplomats—it has real consequences for statecraft and the lives of individual citizens. Just as members of the OIC have pushed through legal loopholes in order to escape international

⁵⁹⁷ See Anver Giladi, , Concept of Childhood and Attitudes towards Children in Mediaeval Islam, 32 Journal of the Social and Economic History of the Orient (1989). Kamran Hahsemi, Islamic Culture in Support of Humanity: Formation of Regional Human Rights Mechanisms in the Muslim World, PP: 5

human rights standards, many Islamic states (and the Western multiculturalists who support their cultural sovereignty) have used relativist rhetoric to marry religion and politics in the Islamic world.

While it may be well-motivated by a desire to show respect for others, this concession to culturally specific rights does not well serve the citizens of Islamic states.

Some Western observers have welcomed the political use of Islamic law on the grounds that it represents a positive step on the path to liberal democracy. The American professor of law Noah Feldman has written: "For many Muslims today, living in corrupt autocracies, the call for Sharia is not a call for sexism, obscurantism or savage punishment but for an Islamic version of what the West considers its most prized principle of political justice: the rule of law" (Feldman 2008). Feldman suggests, for example, that one virtue of Sharia is its high standard of proof for capital crimes:

In fact, for most of its history, Islamic law offered the most liberal and humane legal principles available anywhere in the world. Today, when we invoke the harsh punishments prescribed by Sharia for a handful of offenses, we rarely acknowledge the high standards of proof necessary for their implementation. Before an adultery conviction can typically be obtained, for example, the accused must confess four times or four adult male witnesses of good character must testify that they directly observed the sex act (Feldman 2008).

By suggesting that a different standard for the rule of law should apply to majority Muslim societies, Western commentators like Feldman actually lend credibility to the efforts by the OIC to justify their human rights violations. The rule of law in OIC countries must be circumscribed by the international rule of law.

Abdullahi An-Na'im and Bassam Tibi argue for the removal of Islam from the political arena and the establishment of secularism, civil society and individual human rights (An-Na'im 2008; Tibi 2005). For An-Na'im and Tibi, the ideal place for Islam is not within the ideology of Islamism, which co-opts the tradition for political purposes, but within the lives of people under conditions of secular government that guarantees universal equality and freedom.

Muslim jurists facing the dominant Western notions of democracy and human rights have not been wanting in developing Islamic ideas of a just and fair society under modern conditions. Many human rights recognized in modern human right theory can be found in the Islamic system, e.g. right to life, to property, to protection from arbitrary arrest and protection of the law.⁵⁹⁸

It is interesting to note that fundamentalist Muslims do not underrate the importance of human rights, but argue that Islam presents better protection of human rights consistent with God's will⁵⁹⁹.

The modernist approach presents the Islamic state as democratic in which Islam acts as a moral framework for ordering life in the right direction. Islamic law, explicitly stated in the Koran is to be understood as a necessary deterrent. Whether it should be imposed in letter and spirit is a question on which modernist opinion has been most evasive.

The effort to harmonize democracy with notions of Islamic law has often meant apologetic reasoning on the part of the modernists⁶⁰⁰. What all notions of an Islamic polity contain inescapably, however, is a logical link between membership in the Islamic community and citizenship rights in the state: the true believer has to be differentiated from the hypocrite, the heretic and the non-believer.

Such being the nature of Islamic political theory the question of human rights as claims of individuals to autonomy from the state -that is the Islamic state - is largely inadmissible and improper.

It appears that Islamic religion per say has lot of provisions that are more conducive or in line with the convention of the rights of the child, favouring the children and ensuring the best interest of the child. This is evident from the fact what the almighty the Allah and the prophets have said significant things about the child. Perhaps, the challenge remains due to be provisions of the Sharia law

⁵⁹⁸ Khadduri, Majid, op. cit., pp. 233-9. See also Qadri. Anwar Ahmad, op. cit., 33-41. ISHTIAQ Ahmed, WESTERN AND MUSLIM PERCEPTIONS OF UNIVERSAL HUMAN RIGHTS, PP: 14, available at: <http://www.gap>

⁵⁹⁹ Maududi, Abul Ala, Human Rights in Islam, (Leicester: The Islamic Foundation, 1980). . ISHTIAQ Ahmed, WESTERN AND MUSLIM PERCEPTIONS OF UNIVERSAL HUMAN RIGHTS, PP: 14, available at: <http://www.gap>

⁶⁰⁰ Iqbal, Javid, Ideology of Pakistan, (Lahore: Ferozsons Ltd., 1974). ISHTIAQ Ahmed, WESTERN AND MUSLIM PERCEPTIONS OF UNIVERSAL HUMAN RIGHTS, PP: 8, available at: <http://www.gap>

being quite broad and covers everything, that it is being interpreted very narrowly and to their advantage most of the time.

Thus refining of those provisions and coming up with definitions or a common understanding seems very essential for the promotion of child rights in the Islamic region. For this to happen, continuous dialogue, discourse and debate is essential to establish a common understanding that these child rights are not merely a western concept but a universal truth applicable to all children of this world.

There is a definite need to find, in a way or another, a certain level of harmony between Sharia and international child rights instruments. Otherwise, those international instruments will not find their way to implementation, and consequently will not be able to have a real effect on the lives of children in the Arab world.

Despite the importance of the amendments introduced by the coalition of Islamic organizations to the United Nations declaration "A World Fit for Children", but they remain just suggestions which need to be officially adopted by Islamic countries who are members in the United Nations that have the right to make reservation to the articles they do not agree. That's why the coalition of Islamic organizations identified several urgent claims, and confirmed the need of fulfilling them before and during the meeting held by the United Nations, including:

- Inviting a largest number of Islamic organizations and Islamic bodies to participate in the United Nations Conference, in order to make reservation on the violations in the convention, and adopt an alternative Islamic convention.
- The Islamic organizations must make intensive media campaigns to raise awareness of the public opinion of what the United Nations convention contains of attempts to blur the religious and cultural rights particularizations of children in our country.
- Assuring the importance of taking attempts by concerned religious institutions, and especially the Islamic Research Academy of Al-Azhar, and the Fiqh Council of the Organization of the Islamic Conference, and the Fiqh Council of the Muslim World League, and other major Islamic organizations in issuing statements that reflect the standpoint of Islam towards this convention.

- Holding conferences and seminars and conducting lectures that present children's rights in Islam, and the care that it embraced in various fields.
- Strengthening the cooperation and coordination between the official delegations of Arab and Muslim countries and representatives of civil society organizations on the common points and the unifying the standpoints among them.

Section II: Position of Arab States vis-a-vis the CRC Optional Protocols

Paragraph I: Protocol on Involvement of Children in Armed Conflicts

Algeria acceded the Optional Protocol to the Convention on the Involvement of Children in Armed Conflicts (OPAC) on 6 May 2009. The initial reports on the implementation of the Protocols have not yet been submitted. In 2000 UNICEF and the Institut National de la Magistrature (INM), Algeria's only school providing full-time three-year postgraduate training for future magistrates, entered into a partnership to strengthen the understanding and Fulfilment of child rights through implementation of ratified international treaties such as the CRC. This included in-depth teaching about the CRC and its Optional Protocols and their practical application.

As a member of the African Union, Algeria supported the Common African Position, agreed at the Pan-African Forum for Children in Cairo in May 2001. The document included provisions to stop children from being used as soldiers and to protect and rehabilitate former child soldiers.

The Common Position was presented to the Special Session of the UN General Assembly on Children on 8 May 2002. In October 2005 the UN Committee on the Rights of the Child expressed serious concern over the alleged cases of persons under 18 years of age being used by government-allied paramilitary forces and armed political groups, and over deficiencies in the birth registration system for children belonging to nomadic minorities.

The Committee expressed as well deep concern over the situation of Western Saharan children living in refugee camps in Algeria. A bill on child protection

(Code de Protection de l'Enfant) was introduced and was expected to harmonize existing laws pertaining to the protection and promotion of child rights⁶⁰¹.

Egypt acceded to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC) on 6 February 2007. It submitted initial reports on the implementation of the OPSC and the OPAC in February 2010. In November 2010, the Coalition to Stop the Use of Child Soldiers submitted an alternative report. The Committee issued its Concluding Observations on the initial reports in June 2011⁶⁰².

Iraq acceded to the Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflict and to the Optional Protocol to the Convention on Rights of Child on the sale of children, child prostitution and child pornography. However, it has not yet submitted any reports regarding these Optional Protocols⁶⁰³. The Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) was ratified on 23 May 2007.

Jordan's initial reports on OPSC and OPAC, respectively due in January and June 2009, were submitted in January 2011. Presenting the report, Rajab Sukayri, Permanent Representative of Jordan to the United Nations in Geneva, said that children in Jordan represented almost half of the total population and therefore the authorities attached the greatest importance to their protection. The minimum age of marriage was 18 years, with some exceptions available for children from the age of 15 years. Children born out of wedlock had better legal status, as did children born to a Jordanian mother and a non-Jordanian father. There had been legislative and practical improvements for children with disabilities and unaccompanied children.

Questions were asked about nationality rights, so-called honour crimes, child marriage, the status of children born out of wedlock and corporal punishment. Gender discrimination faced by girls, cultural stereotypes about working women, custody of children, and adolescent sexual and reproductive health were also raised. The plight of the Syrian refugees was a huge issue and an international responsibility, not just the problem of Jordan, several Experts said, but nevertheless Jordan had responsibilities for the children on its territory.

⁶⁰¹ Child soldiers global report, 2004, ALGERIA, p. 2, available at: www.child

⁶⁰² Yara Abdul-Hamid, independent consultant, Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, PP: 27, August 2011 second edition

⁶⁰³ A Review of the Implementation of the UN Convention on the Rights of the Child August 2011, country profile of Iraq, Manara network, p. 18

On the Optional Protocol on the sale of children, child prostitution and child pornography, Committee Experts commended Jordan for acceding without any reservations, and raised questions about legislation, measures to combat trafficking in persons, including of Syrian refugee girls, and support for child victims. Although the pending Juvenile Act and law on domestic violence may resolve some concerns, questions remained about so-called 'honour killings' and health issues, especially in remote areas. Renate Winter, Committee Member acting as Country Rapporteur for the report of Jordan under the Optional Protocol on children in armed conflict, said the initial report was always the most difficult, as there were gaps to be bridged, but she was sure the State party would be able meet the Committee's concerns and harmonize the military recruitment age.

Bernard Gastaud, Committee Member acting as Country Rapporteur for the report of Jordan under the Optional Protocol on the sale of children, child prostitution and child pornography, said the Committee took note of Jordan's willingness to act and thanked the delegation for clearing up several concerns.

Muib Nimrat, Director of the Human Rights Department, Ministry of Foreign Affairs and Expatriate Affairs of Jordan, in concluding remarks, thanked the Committee and said in spite of the tensions in the Middle East and the responsibilities shouldered by Jordan, it remained dedicated to upholding human rights and continuing the process of legislative and institutional reform.

The Delegation of Jordan included representatives from the Human Rights Department of the Ministry of Foreign Affairs and Expatriate Affairs, Ministry of Justice, Sharia Court, Ministry of Social Development, Ministry of the Interior, National Council for Family Affairs and the Permanent Mission of Jordan to the United Nations Office at Geneva⁶⁰⁴.

Kuwait acceded to the Optional Protocol to the CRC on the Involvement of Children in Armed Conflict (OPAC) and the Optional Protocol to the Convention of the Rights of the Child on the Sale of Children in Child Prostitution and Child Pornography on 26 August 2004. Kuwait submitted its initial reports on the OPAC and OPSC in January 2007. An alternative report was prepared by Child Helpline International in 2007.

⁶⁰⁴ United nations, Committee on the Rights of the Child, Committee on Rights of Child examines reports of Jordan on the Convention, Children in armed conflict and the Sale of children, available at: <http://www.ohchr.org/>

The Committee issued its Concluding Observations on the two reports in February 2008.

Lebanon signed the Optional Protocol on the Involvement of Children in Armed Conflict on 11 Feb 2002, but has not ratified it, as of June 2011.

National campaign for the ratification and implementation of the Optional Protocol to the CRC on the involvement of children in armed conflict (Optional Protocol) by Lebanon, were launched by the Lebanese independent NGO, Permanent Peace Movement (PPM), with which the Coalition collaborates. The Protocol establishes that “States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take part in hostilities”.

The Protocol also states that “States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces”. In relation to armed groups, the Protocol establishes that “Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

The campaign, launched by Permanent Peace Movement in March 2007, targeted all sectors of Lebanese society, including community groups, political parties, the media, NGOs and other national stakeholders. It aims to raise awareness of the importance of protecting all children in Lebanon from violence and build a consensus around the need to ratify and implement the Optional Protocol as the most effective international legal instrument to stop and prevent the involvement of children in armed conflict. Permanent Peace Movement created a network of Lebanese organizations to raise awareness of the involvement of children in armed conflict in Lebanon and the need to put in place effective protection and prevention measures. PPM has also initiated the creation of the Middle East Network on the Involvement of Children in Armed Conflict⁶⁰⁵.

Morocco ratified the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) on 22 May 2002.

⁶⁰⁵ Child rights international network, *LEBANON: THE VULNERABILITY OF CHILDREN TO INVOLVEMENT IN ARMED CONFLICT*, available at: www.crin.org

In **Palestine**, the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) was ratified on 18 July 2005.

In **Oman**, The Sultanate acceded to the two Optional Protocols to the CRC on the Sale of Children, Child Prostitution and Child Pornography (OPSC), and on the Involvement of Children in Armed Conflict (OPAC) on 17 September 2004, with reservations subject to Oman's reservations to the Convention on the Rights of the Child.

Qatar acceded to the Optional Protocol the Optional on the Involvement of Children in Armed Conflict (OPAC) on 25 July 2002. The Committee asked about the legal guarantees ensuring that children would never be involved in armed conflict, as there was no specific law criminalising the recruitment of children under 18 within or outside Qatar. The delegation answered that there was no provision in the penal code, but the military code provided that no one could be recruited under the age of 18. Thus, they could only voluntarily join the armed forces over the age of 18.

The Committee noted the lack of specific law to protect children under 18 from being recruited in an emergency. The delegation answered that this would be included in the draft bill related to children and would be based on the CRC. It had also taken into account nationality to prosecute criminals.

The Committee asked about the status of harmonisation of the CRC and internal legislation, and whether the CRC was directly applied by judges. It also asked about the impact of a change in legislation on the OPAC. The delegation responded that the status of the CRC had precedence over national legislation. The state abided by all international conventions it had ratified. The Committee asked about the drafting process of the children's law and its current status.

The delegation noted that a national committee was formed in 2006 to draft a law on the rights of the child. This committee was composed of the higher Council on Family Affairs. The law was based on the CRC and its optional protocols.

The committee was studying the final draft law and would transfer it to the appropriate authority. The delegation noted that all work done here would be

included in the bill. The Committee suggested that, as it was in the early stages of the drafting process, it look at Tunisia's law⁶⁰⁶.

On 10 June 2011, **Saudi Arabia** acceded to the Optional Protocols to the Convention on the Involvement of Children in Armed Conflicts (OPAC).

Tunisia ratified the Optional Protocol to the CRC on the Involvement of Children in armed conflict (OPAC) on 2 January 2003. **Yemen** acceded to the Protocol on the involvement of children in armed conflict (OPAC) on 2 March 2007⁶⁰⁷.

The signing of the transition agreement in Yemen, the Gulf Cooperation Council initiative and implementation mechanism in November 2011 and the launch of the political transition in February 2012 led to a decrease in the number of grave violations committed against children. Nevertheless, hostilities between the Government and Ansar al-Sharia/Al-Qaida in the Arabian Peninsula (AQAP) and their effect on the civilian population remained of concern and resulted in grave violations against children. In 2012, the United Nations verified 53 reports of recruitment and use of children between 13 and 17 years of age. Of those cases of recruitment, 25 boys were recruited by the government forces, including the Yemeni Armed Forces, the Republican Guards, the newly integrated First Armoured Division, the military police and the central security forces.

Many children recruited by the national armed forces were enlisted through brokers, such as military officers, family members and local sheikhs, who further facilitated their recruitment through false documentation and birth certificates. Some children reported fear of reprisal if it became known that they had enlisted with false documentation. Children often received a monthly stipend or retainer from the unit that recruited them.

The United Nations continued to face challenges in monitoring violations by the Al-Houthi armed group operating in Sa'ada governorate. Reports of recruitment and use of children could not be verified owing to security constraints. Nevertheless, the United Nations could verify the use of three boys by Al-

⁶⁰⁶ Child rights international network, State Party Examination of Qatar's Initial Report on the Optional Protocol of Children in Armed Conflict (OPAC), 46th Session of the Committee on the Rights of the Child 17 September – 5 October 2007, PP: 2, available at: www.crin.org

⁶⁰⁷ Yara Abdul-Hamid, independent consultant, Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, PP: 111-206, August 2011 second edition

Houthi in Hajja governorate, who were armed, manning checkpoints or “guarding” health centres⁶⁰⁸.

With regard to association of children with pro-Government militias, the United Nations documented the case of three children aged 13, 16 and 17 years, respectively, who were recruited and used for checkpoint duty by the Popular Resistance Committee in Abyan governorate. Tangible progress was made in dialogue with the relevant parties on the preparation and implementation of action plans to halt and prevent violations against children. On 18 April 2012, the Minister of the Interior sent a letter to the police and other relevant authorities, in which he ordered the full implementation of Police Commission Law No. 15 (2000), which stipulated 18 years as the minimum age for recruitment, and the release of any children present in the ranks of the government security forces. During an official visit to Yemen in November 2012, The Special Representative of the UN Secretary General met the President and other senior government officials, in addition to the leadership of Al-Houthi and the First Armoured Division.

During her visit, the Government committed itself to developing an action plan to end the recruitment and use of children. The leadership of Al-Houthi also agreed to enter into a dialogue with the United Nations on the issue. In addition, the President issued a decree to prohibit underage recruitment and immediately thereafter established an inter-ministerial committee to serve as liaison for the development of an action plan⁶⁰⁹.

Libya acceded to the Optional Protocol to the Convention on the Involvement of Children in Armed Conflict (OPAC) on 29 October 2004. Resolution 1973 on Libya set off a series of reactions that significantly affected Council dynamics in most areas of its work, and findings indicate that this did not affect the children and armed conflict agenda substantively although it may have led to a more cautious approach to the issue in order not to roll-back progress made in the past.

“After several years of largely positive developments and progress, in 2011 the protection of children in armed conflict agenda faced a number of challenges.

⁶⁰⁸ Office of the SRS for Children and Armed Conflict, available at <https://childrenandarmedconflict.un.org/our-work/persistent-perpetratorsold/countries-2013/>

⁶⁰⁹ United nations, children and armed conflict, Yemen, available at: <http://childrenandarmedconflict.un.org/>

Although it was possible for the Security Council in 2011 to adopt resolution 1998, expanding the criteria for inclusion in the Secretary-General's annexes to include attacks on schools and hospitals, questions related to the definition of "situations of concern" and the process of listing and delisting of parties from the annexes to the reports of the Secretary-General were raised. Some members also appeared keen to revisit issues related to why situations not on the agenda of the Council were being considered at all by the Working Group of the Security Council.

Resolution 1973 on Libya set off a series of reactions that significantly affected Council dynamics in most areas of its work. While our recent Cross-Cutting Report on Protection of Civilians in Armed Conflict (published 31 May 2012) came to the conclusion that the level of mistrust in the Council following resolution 1973 did not negatively affect its approach to protection of civilians in terms of measurable outcomes, our findings for children in armed conflict indicate that the more difficult dynamic in the Council, while not affecting this issue substantively, may have led to a more cautious approach in order not to roll-back progress made in the past.

In addition, the apparent reduced attention to the issues among several Council members, either due to other priorities or the belief that these issues are best addressed in the General Assembly, may have led to a lessening of political will to advance this issue. As a result the picture in 2011 and early 2012 is a mixed one for the children and armed conflict agenda"⁶¹⁰.

Paragraph II: Protocol on Sale of Children, Prostitution and Child Pornography

Middle Eastern laws and cultures do not recognize certain forms of human trafficking as being, in fact, trafficking. Because of this, victims of trafficking are often not protected in the Middle East. Instead, victims of human trafficking are often punished because they are viewed as illegal immigrants. Forms of human trafficking in the Middle East have included domestic servitude and forced labour, child trafficking for camel jockeys, and trafficking for sexual exploitation.

⁶¹⁰ Security council report, Children and Armed Conflict, Cross-Cutting Report, PP: 2, available at: <http://www.securitycouncilreport.org/>

Strides have been made in abolishing this practice, such as the invention of robot jockeys to replace children, in addition to laws that raise the legal age of jockeys to fifteen or eighteen years. However, there are claims that the practice still persists⁶¹¹. Child trafficking is a violation of child rights which in some cases results in the worst forms of exploitation.

Policy and programmatic responses to combat child trafficking are related to all the Millennium Development Goals and they contribute to the fulfilment of the commitments made in the Millennium Declaration to protect vulnerable groups and to take action against human trafficking.

The most significant body of laws, legislation and royal decrees passed in the Gulf countries that relate to child trafficking so far has been in connection with camel racing through the combined efforts by Gulf country governments taking steps to adhere to international conventions they had ratified such as ILO 182, and the CRC among others; advocacy by international NGOs, UN agencies including ILO and UNICEF; as well as that by bilateral partners⁶¹².

Efforts are now required to establish comprehensive anti-trafficking laws; Bahrain and Qatar have draft laws in process; the UAE adopted new legislation in 2006. National anti-trafficking plans, regional and international co-operation and networking would also help ensure the implementation and realization of these laws, as called for by country delegations at the first Arab Regional Workshop on Combating Child Trafficking, jointly organized in Riyadh by the Naif Arab University for Security Sciences and UNICEF in February 2006. More needs to be done to increase adoption, awareness, and understanding of international standards and principles countering trafficking - notably the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime which has been so far only ratified by Bahrain, Kuwait, and Oman, and signed by Saudi Arabia.

There are also a number of legislative 'gaps' and inconsistencies which run counter to the best interests of children and child rights principles, and even contribute to further victimization in some cases. For example, in Bahrain, provisions protecting juveniles under labour laws sometimes do not apply to

⁶¹¹ Schuyler Dudley, University of Denver, Human Trafficking in the Middle East and North Africa Region, PP:1,2 available at: www.du.edu

⁶¹² US State Department, Trafficking in Persons report, 2011

specific areas, such as domestic work, and the Bahraini Penal Code criminalizes prostitution, even if done by victims of trafficking, and minors aged less than 18 years can be imprisoned up to 5 years⁶¹³.

Efforts were initiated to develop inter-country modalities of co-operation between Saudi Arabia and countries from which children are coming for street selling and begging. For example, two rounds of negotiations have been held between Saudi Arabia and Yemen with resulting commitments to establish coordinating committees on both sides as well as develop a common strategy and plan of action. These are important preliminary steps that need to be strengthened using experiences within the region and elsewhere.

The successful experience of the camel jockeys' project is a particularly valuable contribution on how countries can initiate, plan and implement collaborative agreements to address trafficking in children in a systematic Manner and how to achieve the significance of protection laws.

“**Morocco** faces considerable challenges as a source, transit and increasingly as a destination country for trafficking in persons,” said the Special Rapporteur on trafficking in persons, Joy Ngozi Ezeilo at the end of a visit to the country. Ms. Ezeilo welcomed the Government's ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and urged it to translate its standards into specific actions to protect and assist victims, prevent trafficking and punish perpetrators. In addition, she encouraged the Government to broaden its cooperation with other country on this issue, noting the cross-border dimension of trafficking⁶¹⁴.

Algeria adopts a legal framework to protect children from trafficking and define trafficking as a criminal offence under domestic law. Algeria agreed to all the recommendations. Egypt has made some progress in addressing trafficking issues. In 2007, a National Coordination Committee against Trafficking was set up, and a Child Trafficking Unit was also set up within the National Council for Childhood and Motherhood. Law No. 64 on Combating Trafficking in Persons was adopted in 2010, and the National Plan of Action against Trafficking was

⁶¹³ KRISHNA BELBASE ,GOLDA EL-KHOURY, UNICEF, PREVENTING CHILD TRAFFICKING IN THE GULF COUNTRIES, YEMEN AND AFGHANISTAN: POLICY OPTIONS, PP: 27, available at: <http://www.unicef.org/>

⁶¹⁴ KRISHNA BELBASE ,GOLDA EL-KHOURY, UNICEF, PREVENTING CHILD TRAFFICKING IN THE GULF COUNTRIES, YEMEN AND AFGHANISTAN: POLICY OPTIONS, PP: 29, available at: <http://www.unicef.org/>

developed in December 2010, including the launch of a National Plan of Action against Sale and Sexual Exploitation of Children.

Under the Criminal Code, trafficking in women and girls (articles 342-349), immoral conduct (articles 333-395) and rape (article 336) are criminal offences punishable by terms of imprisonment ranging from five to 10 years, and the penalty is doubled (up to 20 years' imprisonment) where the victim is a minor. The penalty is also more severe where the offender is a relative of the victim or a person having parental authority over the victim (article 337).

Algeria has ratified many international instruments aimed at abolishing trafficking in women and children, slavery, forced labour, involuntary servitude and the like⁶¹⁵.

However, despite efforts by the Algerian government to incorporate the principles and provisions of the CRC into national legislation, there remain a number of gaps in the formulation and enforcement of legislative measures. The law does not prohibit trafficking in persons, despite the fact that the country is a transit and destination country for men, women, and children from sub-Saharan Africa and Asia trafficked for forced labour, especially domestic servitude, and sexual exploitation⁶¹⁶.

Egypt experiences several forms of trafficking, including: child marriages, child labour employment of servants, slavery, prostitution and organ trading. On April 20, 2010 the Government of Egypt adopted the Law on Combating Trafficking in Persons. The legislation is comprehensive in that it 1) recognizes a trafficked person as a victim once she suffers harm, whether material, moral, or economic; 2) defines human trafficking very broadly to cover all forms of exploitation, including exploitation of acts of prostitution and all forms of sexual exploitation, exploitation of children in such acts and in pornography, forced labour or services, slavery or practices similar to slavery or servitude, or begging or removal of human organs, tissues or a part thereof; 3) provides for the principle of non-punishment and for the principle of compensation of victims through the establishment of a State Fund, making it a state responsibility to provide protection and assistance to victims of human

⁶¹⁵ United nations, Reply to the Questionnaire to Governments on Implementation of the Beijing Platform for Action (1995), PP:16, available at: <http://www.un.org/>

⁶¹⁶ Trafficking in Persons Report", US State Dept June 2007, available at [gvnet.com/human trafficking/Algeria.htm](http://gvnet.com/human%20trafficking/Algeria.htm). Save the Children Sweden, Child Rights Situation Analysis For MENA Region, PP: 18, available at: www.essex.ac.uk

trafficking; and 5) applies on an extraterritorial basis regardless of where the trafficking act was committed.

The Government also recently passed the Organ Harvesting and Transplant Act, which prohibits organ trafficking and commercial transplantations. In the past, organ transplants were “regulated” by a non-binding professional code of ethics. The recently-passed law introduces severe penalties for all parties involved in commercial transplants – including the donor, the recipient, and the doctor – that range from large fines to 25 years in prison and revocation of the doctor's medical license.

These legislative reforms build on a series of pre-existing initiatives aimed at creating the necessary political and institutional framework for the implementation of the newly passed trafficking laws. In July 2007, the Egyptian Council of Ministers approved the establishment of the National Coordinating Committee to Combat and Prevent Trafficking in Persons (NCCCPTP), which serves as a consultative reference to Egypt authorities and national institutions on issues of trafficking⁶¹⁷.

The Committee is charged with drafting and implementing a national plan of action to combat trafficking in persons, which is to be based on the “four Ps approach” of prevention, protection, prosecution and partnership. In addition, the Committee is charged with several efforts that include the following: preparing an annual report for the Council of Ministers; preparing and drafting anti-trafficking legislation; ensuring cooperation with the specialized office of the United Nations and other authorities; recommending measures to assist and protect victims of trafficking; increasing media awareness and developing educational curricula regarding trafficking; conducting and guiding research on trafficking issues; and building capacity within the criminal justice system and in those responsible for enforcing the Protocol to Prevent, Suppress, and Punish Trafficking in Children, ratified by Egypt in March 2004.

Trafficking in persons in Egypt is also prohibited under the Egyptian Constitution, which outlaws forced labour; and by the Penal Code of 1937 and the Child Law of 1996, which criminalize child pornography⁶¹⁸. Article 291 of

⁶¹⁷ Press Release, The Protection Project, Mohamed Mattar, Egypt Establishing a National Committee to Prevent Trafficking in Persons: A Significant Step to Combat a Serious Violation of Human Rights. Protection of human security, Egypt, A Human Rights Report on Trafficking in Persons, Especially Women and Children, PP: 3, available at: <http://www.protectionproject.org/>

⁶¹⁸ Article 178 of the Penal Code n°58 of 1937, Article 89 of the Law n° 12, 1996, (Egypt) available at:

the Child Law 1996 was further amended in 2008 to include the protection of the child from trafficking, sexual, commercial or economic exploitation, or use in scientific studies or experiments.

The Act criminalizes procurement for the purpose of prostitution by means of deceit, violence threat, abuse of power, or other unlawful means⁶¹⁹ and explicitly prohibits sex trafficking. Finally, the act penalizes anyone who facilitates the entry of another person into Egypt for the purpose of practicing prostitution, and also prohibits instigating a male under the age of 21 or a female of any age to depart Egypt for the purpose of practicing prostitution abroad. The Council for Childhood and Motherhood, the highest government authority for the protection and development of children, is working to generate greater awareness on issues of human trafficking.

The organization launched a hotline in 2007 (number 16000) to provide 24-hour assistance to distressed women and children; they received 2,000 calls within the first two days⁶²⁰.

In **Jordan**, wide arrays of legislative and programmatic initiatives were implemented to protect children from violence, exploitation and abuse. Legislative and policy reforms to decrease incidences of trafficking and commercial sexual exploitation are also being implemented. In January 2009, the Jordanian parliament endorsed legislation to combat human trafficking, paving the way for the creation of an anti-human trafficking commission, affiliated to the Ministry of Labour and including officials from the police and Ministry of Justice, to oversee its implementation⁶²¹.

A shelter for victims of trafficking is also being set up, and a National Strategy to Combat Human Trafficking was launched in 2010. While welcoming these developments, the Committee against Torture reports that information, including on the number of complaints, investigations, prosecutions and convictions of perpetrators of trafficking, as well as on the concrete measures

<http://www.interpol.int/public/Children/SexualAbuse/NationalLawsold/csaEgypt.asp>. Protection of human security, Egypt, A Human Rights Report on Trafficking in Persons, Especially Women and Children, PP: 3, available at: <http://www.protectionproject.org/>

⁶¹⁹ Suppression of Prostitution Act No. 10 of 1961, Article 2 (1961), available at:

<http://www.hrw.org/en/node/12167/section/10>. Protection of human security, Egypt, A Human Rights Report on Trafficking in Persons, Especially Women and Children, PP: 3, available at: <http://www.protectionproject.org/>

⁶²⁰ TPUNICEF Yemen: Annual Report, 2005, p. 23. KRISHNA BELBASE, GOLDA EL-KHOURY, UNICEF, PREVENTING CHILD TRAFFICKING IN THE GULF COUNTRIES, YEMEN AND AFGHANISTAN: POLICY OPTIONS, PP: 28, available at: <http://www.unicef.org/>

⁶²¹ Article available at <http://www.irinnews.org/report/82587/jordan-government-adopts-anti-human-trafficking-law>

adopted to prevent and combat such phenomena, are lacking. The Ministerial Committee on Trafficking, composed of representatives from the Ministries of Foreign Affairs, Health, Justice, Labour, Social Affairs, Trade and Industry, and the Public Security Department, coordinates Government of Jordan's anti-human trafficking efforts. In Kuwait, the country has not developed a specific legislation to prevent, combat and criminalize human trafficking, including child trafficking.

In 2011, the Committee against Torture expressed its concerns regarding the lack of information on trafficking in persons, particularly the number of complaints, investigations, prosecutions and convictions of perpetrators of trafficking, and the lack of information on practical measures adopted to prevent and combat such phenomena, including medical, social and rehabilitative measures.

In **Lebanon**, During the UN Human Rights Council Universal Periodic Review (UPR) of Lebanon, held in November 2010, a number of delegations commended Lebanon for progress made in promoting child rights, including initiatives Child rights recommendations which enjoyed the support of Lebanon include: strengthening legal measures to combat the sale and trafficking of children, creation of additional national mechanisms to promote and protect human rights of vulnerable groups, accelerate plans for the adoption and implementation of a national strategy for children, including demining activities to better protect children.

In **Morocco**, Trafficking in persons is prohibited under Moroccan Law: Article 467 of the Penal Code prohibits forced child labour, and Articles 497-499, forced prostitution and prostitution of a minor; the 2003 Immigration and Emigration Act also penalises, perpetrators and those, including government officials, who are involved in or who fail to prevent trafficking in persons are fined or imprisoned, with penalties ranging from 6 months to 20 years imprisonment and the forfeiture of assets.

Although the government is making progress in investigating trafficking offenses and punishing trafficking offenders, penalties for labour trafficking offenses appear not to be sufficiently stringent; penalties for child labour under Article 467 range from one to three years' imprisonment. Legislative measures, such as enactment of comprehensive anti-trafficking legislation with more

stringent penalties for forced labour is needed, while victims need to be provided with rehabilitation services.

In **Qatar**, During the UN Human Rights Council Universal Periodic Review (UPR) of Qatar held on December 2010, a number of delegations commended the positive measures taken at the legislative and institutional levels for the protection of children, such as the setting-up of women and children foundations and the national foundation to combat trafficking in persons.

In **Syria**, In January 2010 the government issued a comprehensive anti-trafficking law, Legislative Decree No. 3, which provides new grounds for prosecuting trafficking and protecting victims, and outlines a minimum punishment of seven years.

The Committee against Torture, in its 2010 Concluding Observations urged the country to “increase its efforts to prevent and combat trafficking of women and children, including by implementing the current laws combating trafficking, providing protection for victims and ensuring their access to medical, social, rehabilitative and legal services, including counselling services, as appropriate”.

The Committee of the right of the child in Syria notes the State party's efforts to cover the offences listed under the Optional Protocol in its criminal legislation as well as the establishment of a specific unit under the Syrian Commission on Family Affairs which is currently undertaking a comprehensive review of legislation.

However, the Committee is concerned that:

(a) There are no specific provisions expressly targeting sale of children and child pornography, although these offences would reportedly be covered by other existing provisions;

(b) The age limit in the Penal Code is apparently not set at 18 years for all the offences covered by the Optional Protocol. The Committee recommends that the State party:

(a) Amend the Penal Code in order to explicitly define and cover all the offences in accordance with articles 2 and 3 of the Optional Protocol, including by speedily adopting and implementing the draft law on the protection of children;

- (b) Set at 18 years the age limit used for defining a child for each of the offences covered by the Optional Protocol;
- (c) Strengthen the legislative framework by the ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime;
- (d) Continue to seek technical assistance in this respect from UNICEF, among others⁶²².

In UAE, UNICEF signed an agreement with the government on the repatriation and re-integration of former camel jockeys. Over one thousand children trafficked to the UAE to work as camel jockeys (mostly from Pakistan, Bangladesh, Sudan and Mauritania), have been reunited with their families since 2005. The success of this collaboration is due to various initiatives and programmes, including the initial identification, repatriation, medical care, psychosocial counselling and education or vocation programmes that assist children with making a smooth transition into their new lives. In brief, the success of this intervention was premised on the effective collaboration and coordination of different actors, including government ministries with different mandates in both the sending and destination countries⁶²³.

Significant progress has been made in addressing the issue of trafficking, especially of boys for economic exploitation, as recommended by the Committee. Federal Anti-Human Trafficking Act No. 51 of 2006 was finally promulgated, and National Committee to Combat Human Trafficking was set up in April 2007. The trafficking of young foreign boys as camel jockeys, which had been a serious problem for many years, has been eliminated, since the federal law prohibiting persons below age 18 from participating in camel races and subjects violators to imprisonment and financial penalties was promulgated. UAE also with the support of United Nations Fund for Children (UNICEF) provided for the social and psychological rehabilitation, repatriation

⁶²² Netherlands institute of Human rights, SYRIAN ARAB REPUBLIC, Optional Protocol on the sale of children, child prostitution and child pornography, available at: <http://sim.law.uu.nl/>

⁶²³ UNICEF, Child protection issue brief, Child trafficking, p. 2, available at: <http://www.unicef.org/>

and local reintegration of child camel jockeys, and contributed \$30 million for the establishment of welfare projects for these children in their countries⁶²⁴.

Since 2007, the multi-disciplinary Federal Law 51 (2006) in the UAE continues to provide the legal framework for handling human trafficking cases. Since the legislation was enacted, more and more people have become aware of the law. Article One of this law defines trafficking as 'recruiting, transporting, transferring, harbouring, or receiving persons by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation, engaging others in prostitution, servitude, forced labour, enslavement, quasi-slavery practices, or the detachment of organs.' Legally, this definition classifies an activity as human trafficking based on the following factors:

1. Form of trafficking – recruiting, transporting, transferring and harbouring;
2. Means of trafficking – by use of threat or force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person;
3. Examples of exploitation – engaging others in prostitution, servitude, forced labour, enslavement, quasi-slavery practices, or organ trade. This definition is closely aligned with what is outlined in the Palermo Protocol and by other international legislation. It offers strong punitive measures, including maximum penalties of life imprisonment and covers all forms of human trafficking.

Under the law, a life sentence is applicable if the crime is committed through deceit, if it involves the use of force or threat of murder or bodily harm, or if it involves physical or psychological torture. Furthermore, the 16-article law prescribes stiff penalties against traffickers ranging from one year to life imprisonment and fines of 100,000 Dirham and one million Dirham (\$27,500 and \$275,000).

In addition, Article 364 of the UAE Penal Code protects against forced prostitution and Article 365 lays out penalties for those establishing and

⁶²⁴ Yara Abdul-Hamid, independent consultant, Analysis, Middle East and North Africa, Report Commissioned by Save the Children Sweden, August 2011 second edition

managing places for prostitution. The UAE also issued Federal Law 39 (2006) on international judicial cooperation, which includes articles on the extradition of suspected or convicted criminals to judicial authorities to try them or execute the sentences given to them. It also provides for mutual judicial assistance in criminal cases, including human trafficking (Articles 6-37).

As part of its comprehensive national and international strategy to combat trafficking, the UAE ratified the UN Convention against Transnational Organized Crime (2000) in May 2007. This includes provisions for international cooperation in anti-human trafficking efforts. More importantly, in February 2009, the UAE ratified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Palermo Protocol), which is one of the two protocols attached to the Organized Crime Convention. During 2010, a sub-committee appointed by the National Committee to Combat Human Trafficking completed a study on the possibilities of amending Federal Law 51, particularly in order to emphasize the protection and repatriation of victims, thus bringing the law more in line with the Palermo Protocol.

These amendments have been forwarded to the government for consideration. Further, the National Committee to Combat Human Trafficking issued Resolution 7/18 (2010) concerning the regulatory procedures for dealing with human trafficking victims among the relevant authorities in the UAE. This resolution was issued to support and protect human trafficking victims, especially among police and public prosecution departments during the investigation stage and at the time the victims arrive at the shelters.

These procedures particularly assist and protect victims of human trafficking by respecting their legal and human rights. The Committee also issued Resolution 8/21 (2010) pertaining to ethical standards that the media needs to adhere to while conducting interviews with human trafficking victims. It sets out ethical standards that should be respected by various media outlets – television, radio, internet, newspapers and other publications – especially with regard to protecting the victims and ensuring their privacy.

The Ministry of Health enacted two legislations in 2010. The first is a federal law on regulating human organ transplant, which aims to prevent trafficking in human organs, tissues and cells. In order to achieve these goals and avoid trafficking in human organs – a practice seen in many countries – current

legislations include several punitive provisions. These address all cases of organ trafficking, including buying or selling – or offering to buy and sell – human organs from living or deceased persons by means of abduction, deception, coercion, abuse of power and exploiting vulnerability.

The second legislation is a regulation on Federal Law 18 (2009). It modifies the process of registration of births and deaths. This has been specifically developed so that parents can strictly confirm to birth and death registrations of children, which would help check human trafficking. At another level, the Ministry of Labour is currently studying the development and amendment of Federal Law 8 (1980) concerning the Organisation of Labour Relations. The ministry is keen to be up-to-date with the latest labour legislations and be consistent with the UAE's obligations to Arab and international labour conventions.

With regard to protecting workers from exploitation, the legislation would include a definition of forced labour and an article on its criminal penalty⁶²⁵. In Yemen, there has been tremendous progress in consolidating international legal instruments related to the prevention of child trafficking and to protecting children who are victims of trafficking. There are 3 main legal pillars that form the basis for this work.

The Government of Yemen does not fully comply with the minimum international standards for the elimination of trafficking. Although the government has signed the CRC and its two optional protocols, it has not yet signed the Convention on Transnational Organized Crime and its two optional protocols, especially the Palermo Protocol for that purpose.

The Higher Council of Motherhood and Childhood is lobbying the government to sign the Convention. The Yemeni Law does not specifically address the issues of the sale of children, child prostitution and child trafficking and the phenomenon of child trafficking has not been fully explored although it has been extensively debated in the parliament. In the absence of an anti trafficking law, the government refers to the criminal code to prosecute and punish traffickers⁶²⁶. The Government of Yemen has increased the monitoring of borders with Saudi Arabia and agreed with the latter to establish a bilateral

⁶²⁵ NATIONAL COMMITTEE TO COMBAT HUMAN TRAFFICKING, *Combating Human Trafficking in the UAE, ANNUAL REPORT 2010-2011*, PP: 4-6, available at: <http://www.nccht.gov.ae/>

⁶²⁶ TPUS Department of State: *Trafficking in Persons Report*, 2005, p. 227, KRISHNA BELBASE, GOLDA EL-KHOURY, UNICEF, *PREVENTING CHILD TRAFFICKING IN THE GULF COUNTRIES, YEMEN AND AFGHANISTAN: POLICY OPTIONS*, PP: 26, available at: <http://www.unicef.org/>

committee to combat child trafficking, the committee is yet to be established. It has also trained security forces on anti trafficking⁶²⁷.

In **Mauritania**, The Committee of the Rights of the Child is concerned about the high number of children engaged in labour, in particular children working in agriculture, in the informal sector and in the street, including the talibés who are exploited by their teachers. While recognizing the efforts undertaken by the State party to stop cases of trafficking of children towards Arab countries, it remains concerned that girls involved in domestic service are often not paid or underpaid and that involuntary servitude is reported to exist in some isolated areas. In light of article 32 of the Convention, the Committee recommends that the State party:

- (a) Continue to undertake measures to prevent and combat all forms of economic exploitation of children;
- (b) Complete the ratification process and implement ILO Convention No. 138 concerning Minimum Age for Admission to Employment and ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; and
- (c) Seek assistance from ILO/IPEC in this regard⁶²⁸.

In **Sudan**, children who are particularly vulnerable to all forms of exploitation, including acts covered by the Optional Protocol. The Committee on the Rights of the Child recommended that the State Party adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention should be given to protect children who are especially vulnerable to such practices, including displaced children, children living in poverty and street children.

The Committee also recommends that the State party intensify its efforts to protect children from early and forced marriages, which often may also have the

⁶²⁷ TPUNICEF Yemen: Annual Report, 2005, p. 23. KRISHNA BELBASE, GOLDA EL-KHOURY, UNICEF, PREVENTING CHILD TRAFFICKING IN THE GULF COUNTRIES, YEMEN AND AFGHANISTAN: POLICY OPTIONS, PP: 28 ,available at: <http://www.unicef.org/>

⁶²⁸ COMMITTEE ON THE RIGHTS OF THE CHILD, Concluding Observations of the Committee on the Rights of the Child: Mauritania. 06/11/2001. PP:11

elements of some of the practices prohibited under the Protocol, i.e. sale of children and/or child prostitution⁶²⁹.

Paragraph III: Protocol on a Communication Procedure

During its 11th session which took place in June 2009, the Human Rights Council adopted Resolution A/HRC/RES/11/1 which decides to establish a working group to explore the possibility of elaborating an optional protocol to the CRC allowing individuals who have had their rights violated under the CRC to submit individual communications to the Committee.

The 1st session of the Open-Ended Working Group will take place from 14 to 18 December 2009. Currently, five committees (CCPR, CEDAW, CERD, CAT, and CRPD) have a communication procedure complementary to the reporting procedure provided under the Convention. Two instruments which have not entered into force yet, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Convention for the Protection of All Persons from Enforced Disappearance also provide for a communication procedure⁶³⁰.

Resolution A/HRC/RES/11/A workshop on the adoption of the third Optional Protocol to the Convention on the Rights of the Child on a communications procedure was held in Doha, Qatar, on 3-4 June, 2012, with the participation of delegations from eighteen Arab countries including Jordan, United Arab Emirates, Tunisia, Algeria, Djibouti, Saudi Arabia, Sudan, Iraq, Oman, occupied Palestinian territory, Qatar, Comoros, Kuwait, Lebanon, Egypt, Morocco, Mauritania, Yemen, and Save the Children, as well as a number of civil society organizations. Participants emphasized the importance of the following:

- Welcoming the adoption of the third Optional Protocol to the CRC on a communications procedure by the General Assembly of the United

⁶²⁹ United Nations, Convention on the Rights of the Child, Concluding observations: Sudan, PP: 4, available at: <http://www.africanchildforum.org/>

⁶³⁰ Rouba Al-Salem, Middle East and North Africa (MENA), December 2009, PP: 4, available at: www.ibcr.org

Nations which provides the base for effective actions against child rights violations;

- Taking the necessary steps to ratify the third Optional Protocol to the CRC on a communications procedure;
- Launching comprehensive dialogue at the national level to promote the ratification of the third Optional Protocol and foster its translation into child protection measures;
- Committing to child protection, taking into account child's best interest, as per the CRC and its first two Optional Protocols; following up on the implementation of the recommendations of the 2006 United Nations Study on Violence against Children, and of the Comparative Arab report on implementing the recommendations of the above mentioned study;
- Strengthening the role of National Institutions for Human Rights, facilitating the establishment of Independent National Mechanisms for receiving complaints at national level, monitoring child rights violations as well as establishing hot lines for child protection, embeds mechanisms and coordination mechanisms for children's protection;
- For the protocols not to contradict with Islamic law; and
- Supporting and strengthening national child protection systems to include prevention, reporting and responding to cases of violence against children⁶³¹.

Section III: Regional efforts towards upholding child rights

The Arab Charter on Human Rights (ACHR) was adopted by the Council of the League of Arab States by its resolution 5437 (102nd regular session) on 15 September 1994. The ACHR entered into force after ratification by the seventh state, the United Arab Emirates, on 15 January 2008. This followed ratification by Jordan, Bahrain, Algeria, Syria, Palestine and Libya. The revised version was adopted by the 16th Arab Summit, hosted in Tunis in May 2004.

⁶³¹ Special Representative of the Secretary General for Violence against Children, Doha Declaration, PP: 1-2, available at: <http://srsg.violenceagainstchildren.org/>

The Arab Charter on Human Rights protects civil, cultural, economic, political and social rights. Once the Charter comes into force, States parties undertake to implement and protect such rights and freedoms as:

- The right of all individuals subject to the State party's jurisdiction to enjoy the rights and freedoms in the Charter without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability (the right to non-discrimination) (article 3);
- The right to life (article 5);
- Freedom from torture (article 8);
- The right to equality before the law and the equal protection of the law (article 11);
- The right to privacy (no one is to be subject to arbitrary or unlawful interference with their privacy, family, home or correspondence) (article 21);
- The right to political participation (article 24);
- The freedom of movement and residence (article 26);
- The prohibition of collective expulsions of aliens (article 26);
- The right to nationality (article 29);
- The freedom of thought, conscience and religion (article 30);
- The right to own property (article 31);
- The right to information and freedom of opinion and expression (article 32);
- The right to seek, receive and impart information and ideas (article 32);
- the protection, survival, development and well-being of the child (article 33);
- the right of workers to enjoy just and favourable work conditions (article 34);
- the right to join or form trade unions (article 35);
- the right to an adequate standard of living which includes access to food, clothing, housing, services and the right to a healthy environment (article 38);
- The right to health (article 39); the right to education (article 41);

- The right to participate in cultural activities (article 42).

The Charter, moreover, guarantees that anyone whose rights or freedoms recognized within the Charter are violated will have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity (article 23)⁶³².

A decade ago, the CRC broke new ground in taking a holistic approach to the child, treating the child's political, economic, social, and cultural rights as elements of an interdependent and mutually reinforcing package. Implicit in this approach is the recognition that although a child may be adequately nourished, the right to develop fully is not adequately protected unless the child is also physically developed, educated, participates in culture and religion and shielded from such things as neglect, abuse, arbitrary detention and exploitation. By signing the convention, the Arab nations espoused this far-reaching and innovative approach to children's rights. The 54 articles of the CRC may be broken down into four broad categories: survival rights, development rights, protection rights and participation rights.⁶³³

In April 2002, the office of the High Commissioner for Human Rights officially approached the Arab League Secretary General to form a working group of Arab independent experts working in the UN human rights bodies, with the aim of revising the ACHR in order to be consistent with international human rights standards. The experts included members of the Committee on the Rights of the Child. The CRC expanded legal boundaries to embrace and legitimize the rights of children, and provides a legal, policy and moral framework for their well-being. It was adopted for signature, ratification and accession by the United Nations General Assembly in 1989.

Countries have, therefore, issued enforceable domestic laws (in official sectors, laws and legislation) to enshrine the principles of the Convention on the Rights of the Child. To date, all countries in the world have ratified the CRC. The CRC has been ratified by 21 Arab countries; most of these made between 1990 and 1997; Somalia signed the CRC in 2002, but has not yet ratified it.

⁶³² Arab Center for International Humanitarian Law and Human Rights Education, Arab Charter on Human Rights, PP:1, available at: <http://who.int/>

⁶³³ Unicef, amr group, NOVEMBER 2002, THE STATE OF THE ARAB CHILD, PP :11, available at: <http://www.amr-group.com/>

The CRC is a code of binding obligations for governments, and a minimum standard of responsible conduct for communities and families with respect to the young. It sets standards which address the neglect and abuse that children face in all countries to varying degrees every day, and recognizes every child's rights to develop physically, mentally, and socially to their fullest potential, to express his or her opinion freely, and to participate in decisions affecting his or her future. The CRC stresses that the "best interests of the child" must be a primary consideration in all actions and decisions affecting him or her.

Palestine holds observer status at the United Nations; however, the Palestinian National Authority is keen on adhering to international conventions on human rights and children's rights in particular. Palestine committed itself to the CRC in 2004 and enacted the Palestinian Child Act in the same year, thus involving Palestine in Arab and international conferences on the Rights of the Child. Palestine also develops reports on children's rights and child protection and presents them to UN organizations; Palestine avails itself of Arab and international expertise in the implementation of children's rights and child protection. Palestine also gives increasing attention to partnership and cooperation with the international organizations working in children's specific areas, such as UNICEF and Save the Children.

In 1992, the First Arab High Level Conference on Children convened in Tunis and adopted a set of global goals for the year 2000. In preparation for the region's participation in the Special Session, the League of Arab States invited members in June 2000 to undertake national reviews of the situation of children. The build-up to the United Nations Special Session on Children, which convened in 2002, offered an opportunity to build on these initial discussions.

The Arab High Level Conference on the Rights of the Child took place from July 1 to 4, 2001 in Cairo and concluded with the adoption of a draft declaration and framework for action on the rights of children for the period 2001-2010. This was called "An Arab World Fit for Children: Mechanisms for Joint Arab Action and an Arab Common Position".

The Beirut Summit (March, 2003) adopted the "Arab World Fit for Children" declaration which had been issued by the Second Arab High level Conference on the Rights of the Child, in Cairo. This mirrored the "World Fit for Children" outcome document of the UN the Arab Summit in Tunis (March, 2004) issued a

Plan of Action 2004-15 which identifies strategies for achieving the Millennium Development Goals and improving the situation of children in the region.

Concerning the level of implementation of the CRC and its Optional Protocols, available responses focused on amendment of appropriate legislation and domestic laws in line with the requirements of international conventions, the development of institutions involved in the implementation of children's rights, and the necessity to develop strategies for action. Arab countries made efforts to follow up on the implementation of the CRC and its optional protocols, as follows:

Most Arab countries have adopted or ratified the two optional protocols to the CRC.⁶³⁴

Under the Arab Charter, the death penalty can be applied to children in certain circumstances, in contradiction with its prohibition by the CRC. Article 37 forbids the death penalty for children under the age of 18 years.

However, Article 7 of the Charter states: "Sentence of death shall not be imposed on persons less than 18 years of age, unless otherwise stipulated in the laws in force at the time of the commission of the crime." But, another provision in the Charter suggests that the Convention may overrule it.

Article 43 of the Charter says: "Nothing 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 forth 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." Human rights law expert Professor Bill Bowring, of the University of London, said: "It would seem to me that if a country has ratified both the Charter and the Convention, it is going to run into problems."⁶³⁵

Arab states have made significant progress in developing strategies for the protection of children. 16 states have developed plans to establish independent

⁶³⁴ Department of Family and Childhood, Secretariat General of the League of Arab States (LAS), 2010, THE COMPARATIVE ARAB REPORT ON IMPLEMENTING THE RECOMMENDATIONS OF THE UN SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN PP: 109, 111, 117, available at: <http://srsg.violenceagainstchildren.org/>

⁶³⁵ Child rights international network, CHILD RIGHTS AND THE LEAGUE OF ARAB STATES, available at: <http://www.crin.org/>

national bodies to confront violence against children: Jordan, the UAE, Bahrain, Tunisia, Algeria, Saudi Arabia, Syria, Iraq, Oman, Qatar, Kuwait, Lebanon, Egypt, Morocco, Mauritania and Yemen.

However, these strategies require clearly-defined mechanisms to assess implementation and report on challenges. Some Arab States, like Jordan and Tunisia, have developed electronic systems to monitor and analyze indicators regarding follow-up on the activities and programmes described in national plans; such systems can enhance coordination with the national institutions involved in the implementation of these plans and strategies, particularly national plans of action for children. The system relies on a group of liaison officers representing the relevant institutions involved in child protection, producing periodic reports on the implementation of programmes under the national plans of action. In Egypt and Tunisia, national centres prepare studies and field surveys on issues relevant to children's rights, share insights on the implementation of plans, regularly provide strategic information on children, and monitor the status of children. In Morocco, the national centre for the rights of the child organizes bi-annual national conference to evaluate and assess the achievements of the national plan of action.

The ministerial committee, chaired by Morocco's Prime Minister, presents during the conference a detailed report on the achievements and challenges of two years of implementation of plans.⁶³⁶

The increased commitment of the Arab League to work with a wide range of stakeholders in the promotion of child rights is to be welcomed. For example, in preparation of the Forth Conference, a Civil Society Forum (February 2010), a Media Forum (May 2010) and a Youth Forum were held (July 2010) to involve various actors in the Second Arab Childhood Plan. The extent to which civil society however effectively participate in decision-making with the framework of the Arab League is restricted. How effective declarations and meetings of the Arab League have been in improving child rights is debatable.

While the countries have endorsed the decade-long Arab Plan of Action for Children, information on its implementation at the national level is limited, and mechanisms for monitoring countries' progress remain inadequate. The

⁶³⁶ Department of Family and Childhood, Secretariat General of the League of Arab States (LAS), 2010, THE COMPARATIVE ARAB REPORT ON IMPLEMENTING THE RECOMMENDATIONS OF THE UN SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN PP:179, available at: <http://srsg.violenceagainstchildren.org/>

Marrakesh Declaration of December 2010 commits the Arab League to update the Plan to include “well-defined goals, fixed time-frames, and subject to assessment, monitoring and follow-up”.

The Committee for Arab Childhood, which is responsible for proposing policies and plans in compliance with regional and international charters, is tasked with producing reports every two years on the status of Arab children and indicators of performance. Although more extensive research is needed on monitoring and reporting mechanisms of the Arab League, it appears that these reports are either not being produced or are not diffused to the general public (Abdul-Hamid, 2011 B)⁶³⁷.

In mid 1990's, the League of Arab States meetings witnessed a discussion on whether there is a need for developing an Arab Convention on the Rights of the Child. The main discussion took place in 1997 and 1998⁶³⁸. Then in its session in January 2011, the Standing Commission took note of the position of the Arab Childhood Committee, which found that there is no need for updating the 1983 Charter on the Rights of the Arab Child. This position argued that since most Arab states (with the exception of Somalia) have ratified the UN CRC, there is no need to create an Arab instrument parallel to every international instrument. In its 2012 summit, the League adopted the Marrakech Declaration, which affirmed commitment to the CRC and its protocols and adopted tools for advancing children's rights accordingly.

According to the Charter of the Rights of the Arab Child, states submit reports to the General Secretariat (rather than to a treaty body of independent experts) on measures they have taken to give effect to the Charter. However, there is no clear timeframe or format for this⁶³⁹.

Progress made by Arab states in the area of child rights can be summarized as follows:

⁶³⁷ Word press, Children Rights Among Different Countries, middle east, January 3, 2013, available at: <http://reliablespace.wordpress.com/>

⁶³⁸ It is noteworthy that I was the chairperson of the Higher Technical Committee for Child Affairs at that time at the League of Arab States

⁶³⁹ Mervat Rishmawi, The League of Arab States in the Wake of the “Arab Spring, PP: 6, available at: <http://www.cihrs.org/>

Algeria: Algeria's government is currently reviewing a draft Child Protection Act in the context of strengthening the legal system related to the rights of the child.

Bahrain: Bahrain passed a Child Act in 2012, which includes a special chapter on the protection of children from abuse. Abuse is defined as: "Any act or omission that would lead to direct or indirect harm to the child (thus) preventing the proper, safe and healthy upbringing of the child, including physical, psychological or sexual abuse, neglect or economic exploitation". The law also provides definitions for each type of abuse addressed.

Iraq: In Iraq, the regional government of Kurdistan approved a law against domestic violence in 2011. The government of Iraq also issued Law 28/2012, which prevents the manufacturing and importing of children's toys that incite violence. It has also sought to issue a set of bills including the Draft Law on Child Protection in Iraq, the Draft Law on a Parliament for Children, the Draft Law on the Child Welfare Authority and the Anti-trafficking Law.

Jordan: In 2008 Jordan drafted a Child Rights Act, which was later withdrawn from the National Assembly. A new draft is currently being prepared in cooperation with all organizations concerned with children's rights and UNICEF. Article 62 of the penal code was amended with the stipulation that no harm should be caused by parents disciplining their children, in addition to the condition of what general custom permits. Amendments of the penal code also included increasing punishment for crimes against family, women and children. The age of protection for sexual offences and crimes against public ethics and morals has also been raised to 18 years of age for the girl child in accordance with international conventions, and punishments for perpetrators have been intensified.

Oman: It has drafted a Child Act, which includes a special section on the protection of children. In addition, several laws were enacted to prohibit all forms of physical and psychological violence, including corporal punishment, humiliation, neglect and exploitation within the family and residential institutions.

Palestine: In 2012, the State of Palestine ratified the amendments made on the 2004 Child Act. Article 68 of the amended law stipulates that: "No child may be subject to physical or psychological torture or to any treatment that is cruel or

degrading to human dignity.” The law also obliges professionals and child carers to report abuse to the Child Protection Guide. Draft laws were also prepared for family protection and the protection of juveniles as well as the establishment of the National Council for Childhood under the umbrella of the Ministry of Social Affairs.

Qatar: In 2010 two decrees were issued to amend certain provisions of Qatar's accession to the CRC and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and give these instruments the force of law. Lebanon completed a draft law, currently under consideration by parliament, to amend the law on the protection of juvenile offenders and those at risk, strengthening social protection, establishing national mechanisms, prohibiting all forms of VAC in all settings, and mandating the reporting of child abuse. Also, proposals were made to amend some articles in the penal code to stiffen penalties on aggressors, to impose remedial measures and to eliminate Article 186 which allows parents and educators use corporal punishment as a form of customarily acceptable discipline.

Morocco: It completed the amendment of several laws including those concerning the legal protection of children from all forms of abuse and sexual assault, as well as the penal code, which punishes carers who abandon children without protection and those who place children at risk. Also, the comprehensive family code was changed to set the age of marriage for both women and men at 18.

Sudan: Sudan's constitution, state constitutions and the Child Act of 2010 have all prohibited the practice of torture, abuse or neglect. The Child Act includes strong penalties and comprehensive solutions for dealing with the abuse of children and protecting them from violence. It obligates any person who believes that a child's right has been violated to notify the authorities. In addition, several states have successfully issued laws to banning and criminalizing female genital mutilation. **Tunis:** Since 1995, the Tunisian Child Protection Code has prohibited all forms of violence against children in their various settings, and has made it compulsory all professionals and citizens to report on threats to children to Child Protection Delegates.

United Arab Emirates: The United Arab Emirates has completed the drafting of its Child Rights Act prepared by the Ministry of Social Affairs and the Ministry of Interior.

Yemen: It undertook a comprehensive legal review of national legislations and regulations on children, followed by drafting a set of laws on the rights of the child, to be integrated into a single law. It also indicated that in 2007 amendments were proposed to parliament on the Child Rights Act and the Penal Code particularly crimes of child exploitation (sexual exploitation, child trafficking, begging)⁶⁴⁰

Arab states showed special commitment to the principles and objectives to the Convention on the Rights of Persons with Disabilities and other relevant human rights and development instruments, gathered at the Arab Regional Consultation on Disability and Development on the General Assembly High Level Meeting on Disability and Development: *“The way forward: a disability-inclusive development agenda towards 2015 and beyond”* from 29-30 May 2013 in Gammarth, Tunis, Tunisia, and adopted the following recommendations as an input for an outcome document of the United Nations General Assembly High Level Meeting on Disability and Development.

- Participation of persons with disabilities and their organization and their capacity development
- Realization of accessibility (both physical environments and ICTs) as part of the general system of society for an investment for the present and future generations
- Consideration of those who suffer from invisible disabilities and/or experience multiple discriminations due to gender, age (children, youth and older persons) and other grounds
- Adequate financial resources should be committed for the recommendations below.

Strengthening the national framework and its mechanisms for inclusive society and development:

1. Urge States to ratify both the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol and call upon those States Parties that have made reservations to withdraw them.

⁶⁴⁰ Department of Family and Childhood, Secretariat General of the League of Arab States (LAS), Second report, 2010- 2012, THE COMPARATIVE ARAB REPORT ON IMPLEMENTING THE RECOMMENDATIONS OF THE UN SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN PP:40,41, 42 available at: <http://srsg.violenceagainstchildren.org/>

2. Harmonize legislation, policies and programmes in line with the Convention on the Rights of Persons with Disabilities.
3. Cross-sectionalities between the CRPD, CRC and CEDAW and other international treaties should be promoted for strengthening the gender and child's perspective.
4. Governments should adopt and implement disability-inclusive policies concerning international cooperation.
5. Governments should enact legislation on reasonable accommodation for persons with disabilities with clear enforcement mechanisms and take punitive action for non-compliance.
6. Inter-ministerial coordination should be improved through adoption of a multi-sectoral approach to include persons with disabilities in all aspects of national and regional development programmes.
7. Specific measures should be taken to build capacity of persons with disabilities for their access to justice for enforcement of their rights and for remedies at national, regional and global levels, paying particular attention to those who suffered from physical and psychological abuse, and, in particular, children and women with disabilities.
8. Special attention should be accorded to children with disabilities, in the context of early detection and diagnosis of disability as well as early intervention and support services for them to achieve full potentials.
9. Governments and other stakeholders should fulfil their commitments to provide adequate resources to protect the children with disabilities from all forms of abuse. It is important that support be given to independent organizations of persons with disabilities so that those organizations can undertake the monitoring of and contribute to the interventions to protect such children with disabilities⁶⁴¹.

Children rights in the Middle East, The state and People did not care children and they did not give them respect, because of a lot of countries in Middle East had some troubles such as Arab Spring, Civil war and other situations that can care children when you are in war. The agenda for child protection is far from complete. Many children lack the protective environment required to safeguard

⁶⁴¹ United nations, Report of the Arab Regional Consultation on Disability and Development "The way forward: a disability-inclusive development agenda towards 2015 and beyond"(Tunis, Tunisia 29-30 May 2013), PP: 5-7, available at: www.un.org

them from harm and ill-treatment, and mechanisms to monitor and document child rights violations. Rights need to be strengthened to be able to effectively protect children. Although countries such as Egypt, Tunisia, and the occupied Palestinian made considerable progress in developing child protection systems, the some countries in general lack a comprehensive approach in addressing child abuse and violence including, for example, studies, legislative measures, public education campaigns, child sensitive procedures and mechanisms, prosecuting violators⁶⁴².

Issues pertaining to women and children are sensitive for many countries, especially throughout the Islamic world and the Arab League. Islam plays a huge role in determining the rights and status of women and children. The varying interpretations and implementations of Quranic principles make it difficult to reach a clear consensus. The status of women and children varies by region and by country. Culture and religion significantly influence the role of women and youth in the home, the workplace, and in public spaces. In the Middle East (MENA), the status of women and children is frequently the focus of international criticism. Child labour and child marriage are still prevalent in MENA⁶⁴³.

Ten percent of children, ages 5-14, are involved in child labour⁶⁴⁴. Child marriage still occurs in the region with 18 percent of women married under the age of 18.2. Women and children are still be affected by female genital mutilation. This is very much a country to country issue with 93 percent of women in Djibouti, 91 percent of women in Egypt and 89 percent of women in Sudan having been "circumcised" or cut.

Family disputes, mainly affecting women and children, are often settled, if not all, in religious courts which according to legal texts and practices mostly favour males. This makes the realization of a fair and equitable outcome difficult in many of the cases.

⁶⁴² Word press, Children Rights Among Different Countries, middle east, January 3, 2013, available at: <http://reliablespace.wordpress.com/>

⁶⁴³ Special Committee on Arab Human Rights, Model Arab League – Background Guide, National Council on US-Arab Relations, available at <http://ncusar.org/modelarableague/wordpress/wp-content/uploads/2013/10/SPEC-BGG-2014.pdf>

⁶⁴⁴ "Child Protection from Violence, Exploitation and Abuse - MENA Region." UNICEF.org. United Nations Children's Fund, n.d. Web. <<http://www.unicef.org/protection/MENA.pdf>, National council of US Arab relations, Model Arab League, BACKGROUND GUIDE, Special Committee on Arab Human Rights, 2013 - 2014, pp: 3, available at: <http://ncusar.org/>

While looking for solutions by The Arab Charter on Human Rights (ACHR) to this issue, it is important to remember the diversity of treatment of much lower in places such as Bahrain, where it remains at 5 percent⁶⁴⁵. Again, child marriage is much higher in certain regions rather than others. In Sudan and Yemen, child marriage is between 32 and 34 percent. Countries like Algeria, however, are much lower, around 2 percent. Religion plays a key role in deciding the treatment of women and children and the determination of their rights. Islam and the Quran are interpreted in many different ways by each country.

There are Sunnis and Shias throughout the region and within those branches are various sects, including Ismaili and Zayidi. In order for a solution to be found, it will be important to address each interpretation and the possible concerns that will follow. Culture also, is key in determining the treatment of women and children. Some practices, such as those rooted in prescriptive scripture, arise from religion; others arise from long held traditions.

Again, it is important to address these concerns while searching for a solution to the abuse and harassment of women and children. Saudi Arabia, for example, recently took action to address these issues by passing legislation to officially criminalize domestic violence. Under this new law, perpetrators of physical or psychological abuse could face up to one year in prison and a fine of around \$13,000.⁶⁴⁶

⁶⁴⁵ Child Protection from Violence, Exploitation and Abuse - MENA Region." UNICEF.org. United Nations Children's Fund, n.d. Web. <http://www.unicef.org/protection/MENA>, National council of US Arab relations, Model Arab League, BACKGROUND GUIDE, Special Committee on Arab Human Rights, 2013 - 2014, PP:5 available at: <http://ncusar.org/>

⁶⁴⁶ Agencies France-Presse, "Saudi Arabia Outlaws Domestic Violence," AlJazeera.com. AlJazeera, 30 Oct. 2013. Web. <<http://www.aljazeera.com/news/middleeast/2013/08/20138290272119559.html>>. National council of US Arab relations, Model Arab League, BACKGROUND GUIDE, Special Committee on Arab Human Rights, 2013 - 2014, PP:5 available at: <http://ncusar.org/>

Chapter III: Application of the international women and children's rights by National Judiciary in the Arab World

“Arab judicial systems are very complex and hierarchically structured. In all countries, the courts responsible for Muslim family matters are part of the state judiciary. Many conflicts, in fact the majority in some countries, are settled out of court in traditional council meetings and in the presence of traditional authorities; not an insignificant percentage is even resolved in this manner.

Access to the state judicial system is complicated by a number of factors. This can be summarized as follows⁶⁴⁷:

- Corruption, prolonged hearings and their regular implementation of court verdicts are factors affecting both sexes.
- Widespread illiteracy and legal illiteracy make most petitioners dependent on lawyers and/or other legal experts.
- In many countries, the bureaucratic requirements for a court order are so complicated, even in the first instance, that they can no longer be met without the assistance of a lawyer.
- Costs of lawyers; there is no tradition of paralegals and free or economical legal assistance offered by NGOs is restricted to a few urban centres. Nevertheless, in many countries, it is primarily women who use the respective family courts and chambers. This is mainly because women depend on legal intervention in several aspects of marriage and divorce.
- The process of going to court is not easy for any woman, and not only because of the cost involved.
- Conflict settlement by judicial process generally has its shortcomings; furthermore, and this applies mainly to divorce law, a court divorce means that a woman loses all her financial rights.

⁶⁴⁷ Federal ministry for economic cooperation and development, Women's Rights in the Arab world, PP: 18, 26, available at: <http://www.powregypt.org/>

- As a rule, most people do not consider the courts and other state institutions, such as the police and the state prosecution, to be helpful. It is true that were divorce by repudiation to be abolished, it would effect change in an important sphere where men and women do not enjoy the same legal positions. However, this would also abolish a non-bureaucratic, consensual and extra-judicial method of terminating a marriage, which perhaps neither partner wishes to sustain.

Particularly in view of the notorious overload (and corruption) in the courts in Arab countries, one should carefully weigh the options before deciding the direction in which the reform of the divorce law should proceed. For example, If men and women were to be equal before the law, should consensual, extra-judicial forms of marriage dissolution (such as redemption and repudiation) In the case of redemption, attempts should be made to set an upper limit on the sum that a woman pays for a divorce – an opinion also shared by some traditional schools of law.

If children are involved, the state should at least review a consensual, extra-judicial custody agreement and the children should be given a fair hearing. In the long term, attempts should also be made to modify the principle of the fault divorce obtained by the woman through the judicial process.

However, women's groups in many countries are currently campaigning for expanding women's possibilities for divorce and for curbing the opportunities available to men, thus the issue of losing one's rights in the case of a judicial divorce may not necessarily take priority.

The shortcoming of the judicial divorce is, however, causally linked to the fault divorce and to the related loss of rights⁶⁴⁸.

The objective of establishing an Arab Court of Human Rights is one of various initiatives made by the government of Bahrain to reform the LAS human rights system, in particular following the uprisings that began in numerous MENA countries since 2011. These uprisings helped to expose the dismal state of human rights in the region, the weakness of human rights guarantees, and the lack of effective enforcement and recourse mechanisms for victims of human rights violations. In March 2012, a new proposal to create a court was presented

⁶⁴⁸ Ibid.

by the Kingdom of Bahrain. However, this time the proposal was specifically to create an Arab Court for Human Rights⁶⁴⁹.

Section I: Application of international women's rights by national judiciary

Before analyzing the application of international women's rights conventions by national judges in the Arab countries, below is an overview of how judiciary in countries of other regions have applied them.

States vary tremendously in how they have implemented CEDAW, but again there is no record or coding of national gender policy before and after ratification of the treaty. In the absence of concerted efforts by legislatures and executives to change gender policy, it is the judiciary of many countries that ends up doing the work of bringing domestic law into conformity with the treaty. Legal systems vary in how much weight is given to the provisions of treaties ratified by national governments. The British common law tradition, for example, is often thought to treat international treaties as *non-self-executing* unless made into statutory law by the appropriate legislative body. Statutory legal traditions take treaties to be immediately binding. Interesting and important decisions on CEDAW have been forthcoming from around the globe, and from both legal traditions.

One decision that probably affects the most number of persons is the decision of the Indian Supreme Court, in *Apparel Export Promotion Council versus A.k. Chopra*, decided on January 20, 1999. Mr. Chopra attempted to sexually harass a secretary while working as executive for Apparel Export Promotion Council. He was fired from his position, and then sued the Council, alleging (with lower court agreement), that since he did not actually commit any sexual act, was not harassment. The Supreme Court, using CEDAW, made major case law in defining sexual harassment along lines of intimidation. The Court was explicit in noting that the Parliament had not clarified definitions of sexual harassment, but by ratification of CEDAW the domestic courts were bound to consider such cases.

In the absence of legislative guidance, the Court promulgated its own standard to be in conformity with CEDAW. In the words of the Court (1999): "These

⁶⁴⁹ International Commission of Jurists, Proposed Arab Court of Human Rights: Rewind the process and get it right, PP: 13-14, available at: <http://www.fidh.org/>

international instruments cast an obligation on the Indian State to gender sensitise its laws and the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. This Court has in numerous cases emphasised that while discussing constitutional requirements, court and counsel must never forget the core principle embodied in the international conventions and instruments and as far as possible, give effect to the principles contained in those international instruments. The courts are under an obligation to give due regard to international conventions and norms for construing domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law⁶⁵⁰.”

Albania:

The period between 2003 and 2009 was characterized by several initiatives and activities that led to improvements in the Albanian legislation with regard to prevention of violence against women. The implementation of new laws was accompanied by a series of measures taken by the relevant authorities; however, problems still remain with their practical implementation. The degree of familiarization with and awareness of the law was not sufficient enough to demand from the courts to implement these measures, while the judges themselves were still unclear as to the way they were to be implemented. In addition, the Family Code (FC) did not envisage any time limits for violence related measures. Law No. 9669 of 23 December 2006 on Measures against Violence in Family Relations, (The Domestic Violence Law) entered into force on 1 June 2007.

The law on domestic violence envisages legal measures that guarantee the protection of all family members, regardless of gender or age, with a view to preventing them from becoming victims of domestic violence. These measures provide for better protection, not only of the persons who are currently in a family relationship, but also of persons who used to be in a family relationship, such as former spouses or partners.

The practical implementation of this law has underlined the problem of protection from violence in girlfriend/boyfriend or engaged-to-be-married relationships (i.e. other intimate relationships). They are not included among the subjects protected by the law on domestic violence and the courts have not

⁶⁵⁰ Michael Kevane, Ratification of CEDAW (Convention for the Elimination of Discrimination Against Women), PP: 5-7, available at: http://eml.berkeley.edu/~webfac/bardhan/e271_sp03/mcvane.pdf

extended coverage by protection orders beyond the subjects mentioned in the law. In practice, violence against a female partner or girlfriend is present, and has in some extreme cases, even led to them being killed. Applications can be made to Courts for the issuance of orders of protection against domestic violence, which the law terms "Protection Orders" or "Emergency Protection Orders".

The law also provides for legal assistance free of charge in the preparation of the complaint/application and any accompanying documentation, as well as their submission to the Court. All the proceedings are conducted within the civil jurisdiction system; however, this does not prevent the commencement or continuation of criminal or other proceedings on the same case. The law "On Measures against Violence in Family Relations" requires from the Council of Ministers to adopt byelaws. In addition, it clearly defines the duties of each of the relevant public authorities. So far only a part of the byelaws have been adopted. As things stand now, these acts are being successfully implemented by the Ministry of the Interior, which has established new professional structures to deal with domestic violence, which are proving to be very effective. However, more remains to be done regarding the further training of staff and the establishment of similar professional structures in all the districts in the country⁶⁵¹.

In the recent years, several special measures have been taken in Albania for the realization of women's right to be involved in public life, especially in the higher levels of decision-making. The most important measure in this regard was the introduction of legal provisions for instituting gender quotas. These provisions were especially introduced through the law "On Gender Equality in Society" (2008) and the Electoral Code (2009).

The implementation of Electoral Code provisions on gender quotas in the 2009 parliamentary elections led to an increase in the number of women representatives in the Albanian parliament. Compared to the 2005 elections, the number of elected women MPs in the Parliament increased by 7%, taking the number of women to 15% of the total number of representatives. Nevertheless, this result is still far from the objectives set in the law, the legal requirement for

⁶⁵¹ United Nations Human Rights, SHADOW REPORT ON THE IMPLEMENTATION OF THE CEDAW CONVENTION IN ALBANIA, 2010, PP: 21-26, available at: http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/GADC_Albania_46.pdf

gender representation being a minimum of no less than over 30%. The obligation to comply with the gender quota requirement also applies to positions in appointed bodies. This obligation is contained in the law "On Gender Equality in Society", which requires equal gender representation in all legislative, executive and judicial bodies, as well as other public institutions.

The law contains a clause stating that the quota requirement in appointed bodies shall be complied with by appointing a candidate from the less represented gender, all other qualifications and qualities being equal. In the recent years the high appointing bodies in the country have, to some extent, taken this criterion into account in the procedures for appointing senior government officials, but not as much as is desirable. Although the number of female judges has increased, there is only one woman minister in the present government, although there are more women in deputy ministerial posts⁶⁵².

United kingdom

Successive UK governments have consistently refused to incorporate CEDAW into domestic law. This is despite the CEDAW committee's persistent urging of it to do so. Thus both in 1999 and again in 2008, the Committee recommended that the UK fully incorporate CEDAW. The UK has entered a comprehensive reservation to CEDAW permitting it to apply all UK legislation and rules of pension schemes affecting retirement pensions, survivor's benefits, and other benefits in relation to death or retirement (including retirement on grounds of redundancy). It has also entered reservations in relation to certain social security benefits. This contrasts with the position under the ECHR. Not only has the UK no equivalent reservations under the ECHR. In addition, such reservations are clearly inconsistent with ECHR jurisprudence, which has held that social security benefits, including survivors' benefits, must be applied without discrimination on grounds of sex.⁶⁵³ In the 2008 Concluding Observations, the Committee requested the UK to undertake public awareness and training programmes and to raise awareness among women of their rights under the Convention and the Optional Protocol, as well as the Committee's general recommendations. It also requested the UK to ensure that the Convention, the Protocol, the Committee's general recommendations and its

⁶⁵² Ibid.

⁶⁵³ *Stec v United Kingdom* (2006) 43 E.H.R.R. 47 (European Court of Human Rights), Sandra Fredman, CEDAW in the UK, PP: 1-5, available at: www.google.com.lb/search?q=how+judges+Implement+CEDAW+convention+in+europe&newwindow=1&ei=rLA3VPyjG4rSaMqIgrGD&start=10&sa=N&biw=1366&bih=624

views on individual communications, are made an integral part of educational curricula, including for legal education and the training of judicial officers, judges, lawyers and prosecutors.

In response, the Government Equality Office has begun to take some steps to publicise CEDAW. With the Women's National Commission, it organised five CEDAW awareness-raising events for civil society and women's groups in various parts of the country, which included discussion sessions, where participants considered how NGOs could use CEDAW and the Optional Protocol more effectively as a tool to promote and protect women's rights in the UK. In addition, the Women's Resource Centre (WRC) and the Equality and Human Rights Commission (EHRC) presented a full day capacity-building and strategy conference on CEDAW in March 2009, with the aim of disseminating information on practical ways of using CEDAW by women's organisations⁶⁵⁴.

sri Lanka

In sri Lanka, gender-based violence against women has gained recognition under International law, in the jurisdictions of international courts and tribunals, in the Convention on the Elimination of Discrimination against Women (CEDAW) itself and under the Security Council's effort to broaden their approaches to peace and security. But an intertwined approach is still lacking and a concerted and coherent response from the UN system is needed. In light of Security Council Resolution 1820 and of consistent evidence of the pervasiveness of sexual violence during situations of armed conflict, general lawlessness and repression, it has to be taken into consideration that sexual violence is likely and foreseeable under certain circumstances. It is preventable, therefore, whenever it is planned and orchestrated as a tactic of war. This seems to be especially true in situations where the common plan involves the detention of women by military or paramilitary forces.

The remarks made by SCR 1820 and especially the link between sexual violence and tactics of war have to be taken into consideration when interpreting and implementing SCR 1820 to CEDAW. This interpretation is supported by international jurisprudence. Certainly, SCR 1820 and international jurisprudence are intertwined. The ad hoc Tribunal for Former Yugoslavia (ICTY) recognized a direct form of individual criminal liability which was

⁶⁵⁴ Ibid.

derived from “committed” and is known as joint criminal enterprise (JCE). This approach, recognizing the fore-see ability of sexual violence, provides a useful, lucid framework for joint liability, especially for perpetrators who are physically far removed from the locations of sexual assault crimes, including military and political leaders⁶⁵⁵.

Following the above overview, we will proceed with studying how the Arab countries applied the international women's rights conventions, mainly the CEDAW, and to what extent the latter has been present in the mind of Arab judges and in their judgments.

Paragraph I: Algeria

There is no specific international convention on the independence of justice in Algeria. However, criteria for the independence and impartiality of justice do exist in the texts of general international human rights law and constitute an «international procedural standard » with a normative character. Algeria has ratified the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979⁶⁵⁶.

Most national legislation ensures women some form of protection from discrimination; and women are treated equally in legislation governing employment, education, health, and the judicial system. Equality is recognized in the texts of law and many reforms have taken place in the legal and judiciary framework, Algeria's signing of agreements, pacts and declarations which aim to enhance equality provides essential support to civil society organizations fighting for their application in national regulations. Article 116 of the Constitution grants international treaties and agreements a greater power than that given to laws. The principle of the primacy of international agreements over national laws is an asset for the enhancement of women from the legal point of view⁶⁵⁷.

⁶⁵⁵ Visser Sellers, OHCHR, WRGUS, page 16. United nations human rights, Alternative report on the implementation of the UN Convention on the Elimination of Discrimination against Women (CEDAW), Sri Lanka, PP: 4, 10, available at:

http://www2.ohchr.org/english/bodies/cedaw/docs/ECCHR_Sri_Lanka_for_the_session_CEDAW48.pdf

⁶⁵⁶ Euro-Mediterranean Human Rights Network, ALGERIA, The independence and impartiality of the Judiciary, PP: 7, available at: <http://www.euromedrights.org/>

⁶⁵⁷ Iraq league development project, the Status of Women in Iraq: An Assessment of Iraq's De Jure and De Facto Compliance with International Legal Standards, PP: 88-89, available at: <http://www.americanbar.org/>

According to the penal code, a woman is considered equal to a man before the courts whether she is the plaintiff or the defendant. While a woman's testimony is considered equal to that of a man, a 1984 Ministry of Justice directive on the requirements for notarized deeds deems the value of two women witnesses equal to that of only one male witness; Algerian notaries actively apply this directive in practice⁶⁵⁸.

At the same time, the prejudices and conservative attitudes of judges and lawyers, therefore, can lead to discrimination in practice that does not exist in the legal texts. Most Algerian women's access to justice is further restricted by their lack of financial resources (men continue to maintain strong control over finances in most families), lack of confidence in the public sphere, and lack of knowledge of their legal rights.

Article 52 of the Family Code provides that a woman may be compensated if the judge finds that her former husband has abused his right to divorce her, but it is not specified what constitutes an abuse, or what compensation entails. Lawyers and women's activists have reported to Amnesty International that in practice the requirement of a ruling by a judge in order to effect a divorce is widely disregarded, and women are often simply disowned and thrown out onto the street by their husbands. Discriminatory divorce provisions aggravate women's unequal position in the family, as a husband may try to enforce his wife's duty to obey him and, as a last resort, is able to threaten to divorce her if she does not comply with his desires.

Most importantly, the discriminatory divorce provisions put women at increased risk of violence in the home, as women may feel that the economic consequences of a divorce leave them no option but to remain in a violent relationship. Even if a woman accepts the economic and social consequences of divorce, her own right to request a divorce is limited to specified conditions. These relate to the husband's absence or his failure to fulfil his duties as a husband, which may be difficult or embarrassing to prove in court⁶⁵⁹.

Amnesty International welcomes proposed changes, as they may be important steps towards protecting women from violence in the family in the long run.

⁶⁵⁸ Ibid.

⁶⁵⁹ 32nd Session of the UN Committee on the Elimination of Discrimination Against Women, 10-28 January 2005: Comments by Amnesty International on the compliance by Algeria with its obligations under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), available at [http://www2.amnesty.se/svaw.nsf/\(intdok\)/73A6475B8270C1F5C1256F8500812AD1?opendocument](http://www2.amnesty.se/svaw.nsf/(intdok)/73A6475B8270C1F5C1256F8500812AD1?opendocument)

These changes, however, would need to be accompanied by wide-ranging awareness-raising campaigns, and by other necessary measures to ensure women's protection in practice, failing which their effectiveness may be seriously undermined. In addition, some of the provisions that facilitate violence against women, such as those related to divorce, are reportedly not due to be amended. Amnesty International hopes that these and other discriminatory provisions in the Family Code will also be amended in order to bring Algeria's national legislation into line with its obligations under CEDAW⁶⁶⁰.

Algeria's report to the CEDAW Committee confirms that virtually no cases of violence in the family are brought to court in Algeria⁶⁶¹. According to Algerian women's activists the threat of the economic and social consequences of a divorce prevents most victims of violence in the family from taking legal action. In practice, a woman is likely to take legal action only if she knows that she has somewhere else to live. In the rare cases in which violence in the family is taken to court, no specific measures are taken to protect a woman while the judicial investigation takes place.

Only once a person is accused of a crime punishable by a prison sentence may a judge subject the defendant to measures of judicially imposed constraints (*contrôle judiciaire*), which may include banning the person from a place or from meeting a particular person, or restricting him or her to a geographical area⁶⁶².

On the other hand, women's presence in the judiciary has never been an issue. Women represent about a third of the 3,000 judges. Although few women hold high positions in the judiciary, in 2004, a woman was nominated President of the State Council⁶⁶³. Since Algeria's independence, women have entered the judicial field, holding positions as judges and participating at all levels of judicial committees, in significant numbers. In 2005-2006, the number of women judges in Algeria was 1063 out of 3069 (34.57%).

⁶⁶⁰ Refworld, ALGERIA, BRIEFING TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PP:20-22, available at: <http://www.refworld.org/>

⁶⁶¹ Algeria's second periodic report, *supra* note 1, p. 17. Refworld, ALGERIA, BRIEFING TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PP:33-35, available at: <http://www.refworld.org/>

⁶⁶² Article 125 (b) (1) of the Criminal Procedure Code, Refworld, ALGERIA, BRIEFING TO THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, PP:37, available at: <http://www.refworld.org/>

⁶⁶³ Fidh, Women and the Arab Spring: taking their place?, PP: 66, available at: <http://www.fidh.org/>

This number includes judges in Appellate Councils, Supreme Court Justices and the Council of the State, Algeria's highest judicial body. In 2007, there were 3 women presidents of higher courts, 29 women presidents of tribunals and 83 women presidents of sections. The number of women holding leading positions remains weak, however, despite the high number of women in the field.

The Supreme Court includes 32 women, of which 6 are department heads. The Council of the State, the highest body in the Administrative Judiciary, is led by a woman and includes 23 women, one of which heads a chamber and another 5 head various departments. Of 211 judges in judicial councils, women heads of councils numbered 3 of 79; women deputy heads of councils numbered 5; and women heads of chambers numbered 60. Of 767 women judges in courts, 28 women were heads of courts, 70 women were investigative judges, and 37 women were assistant public representatives.

Of the 19 members of the Judicial Supreme Council, which is the commission responsible for assignments, promotions, and penalties, 1 woman was elected by the judiciary and 2 were appointed by the President of the Republic⁶⁶⁴.

Paragraph II: Bahrain

Women are treated as men before courts in Bahrain, and a woman's testimony is accepted by the court on equal footing as that of a man, except in cases related to Islamic Sharia Law, in which a man's testimony carries double the weight of a woman's, according to Islamic Sharia principles. A female attorney has the right to represent her clients before courts and special judicial establishments on equal footing with a male attorney. As for delivering legal services, the state is committed to delivering such services to those who need them, males or females alike. Women are granted similar compensations as men in similar circumstances, and women face the same provisions faced by men in similar cases. Reservations have weakened the positive effects of the Kingdom of Bahrain joining the CEDAW Convention, since there are no conflicts between the Convention and the principles of the Constitution, which clearly stipulate that citizens are equal before the law and general duties, on the basis of sex, origin, language, religion or faith.

⁶⁶⁴ DePaul University College of Law, GENDER JUSTICE AND WOMEN'S RIGHTS IN IRAQ, February 2006, PP: 53, available at: <http://www.law.depaul.edu/>

Furthermore, there is no conflict with Islamic Sharia Law, which requires the cancellation of these reservations⁶⁶⁵. Regarding the application of the CEDAW by the national judiciary in Bahrain, we have not found judgments which apply directly the CEDAW and therefore it seems that its application has not been a practice in Bahrain.

Paragraph III: Egypt

It is clear from the foregoing that, in accordance with the constitutional principles and legal precepts on which the Egyptian legal system is based, all State authorities are required in the performance of their functions to guarantee compliance with the principle of equality between men and women as embodied in article 40 of the present Constitution⁶⁶⁶.

It is noteworthy that the Egyptian Court of Cassation mentioned, in a judgment issued on 8 March 1957, that “ the conventions become a law of the state laws once it is ratified and the Egyptian judge should apply them even if their provisions infringes the provisions of internal law whether if the internal law was released before or after approving the convention.

Through its various bodies, the independent judicial authority provides women with full means of redress in accordance with the type of dispute and the parties involved, as set forth hereunder. The legislative authority exercises its functions within the framework of compliance in the enactment of laws with the approved constitutional principles and provisions, including the principle of equality between men and women.

The Supreme Constitutional Court is the means by which women may seek redress in respect of laws or ordinances enacted by the legislature which are in contravention of such principles. It is an independent judicial body established in accordance with the provisions of articles 174 to 178 of the Constitution, and it is unique in having the power to decide on the constitutionality of laws and ordinances and to interpret legislative and judicial texts in a manner binding on

⁶⁶⁵ United nations, THE SHADOW REPORT ON IMPLEMENTATION OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW), 2008, PP:19-20, available at: <http://www2.ohchr.org/>

⁶⁶⁶ United Nations, Committee on the Elimination of Discrimination Against Women (CEDAW), Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women Combined fourth and fifth periodic reports of States parties, Egypt, available at <http://www.un.org/womenwatch/daw/cedaw/cedaw24/cedawcegy45.pdf>

all State authorities. The annulment of any text deemed unconstitutional is effected by the publication in the Official Gazette, within the legally specified period, of Supreme Court judgments. The Supreme Constitutional Court has issued a number of judgments relating to human rights in general and to the principle of equality between men and women in particular⁶⁶⁷.

In Case No. 23/16, the Supreme Constitutional Court of Egypt considered the constitutionality of Article 73(6) of the Law of the State Council (Law No. 47/1972), which prohibited a candidate for the state council from being married to a foreigner. The Supreme Constitutional Court held that the prohibition was a violation of the constitution, particularly of the rights to privacy, marriage, and family life enshrined therein, and in doing so referred to Article 16 of the UDHR; Articles 6 and 16 of CEDAW; the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages; Article 5 of the Convention on the Elimination of All Racial Discrimination; and Article 23 of the ICCPR⁶⁶⁸.

Despite this important ruling, women are still barred from serving as judges in other state bodies, including criminal courts. In 2007, the Supreme Judicial Council selected 31 women to serve as judges in family courts, though some Muslim conservatives in Egypt criticized the decision. The Egyptian constitution states in article 40 that "all citizens are equal before the law. They have equal public rights and duties without discrimination due to sex, ethnic origin, language, religion or creed."

As a party to the CEDAW, Egypt has an obligation to eliminate gender-based discrimination in political and public life, and "in particular, shall ensure to women on equal terms with men, the right to perform all public functions at all levels." The United Nations' CEDAW Committee, in its review of Egypt's state report at the end of January 2010, recommended "that the Convention and related domestic legislation be made an integral part of the legal education and training of judges, magistrates, lawyers and prosecutors, particularly those working in the family courts, so that a legal culture supportive of the equality of women with men and non-discrimination on the basis of sex is firmly established in the country."

⁶⁶⁷ United Nations, Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined fourth and fifth periodic reports of States parties, Egypt, PP: 17, available at: <http://www.un.org/>

⁶⁶⁸ Mohamed Y. Mattar, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, PP: 41, available at: <http://harvardhrj.com/>

Today, three women serve as ministers in Egypt's 27-member cabinet. A 2009 law requires that women should hold at least 12 percent of the 518 seats in the lower house of parliament, beginning with the election scheduled for November 2010⁶⁶⁹.

Paragraph IV: Iraq

The court applied international law, referring to the CEDAW, especially to Article 16, which provides for the principle of equality in marriage, and Article 5, which calls for the elimination of harmful customary practices that are based on the inferiority of women. Additionally, the court also relied on Articles 23 and 24 of the ICCPR, which provide for the equality of men and women. The court characterized a request for a return to the marital home for disobedience as a form of violence against women, an abuse of rights, and a breach of the marriage contract, which is based on love, affection, and respect, according to the court.

The significance of this case is that in the absence of a relevant provision in domestic law, the court applied international law directly, filling the gap. A right that has been upheld by domestic courts through reference to general principles under international law is the right to movement. For instance, in an Iraqi case, a husband sought to prohibit his wife from travelling abroad with their children without his approval.

The Iraqi Appellate Court 263 held that the husband did not have the right to prevent his wife from travelling because this would violate her right to freedom of movement, as provided in Article 42 of the Iraqi Constitution of 2005²⁶⁴ and Article 13 of the Universal Declaration of Human Rights. Furthermore, the court held that a marriage contract does not give a husband any privilege over his wife; the contract instead stipulates equality in the rights and duties of the husband and the wife, as similarly provided for in Article 16 of the CEDAW. The husband's prevention of his wife's travel constituted a violation of her right to equality and to be free from discrimination⁶⁷⁰.

⁶⁶⁹ Human rights watch, Egypt, available at: <http://www.hrw.org/>

⁶⁷⁰ Mohamed Y. Mattar, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, PP: 43, 48 available at: <http://harvardhrj.com/>

According to article 40 of the Iraqi Personal Status Law, both spouses have the right to ask for legal separation, if one of the cases defined therein is applicable. It specifies that:

“Both spouses may request separation for any of the following reason:

- If one of the spouses inflicted harm to the other spouse or to their children rendering the continuation of their marital life impossible

Considering that marriage should be based on consent and mutual respect, the laws guaranteed the wife's rights to be treated well by her husband; and considering that Personal Status Laws in Arab countries are derived from the provisions of the Islamic Sharia which allow polygamy for men although within defined rules and conditions, namely the presence of a justification for such polygamy and the approval of the first wife, as stipulated by article 40 of the Iraqi Personal Status Law which granted the wife the right to ask for separation if the husband takes a second wife without respecting the conditions provided for in the Law; it stated the following:

“Both spouses may request separation for any of the following reasons:

If the husband marries another wife without the permission of the Court.”

The condition which requires that the first wife be aware of a second marriage is an essential guarantee for her rights, and this was what the judges adopted to guarantee such rights⁶⁷¹.

Article 41 of the Iraqi Constitution of 2005 provides that each religion or sect has freedom to manage its affairs and religious institutions, including personal status laws. This effectively repeals the IPSL, and allows each sect to create its own family laws, most likely to the detriment of women's rights.

For instance, in October 2013, the Ministry of Justice submitted drafts of both the Ja'fari personal status law, and the Ja'fari judiciary law, based on Ja'fari doctrine. The draft Ja'fari personal status law sets the minimum age of marriage for girls at 9, and further enables temporary marriages and polygamy. Iraqi women's organizations have been actively campaigning to retain the IPSL and invalidate Article 41 of the new Constitution.

⁶⁷¹ Raoul Wallenberg Institute, Jurisprudence, In the Application of Human Rights Standards In Arab Courts, PP: 98- 101, available at: <http://rwi.lu.se/>

There is a need to recognize that resistance to reform towards equality and justice for women and in this case for Constitutional amendment, stem from reasons beyond ostensible religious grounds, including political interests and power relations. Given the State party's history of progressive interpretations of the Sharia through the IPSL and its subsequent amendments, and the strong advocacy by women's groups for reconsideration of Article 41, the government should display leadership and the political will to take concrete steps to comply with the State's commitment to the CEDAW Convention⁶⁷².

As a way to combat violence against women, the United Nations Assistance Mission for Iraq (UNAMI) welcomed the endorsement, by the Council of Ministers of a National Strategy on Combating Violence against Women on the occasion of International Women's Day. The Strategy aims at creating a road map for improving legal protections for women and girls through the review and reform of existing legislation, in particular those contravening the Iraqi Constitution and the Convention on Elimination of All forms of Discrimination against Women. The Strategy also aims at improving protection mechanisms for women and girls who are the victims of violence by enhancing coordination between law enforcement and justice institutions, establishing family courts throughout Iraq, and improving the provision of legal, health, and psycho-social services for victims of violence⁶⁷³.

Although the Strategy sets ambitious goals and its implementation is still embryonic, members of the women's rights network of Iraq considered its endorsement as the most significant achievement of the last ten years.

The absence of comprehensive data on violence against women is due to the fact that victims do not feel comfortable in reporting their cases to the police or the judiciary for fear of retaliation by the alleged perpetrators or their family members. The lack of action by law enforcement and judicial institutions to address violence against women and girls is frequently linked to their lack of understanding of the need to protect the rights of women and girls, owing to the

⁶⁷² NGOs Coalition of CEDAW Shadow Report, Shadow Report Submitted to the CEDAW Committee (February 2014), *supra* note 23, p. 12. Musawah, Musawah Thematic Report on Article 16: Iraq, PP: 18-19, available at: <http://www.musawah.org/>

⁶⁷³ Heartland Alliance for Human Needs & Human Right, Iraq Programs, ISSUE 1 - 02.02.10, available at <http://www.heartlandalliance.org/international/research/heartbeat-iraq-lq10.pdf>

role of secondary importance that women have traditionally played in Iraqi society⁶⁷⁴.

The above could be one of the reasons why Iraq judiciary has not issued judgements based on international women's and children's rights.

As to the enforcement of labour rights, an independent Labour Court was established to preside over labour disputes in a timely manner. While these courts can be accessed by men and women equally as a form of contesting decisions as to employment and termination of employment ("hiring and firing"), the court does not appear to have jurisdiction to address general allegations of gender discrimination with respect to pay, promotion, or general treatment in the workplace (e.g., lack of facilities for women, lack of compliance with maternity provisions).

Article 59 of the Unified Labour Code states that there will be no hearing in courts for cases against the government filed by the official or the employee claiming rights under the Civil Service Law and that such hearings should be carried out by the "Public Disciplinary Council"⁶⁷⁵.

A broad spectrum of Iraqi rights activists, Sunni and Shia religious leaders, and judges have criticized the draft law as discriminatory, violating religious texts, and, because the law would single out one sect, entrenching sectarian divisions in law. The Iraqi Women's Network, an association of women's rights groups, held protests on March 8, International Women's Day, calling it a day of mourning in Iraq⁶⁷⁶.

Paragraph V: Jordan

The judiciary operates as a separate branch of power in Jordan. The constitution states that the judiciary is completely independent and governed by law. The most recent amended independence of the judiciary law provides the higher judicial council with more authorities regarding the appointment of judges, who pass a free and open competition, and their designation. Also, the amended law

⁶⁷⁴ Iraq league development project, the Status of Women in Iraq: An Assessment of Iraq's De Jure and De Facto Compliance with International Legal Standards, PP: 88-89, available at: <http://www.americanbar.org/>

⁶⁷⁵ Iraq league development project, the Status of Women in Iraq: An Assessment of Iraq's De Jure and De Facto Compliance with International Legal Standards, PP: 101, available at: <http://www.americanbar.org/>

⁶⁷⁶ Articles 393 and 440-443 of the Iraqi Penal Code no, 111 of 1969. UNITED NATIONS, Assistance Mission for Iraq (UNAMI), Human Rights Office, August 2013, Report on Human Rights in Iraq: January - June 2013, PP: 34, available at: <http://protectingeducation.org/>

does not allow the Minister of Justice, as an executive power, to interfere with the legal procedures and court decisions in Jordan. In 2000-2001 the Royal Committee for Reviewing Judiciary Bylaws presented several recommendations to enhance the independence of the judiciary⁶⁷⁷.

Gaps in Jordanian laws also fail to provide protections for women's rights and equality. In the absence of a constitutional court, the available legal means to contest the constitutionality of laws include bringing a case before the High Court of Justice and submitting an ancillary challenge in a case before the courts.

The National Center for Human Rights deals with gender discrimination cases through its complaints unit but does not have the legal capacity to file such cases before the courts.

The decision of the Jordanian Court of Cassation (Rights) no.496/1992 (panel of five judges) dated 08/31/1992, Adaleh Center publications, stipulated: "The jurisprudence referred to the principle according to which a Christian man who divorces his Christian wife after converting to Islam is bound to compensate her for the harm inflicted upon her due to the divorce if it resulted from his abusiveness, since a divorced Christian wife is deprived, after divorce, from spousal support and alimony, considering that a Christian marriage union makes the marital bond of Christians an eternal bond, in accordance with the regulations of the Christian Personal Status Law and the rules of justice and equity, all that being supported by the provisions of article 134 of the Personal Status Law for Muslims, no.61 for the year 1976⁶⁷⁸."

Significant achievements recently have taken place in women's favour in Jordan. Enhancing women's political status and representation, steps to eliminate discriminatory laws and addressing the issue of violence against women and honour killings are but a few examples. These developments have been achieved in the context of a democratization process followed by a reform initiative targeting the institutions of power. An independent, effective, and fair legal system is one of the goals of the reform initiative. A new strategy for reforming the judiciary was adopted in 2005 where priorities included the training of judges on human rights issues and engendering the judiciary. This

⁶⁷⁷ Jordan embassy, Jordan and human rights, available at: www.jordanembassy.org.

⁶⁷⁸ Raoul Wallenberg Institute, Jurisprudence, In the Application of Human Rights Standards In Arab Courts, PP: 96, available at: <http://rwi.lu.se/>

new atmosphere of reform created a momentum that opens the door to women's activism and their demands for more rights. The debate on citizenship as a central feature of democracy has encouraged many women activists to shift the discourse on the women's question from a moral and ethical one to a discourse of equal human rights. This would realize the Jordanian constitutional stipulation that "All Jordanians are Equal before Law"⁶⁷⁹.

As a result of these initiatives, women's access to leading positions within the legislative and judicial bodies has increased (16 female judges serve today on diverse civil courts); a quota system was adopted at the level of the parliament's lower house; women were appointed to the upper house; and recent legal amendments to the Personal Status Law and the Penal Code (the latter often associated with honour killings) have helped to change the lives and aspirations of many women. In spite of these achievements, women face considerable problems within the judicial and legal system. Women are still underrepresented in judicial and legal decision making positions; the legislative amendments are at risk because of the significant presence of tribal leaders and Islamists who often challenge changes in women favour; and the courts are still men's domain. While calls for more female representation within the judicial system (mainly as judges) and more legal reforms are heard loudly in the Jordanian public space, it is important to research the status and role women play within this context. This paper will thus examine the patterns and trends in women's access to and participation in the legal system⁶⁸⁰.

In order to support women's entry into the judicial system, the Judicial Institute of Jordan's bylaw states that women shall constitute a minimum of 15% of the Institute's student body. Students accepted in the Judges of the Future Program are accepted on a fifty-fifty basis in all governorates, which will definitely lead to raising the ratio of women's participation in the judicial system, wherein the percentage of female judges has risen from 1.2% in 2000 to 7.1% in 2009 (the number now stands at 48 female judges). It is worth mentioning that this development has involved both quality and quantity, as one woman has been

⁶⁷⁹ THE SECOND WORLD CONGRESS FOR MIDDLE EASTERN STUDIES, 11-16 JUNE 2006 AMMAN, JORDAN, organized by UNESCO and UNEFEM, available at http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/gender_justice.pdf

⁶⁸⁰ Ibtesam al-Atiyat, *Women, Law, and Judicial Decision Making: The Case of Jordan* UNESCO, WOMEN, LAW, AND JUDICIAL DECISION-MAKING IN THE MIDDLE EAST AND NORTH AFRICA: TOWARD GENDER JUSTICE, available at: <http://www.unesco.org/>

appointed as president of the Amman Court of First Instance, while several female judges are members of courts of appeal panels⁶⁸¹.

Paragraph VI: Lebanon

Lebanon's judicial system consists of ordinary courts and special courts. Ordinary courts, divided into civil and criminal units, are hierarchical and include the courts of first instance, the courts of appeal, and the Court of Cassation, which has jurisdiction over final appeals and inter-court disputes. Special courts preside over specific areas of law and include juvenile courts, military courts, and labor courts. Religious courts for each sect hear cases pertaining to personal status and family law. Sharia courts, for instance, are separated into Sunni and Shiite hearings, and ecclesiastical courts have jurisdiction over the personal status issues of the various Christian denominations.

The court system is supervised by the Ministry of Justice and the State Consultative Council, the supreme administrative court of Lebanon. All citizens, men and women, are guaranteed equal access to the judiciary under Article 7 of the code of civil procedure, which provides every Lebanese with the right to initiate proceedings and the right to defense. Article 427 of the same code stipulates that any Lebanese citizen may apply for legal aid if he or she is unable to pay the costs and fees of the proceedings. However, women rarely claim these rights in practice, either because of legal illiteracy or because the prevailing patriarchal social system discourages them from asserting their rights in opposition to men. Similarly, noncitizen women have access to justice and are offered free legal assistance, but they rarely resort to courts due to ignorance of these services or the fear of becoming involved with an unfamiliar legal system.

In 2005, the NCLW established a CEDAW committee to prepare Lebanon's official report to the United Nations on the status of women and suggest ways in

⁶⁸¹ The Jordanian national commission for women, Jordan's Fifth National Periodic Report to the CEDAW Committee – Summary, PP: 7, available at: <http://www.women>

which Lebanon could implement the clauses of the CEDAW treaty. To this end, it organized a workshop entitled "On the Road to Applying CEDAW"⁶⁸².

In a nutshell, although Lebanon is known by the having a high level education for judges, when it comes to the application of international law, we haven't seen it as a practice by various Lebanese judges.

Paragraph VII: Morocco

A major issue repeatedly mentioned in Morocco is that of enforcement of the 2004 reforms. This is due to a number of reasons. Given the eight-year period since the reforms were promulgated, the personnel in the judiciary is still the same as before. Many judges, trained in the previous legislation based on the Shariain its Maliki interpretation, are sometimes reluctant to apply fully the new reforms.⁶⁸³

As for women position in the judicial posts: In 2010, women represented 20% of all judicial posts: 21% of judges and 11.8% of prosecutors. In January 2012, the Moroccan association of women judges (established following the reform of the Constitution which removed restrictions on such associations) announced that it would submit a claim to the Supreme Court calling for increased representation of women in the judiciary and access to the highest positions, currently occupied exclusively by men. Female judges are not yet permitted to serve in courts applying Sharia law. Women represent 18 percent of the 3,082 judges⁶⁸⁴.

The modern legal system that handles non-family matters comprises the common law courts and specialized jurisdictions. In parallel to the modern legal system, Islamic law courts handle family matters such as marriage, divorce, inheritance, and child custody. The bulk of judicial irregularities in non-political cases take place in Islamic courts, the communal and district courts, and the courts of first instance. These courts handle minor or uncontested infractions and can only impose monetary penalties and light jail sentences. Several factors

⁶⁸² Initial Report of States Parties: Lebanon (New York: UN Committee on the Elimination of Discrimination against Women, September 2, 2004), 29, <http://www.un.org/womenwatch/daw/cedaw/reports.htm>. Mona Chemali Khalaf, Freedom House, Lebanon, PP:6-8, available at: <http://www.freedomhouse.org/>

⁶⁸³ Mounira M. Charrad, FAMILY LAW REFORMS IN THE ARAB WORLD: TUNISIA and MOROCCO, PP: 10, available at: <http://www.un.org/>

⁶⁸⁴ The world bank, The Status & Progress of Women in the Middle East & North Africa, PP:50, available at: <http://siteresources.worldbank.org/>

facilitate corruption in these courts: legal ambiguities or vacuity; the defendant's unfamiliarity with the legal system; lack of disciplinary measures; inadequate representation; and resource constraints that result in cursory hearings, exclusive reliance on police reports, and admission of confessions taken under duress. Courts of appeal cannot address the irregularities of lower courts because they handle cases predominantly involving crimes punishable by five years in prison or more. And while the Supreme Court can review and adjudicate cases that make it to the courts of appeal, it renders decisions only on procedural issues, life sentences, and the death penalty⁶⁸⁵.

Therefore, the vast majority of defendants in lower courts have very few judicial outlets. A positive effect of this state of affairs is that, since 1999, the king has appointed a dozen women as royal counsellors and to high ministerial and managerial positions. In addition, in 2001 the government established a minimum 10-percent quota for women in the parliament. As an indication of Morocco's remaining problems, the UN Committee on the Elimination of Discrimination against Women issued a report in July 2003 asking the government to comply with signed conventions and accelerate reforms. The constitution stipulates the independence, universal accessibility, and legal accountability of the judiciary. In practice, however, the courts are subject to governmental pressure, and in civil and criminal cases, judicial discretion is the source of abuse and corruption⁶⁸⁶.

As the nucleus of society, family is granted legal protection as stipulated by the International Covenant on Economic, Social and Cultural Rights (ICESCR) in paragraph 1 of article 23 thereof:

“The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

The same text is also included in paragraph 3 of article 16 of the Universal Declaration of Human Rights. This protection applies whether the family is united or disintegrated by divorce, as child custody is mostly awarded to the mother. With the increase of divorce cases and social hardship, Morocco established the Social Solidarity Fund by virtue of the 2011. Finance Law with the aim to enable disadvantaged divorcees and widows to benefit from its allocations whilst waiting for the courts' final ruling in divorce and alimony

⁶⁸⁵ <http://www.freedomhouse.org/report/nodefield-data-countryname-0#.VCXybWeSz0c>

⁶⁸⁶ UNHCR, *Countries at the Crossroads 2004 – Morocco*, available at: <http://www.refworld.org/>

cases. The amount of the allocation was set to 350 Moroccan Dirhams for each beneficiary provided that the maximum total amount allocated per family does not exceed 1050 Dirhams. The aforementioned was tackled in the Court's decision⁶⁸⁷.

Morocco ratified the convention and worked on amending domestic legislations to make them concordant with its international obligations, what was reflected in the Moroccan Labor Code that comprised several provisions to prevent discrimination against working women and protect them from any harassment in the workplace. The judgment herein stated the following:

“Whereas the act of sexual harassment that the employee was subjected to is considered insulting and humiliating to women and an act of injustice towards her humanity. Perhaps the most important development supporting the judges' conclusion would be the provisions of the Moroccan Labor Code, especially article 40 thereof which considered sexual harassment committed by the employer against an employee a grave mistake that entails indemnification of the employee; therefore, the Court ordered that the plaintiff be indemnified⁶⁸⁸.”

Morocco ratified all conventions and worked on amending its domestic laws to be in compliance with its international obligations; article 36 of the Labor Code stipulated the following:

“The following do not constitute acceptable justifications for disciplinary punishment or dismissal:

- Race, color, gender, marital status, family obligations, creed, political opinion, national origin or social origin⁶⁸⁹.”

Despite improvements, it remains difficult for women to negotiate their full and equal marriage rights. Article 19 of the 2004 family law set the minimum age for marriage at 18 for both men and women, in accordance with certain provisions of the Maliki school of Sunni jurisprudence. Women who have attained this age may contract their own marriages without the consent of their

⁶⁸⁷ Raoul Wallenberg Institute, Jurisprudence, In the Application of Human Rights Standards In Arab Courts, PP: 99, available at: <http://rwi.lu.se/>

⁶⁸⁸ Ibid.

⁶⁸⁹ Ibid.

fathers. However, judges are empowered to waive the minimum age rule, and as a practical matter they are very reluctant to uphold it⁶⁹⁰.

Female victims of violence in Morocco need to feel that they can trust the system to protect their rights and bring them justice without having - oftentimes- to resort to extreme "solutions". Their rehabilitation and safety must be emphasized as much as their honour has been. Another notable weakness of the ability of the Moroccan legal system to protect victims is rooted in court delays, a feature typical of the country's bureaucracy. There are multiple causes of delay including prolonged hearings; insufficient human and financial resources in courtrooms; mismanagement and disorganization of court resources and caseload; inefficient legal procedures and court processes; and party delays. Numerous legislative and administrative initiatives have been undertaken over the years to address these issues. And while many have been successful in their specific aims, the issue continues to be flagrant. An efficient and effective court system is crucial to the administration of justice to protect the rights of female victims of violence⁶⁹¹.

Since the enactment of the new Moroccan family code, a variety of observers have noted that in practice the new code suffers from problems of application. At times, courts and lawyers utilize and apply the code in ways that are either erroneous or inconsistent with the spirit of the reform, and, in general, application is not uniform throughout the country. This program addresses this concern and develops comprehensive online modules of women's rights under international and national law to be taught to judges and clerks throughout Morocco.

The curriculum, which will be adopted and standardized by the Institut Supérieur de la Magistrature (national judge institute) as part of its official core curriculum, will foster uniform interpretation and application of the code, consistent with international human rights standards and basic principles of gender equality. This is the first time e-learning is being integrated into formal judicial training.

This association brings together women from across the MENA region in a network of lawyers, judges and other legal professionals to exchange expertise and information, promote women as decision-makers, provide professional

⁶⁹⁰ Fatima Sadiqi, *Non-State Actors in the Middle East*, available at <http://books.google.tn/books?id>

⁶⁹¹ Leila Hanafi, *Al Jazeera*, available at : <http://www.aljazeera.com/>

development training and mentoring, and help to secure women's equal rights under the law. With this funding, the network is developing sub-regional hubs in three countries to conduct professional development programs reaching more than 500 women legal professionals⁶⁹².

Paragraph VIII: Palestine

In May 2008, the Chief Justice, Attorney General and Minister of Justice presented a joint strategic framework for the reform of the justice sector. The implementation of the "Law on the Judicial Authority" is hampered by the ambiguity of its provisions in relation to the Basic Law and other Palestinian laws. This ambiguity regarding the respective roles and responsibilities of the judicial institutions has led to competition between the judicial actors. The conditions for training of judges and prosecutors were improved by the EC supported establishment of the Palestinian Judicial Training Institute.

In Gaza, the functioning of the judiciary system regressed, through establishment by Hamas of a parallel prosecution system, a separate judicial training institute and the eventual destruction of the Ministry of Justice building in December 2008⁶⁹³.

Continued political unrest and ongoing armed conflict, combined with restrictions on freedom of movement, the inability of most PA courts to enforce decisions, and a slow process of new legislation, make it extremely difficult for Palestinian women to advocate for women's rights in the face of continuing violence and poverty. As a result, Palestinian women suffer from insufficient legal protections and inconsistent enforcement of laws. While women enjoy freedom of expression, they also find it difficult to advocate for their social rights when all of Palestinian society suffers under Israeli occupation. Of the 46 judges working in the West Bank 4 are female, as is the case also in Gaza. Out of the 1,332 lawyers in the Palestinian territories, 141 are female. Reasons for the low representation of women in the judiciary include the high costs of legal education and society's expectations concerning the roles of women. Also, women are not often promoted in the judicial hierarchy, and female lawyers are not afforded equal opportunity to

⁶⁹² US department of state, Judicial Curriculum Development on Women's Rights, Morocco, available at: www.mepi.state.gov

⁶⁹³ COMMISSION OF THE EUROPEAN COMMUNITIES, COMMISSION STAFF WORKING DOCUMENT, PP:5-6, available at: <http://ec.europa.eu/>

train, qualify, and develop skills to be able to compete for high posts Violence against women is extensively reported by local women's institutions and seems to increase during times of political and economic turmoil in the Territory⁶⁹⁴.

The Basic Law regulates rights and freedoms, outlines the organization of the executive, legislative and judicial authorities, and governs their interrelations. Article 94 of the Basic Law calls for the creation of an independent Supreme Constitutional Court to adjudicate disputes related to the Basic Law. The Law on the Supreme Constitutional Court, drafted and approved in 2006, governs the Court's composition, jurisdiction, procedures, and financial and administrative matters. Although it was promulgated in 2006, it has not yet been implemented and the Court has never been established. In the absence of a constitutional court, its duties have been temporarily assumed by the High Court, according to the transitional provision (Article 104) of the Amended Basic Law⁶⁹⁵.

The significance of the Palestinian Basic Law for women's rights in the OPT is twofold: it empowers the High Court to strike down unconstitutional legislation, including discriminatory legislation. In addition, although judges in the lower courts cannot decide upon the constitutionality of the law, they are obligated to take the principles of the Palestinian Basic Law - including the principles of equality and non-discrimination - into account when interpreting legislation. In practice, however, these judicial powers – which have potentially wide-ranging implications for human rights in the OPT – are not being employed to take women's rights forward. An initial database search of recent court judgments carried out by the author found that the principles of equality and non-discrimination established by the Palestinian Basic Law do not feature extensively in legal practice, either in the pleadings of lawyers or in the judgments of the courts⁶⁹⁶.

At present, the taking of an additional wife is only grounds for divorce if an additional clause to that effect has been inserted into the marriage contract. The reform proposals of the Office of the Chief Justice are more limited in scope; the draft law proposed by his office merely confers upon existing and potential

⁶⁹⁴ UNHCR, Women's Rights in the Middle East and North Africa – Palestine, available at: <http://www.refworld.org/>

⁶⁹⁵ International Bar Association, A Comparative Analysis of the Law on the Supreme Constitutional Court of the Palestinian National Authority, August 2009, available at <http://www.musawa.ps/uploads/File/Comparative.pdf>

⁶⁹⁶ Naser-Hussein, K., Palestinian Women's Centre for Research and Documentation, Review of Gender in Palestinian Legislation on Women's Political Participation [in Arabic], 2009, UNDP, A Review of Palestinian Legislation from a Women's Rights Perspective, PP:21, available at: <http://www.undp.ps/>

additional wives the right to be informed about the existence of the other in advance of the polygamous marriage. The Chief Justice issued an interim decision to this effect on 25 March 2011⁶⁹⁷.

As noted CEDAW guarantees women and men equal rights to enter into marriage and to leave it. In relation to the issues of divorce and judicial separation, women's groups and human rights advocates focus in the main on the need to revoke discriminatory provisions and to deter the arbitrary divorce of women by their husbands. Women's rights advocates are also calling for divorce to have legal effect only when it is carried-out under judicial supervision. In this respect, the Chief Justice has issued a decision to fine individuals who perform a divorce outside of court⁶⁹⁸. And we considered this as a good practice by the judiciary.

The judicial system came to a virtual standstill during the height of the second intifada. It was just beginning to recover in 2005. In late 2005, Human Rights Watch attended an initial hearing in a Ramallah rape case that had been frozen for five years. The Palestinian judicial system comprises the regular courts (which hear both civil and criminal cases) and Sharia religious courts for matters of personal status (the Sharia courts for Muslims and religious courts for recognized non-Muslim communities). The regular courts are structured in a two tier system plus a Court of Cassation. The first level comprises the Magistrates Courts, which hear civil and criminal cases below a certain penalty or damage value. For example, in November 2004, 1,591 cases and complaints were awaiting adjudication at the Qalqilya Magistrates Court by one judge⁶⁹⁹. We note here that the application of the CEDAW will be much more difficult by the Sharia religious courts than by the civil courts. Time will tell how much the Sharia courts will be able to apply CEDAW.

While the Basic Law (2002) and the Law on the Independence of the Judiciary (2002) provide for independence of the judiciary and the establishment of a Higher Judicial Council to oversee the appointment, supervision, training, transfer, and dismissal of judges, there are continued power struggles between the Ministry of Justice and the Higher Judicial Council, due at least in part to a lack of specific procedures and regulations governing the bodies' respective

⁶⁹⁷ Interview with Sheikh Yousuf Id'eis, Chief Justice of the Sharia Court, 29 March 2011, Ramallah. UNDP, A Review of Palestinian Legislation from a Women's Rights Perspective, PP:24, available at: <http://www.undp.ps/>

⁶⁹⁸ Interview with Sheikh Yousuf Id'eis, Chief Justice of the Sharia Court, 29 March 2011, Ramallah. UNDP, A Review of Palestinian Legislation from a Women's Rights Perspective, PP:24, available at: <http://www.undp.ps/>

⁶⁹⁹ Human Rights Watch Report, available at <http://www.hrw.org/reports/2006/opt1106/4.htm>

functions. In April 2005 three people, one armed with a pistol, raided Bashtawi's law office and demanded that the judge and his assistant recuse themselves from a particular case. Several months later, the Palestinian Bar Association called a one-day lawyers strike and released a statement criticizing the unsafe working environment for legal professionals, increased vigilantism, and the failure of the PA's legislative and executive branches to protect the judicial system. If actually prosecuted, all cases of gender-based violence, such as domestic abuse, incest, rape, or murder of girls and women in the name of "family honour," are brought as criminal cases in the regular courts. A woman may also allege domestic abuse against her husband in the shari'a (Muslim religious or personal status) court system, but only in order to prove that she has grounds for divorce based on harm, not in order to bring criminal charges against her husband⁷⁰⁰.

Section II: Application of international children's rights by national judiciary

The CRC is one of the conventions providing for the rights of specific groups of persons, compared to the conventions providing for general rights to all individuals regardless of their category: men, women, children, disabled persons or others, which fall under the International Bill of Human Rights represented mainly by: the Universal Declaration of Human Rights of December II, 1948; the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of December 16, 1966; and the two Optional Protocols to the ICCPR of 1990, the First Optional Protocol being related to the Human Rights Committee and the second to the abolition of the death penalty. By adopting the Convention on the Rights of the Child, States tried to enshrine the basic rights of this category which should be granted special protection and care given its vulnerability, and the principle of the best interest of the child is considered one of the principles that all State parties agreed to consecrate as specified in paragraph I of article 3 of the convention which stipulated the following:

⁷⁰⁰ Human Rights Watch, A Question of Security ,Violence against Palestinian Women and Girls, PP:23-25, available at: <http://www.hrw.org/>

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration⁷⁰¹.”

It is of use here to tackle the essential nature of the “best interests of the child”; which is considered a concept that bears some ambiguity and that has been the subject of contradicting interpretations and constructions. Some jurists consider that the term “best” should not be interpreted in such a way that the interest of the child prevails over any other interest. In fact, the agreement to consider child's interest a reference in many juvenile-related international conventions is due to the ambiguity of this concept, which some jurists described as the fill-in the- blank question the judge has to answer. This Convention was adopted on November 20 1989 and entered into force after achieving quorum for ratification on September 2 1990. It constituted one of the most adopted conventions as it was ratified, till the present day, by 193 States. Both the Algerian judge and the Iraqi judge applied this convention's provisions in their judgments. However we notice that a long time elapsed between the date of ratification and that of its judicial application⁷⁰².

Before analyzing the application of international children's rights instruments by national judges in the Arab countries, we will cover below how judges in non-Arab countries have applied the CRC:

All European countries have signed and ratified the CRC but they have not all incorporated it into national law. Whether or not incorporated into national law, the CRC is a binding obligation under international law that should guide national law and its interpretation. There is a wide range of regional and national policy and legal frameworks in Europe aimed at ensuring respect for the CRC. At the same time, national migration policies and legislation do not usually adopt a child rights perspective or consider the particular vulnerabilities of children, while most public policies on children do not take into account the specific rights of children in the context of migration. This leaves a clear gap in legal and policy frameworks – a yawning gap into which many migrant children, particularly those in an irregular migration situation, are falling. It is the concern about this gap and its consequences for some of the most vulnerable children in Europe that has motivated OHCHR and UNICEF to hold a Judicial

⁷⁰¹ Raoul Wallenberg Institute, Jurisprudence, In the Application of Human Rights Standards In Arab Courts, PP: 106-107, available at: <http://rwi.lu.se/>

⁷⁰² Ibid.

Colloquium and to commission this study. One source of good practice and the emergence of guidance on the best interest principle that warrants particular focus is the case law of regional and national courts. Given the multilayered obligations concerning child migrants originating from international obligations under the CRC, regional obligations flowing from the European Convention on Human Rights (ECHR) and EU law as well as national law, the jurisprudence on this issue is spread among national courts, the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR). The CJEU and the ECtHR are supranational courts, the jurisprudence of which the countries in Europe have accepted to be, at the least, authoritative insofar as the interpretations of regional and international standards are concerned. The national courts are clearly influenced by the judgments of these regional courts, judgments that are often referred to in their decisions regarding the best interests principle and migrant children⁷⁰³.

While legal traditions differ across European countries, with the majority operating a system of civil or codified law and the minority following common or precedent-based law, the different courts recognize that the CRC is a binding obligation in international law that should guide national jurisprudence on children. National courts are therefore bound to make the best interests of the child a primary consideration in all cases concerning children. In this process, it is to be expected that national courts will be influenced by the case law of European regional courts – the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) – given the regional obligations concerning migrant children that flow from the European Convention on Human Rights (ECHR) and EU law. The jurisprudence of these regional courts, which is accepted by European countries to be, at the least, authoritative insofar as the interpretations of international standards that the States have committed to are concerned, is therefore also an important source of good practice in determining the best interests of the child in individual cases⁷⁰⁴.

The European Union has clearly articulated its intention to apply and promote the principles contained in article 3 of the CRC. Article 3.5 of the Lisbon Treaty states that the Union will contribute to the protection of human rights and, in particular, the rights of the child. “Fundamental rights form an integral part of

⁷⁰³ Refworld, UNICEF, JUDICIAL IMPLEMENTATION OF ARTICLE 3 OF THE CONVENTION ON THE RIGHTS OF THE CHILD IN EUROPE, PP: 7, available at: <http://www.refworld.org/docid/5135ae842.html>

⁷⁰⁴ Ibid.

the general principles of law the observance of which the Court ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international instruments for the protection of human rights on which the Member States have collaborated or to which they are signatories". The Court has already had occasion to point out that the International Covenant on Civil and Political Rights is one of the international instruments for the protection of human rights of which it takes account in applying the general principles of Community Law. That is also true of the Convention on the Rights of the Child [which], like the Covenant, binds each of the Member States". The CRC has also been referred to in six opinions of Advocate Generals between 2003 and February 2009. However, in practice in a number of cases where the Court considered the substantive rights held by children in migrant families, their rights were found to derive directly from the EU Treaty and its directives and regulations and not from the CRC itself. For, example, in *Baumbast*, the Court confirmed that a child who entered education while his or her parent was exercising a right of free movement within the European Union has the right to remain to complete their education even if that parent is no longer in the member State in question. In doing so, it applied the rights arising from the EU Treaty and Regulation 1612/68, which were already binding on member States.

There has also been another line of case law dealing with the rights of migrant children who have acquired citizenship in the European Union even though their parents have not. In the case of *Chen* the Court held that a non-EU national mother derived a right to remain in the United Kingdom with her Irish child, who had moved to England and was financially self-sufficient. The Court reached this conclusion as it deemed that the only way that the child could remain and enjoy her right of free movement as a self-sufficient person was if the mother was with her to meet her day-to-day needs. Therefore, again the decision was dependent on an analysis of the rights of free movement contained in the EU Treaty and not her rights under the CRC. However, in the recent case of *Zambrano* an indirect link was drawn with article 3 of the CRC. In this case Colombian parents were liable to expulsion from Belgium while at the same time their children had acquired Belgian citizenship and therefore a right to remain there. It was argued that refusing to recognize that the non-EU national parents had acquired a derived right to reside in the EU would be a breach of both the European Treaty and among other provisions, article 24 of the Charter of Fundamental Rights, which itself makes direct reference to the best interests

of the child. The Court held that “since the entry into force of the Treaty of Lisbon, the Charter has acquired the status of primary law”. It also found that the “Belgian authorities’ decision to order Ruiz Zambrano to leave Belgium, followed by their continued refusal to grant him a residence permit, constitutes a potential breach of his children’s fundamental right to family life and to protection of their rights as children⁷⁰⁵”.

The Court in Europe has, through its case law, set out the principles, which should govern the implementation of a care order under Article 8 with the starting point being the fundamental nature of the family life relationship between parents and their children. According to the Court, a care order is intended to be temporary in nature and as a consequence, its implementation must be guided by the ultimate aim of family reunion. Only in exceptional cases, then, can it be justified to act as if a care order should never be lifted and even if it is necessary for the child to spend a long period of time in care, the aim of lifting the order must inform all arrangements made during that time. The Court’s approach, therefore, is to emphasize the vital nature of contact between parents and children in care in order to maintain the family life relationship in accordance with Article 8. This has implications for the way in which the care order is implemented, for restrictions on contact per se, and the process of reuniting parents and their children. Consistent with the purpose of Article 8 to protect family life from unlawful and arbitrary state interference the Court has found certain procedural safeguards to be implicit in respect for family life. Thus, even though the provision contains no explicit procedural requirements, the whole decision-making process (administrative and judicial proceedings) leading to measures of interference must be fair and afford due respect to the interests protected by Article 8. What falls to be considered under Article 8, therefore, is whether “the parents have been involved in the decision-making process to a degree sufficient to provide them with a requisite protection of their interests”. The Court has recognized that regular contact between social workers and parents provides an appropriate channel for the communication of the parents' views and appears to accept, therefore, that parental involvement at this level may be sufficient to satisfy the procedural requirement under Article 8⁷⁰⁶.

⁷⁰⁵ Ibid.

⁷⁰⁶ URSULA KILKELLY, CHILDREN’S RIGHTS: A EUROPEAN PERSPECTIVE, PP: 74,77, available at: http://www.jsijournal.ie/html/Volume%204%20No.%202/4%5B2%5D_Kilkelly_Children's%20Rights%20A%20European%20Perspective.pdf

It is arguable that the procedural rights implicit in Article 8 apply also to children although the Court has yet to make this observation explicitly. However, it is clearly arguable that children and young people, who wish to do so, should have the opportunity to be directly involved in the decision making process regarding their future care. Applying Article 8, this would require providing them with the opportunity to be heard and the right to be present at case conferences and other meetings where crucial decisions about their future are made. Like the parent's right to be involved, this right would not be absolute under Article 8, but would apply to the extent that it was meaningful or useful. The concept of in direct participation, or representation, is more important perhaps. Thus, where a child is not old or mature enough to participate directly, it is at best arguable that their interests under the Convention – that is their right to be protected from ill-treatment under Article 3; their right to remain with or at least have contact with parents, siblings and friends under Article 8 – require some form of independent and separate representation. This issue has not been unremarked upon in Strasbourg. The Commission has referred in its case law to the 'growing recognition of the vulnerability of children and the need to provide them with specific protection of their interests'. More recently, it suggested that individual social work assistance or representation for the children's interests should be provided at the beginning of the care process rather than at the institution of the care proceedings in order to ensure that any risk which they face is effectively taken into account.

The Court of Human Rights has considered indirectly there presentation and participation of children in private law proceedings. In particular, it has been critical of domestic proceedings determining custody and access between unmarried parents which appeared to ignore the view of the child and in a series of applications against Germany, it found that the failure that the German courts' failure either to hear the child at the centre of the access proceedings or to consider expert evidence in order to evaluate the child's wishes revealed that the applicant father was not sufficiently involved to protect his interests under Article 8. Although it is open to the German government to appeal these judgments under Article 44 para. 2 of the Convention, as they stand, however, they reflect clearly the influence of Article 12 of the Convention on the Rights of the Child, which sets out clear guidance as to the extent to which children should be heard and their views considered in all matters concerning them. Moreover, a strong line of case law from the Court emphasizing the child's right

to participate and be heard in private as well as public family law proceedings has the potential to impact heavily on Irish law in this area⁷⁰⁷.

Children are treated with great ambivalence by the courts. They are often held fully

responsible for criminal acts on the one hand, yet on the other are considered incapable of making decisions about living arrangements when parents separate. Child friendly justice has, for example, been given much greater visibility at European level in recent times. The Council of Europe Child Friendly Justice Guidelines (2010) is a manifestation of the intention of the Council to prioritise justice for children and the EU Agenda on the Rights of the Child (2011) includes as a key action item the promotion of the use of these Guidelines. The European Convention on the Exercise of Children's Rights (1996) provides standards on implementing children's rights in 'family proceedings'. It contains the right of children to, for example, express views in judicial proceedings and to apply for a legal representative. There is some interesting practice at domestic level concerning hearing children in proceedings affecting them⁷⁰⁸:

In **Finland**, the views of the child have a place of prominence in proceedings affecting them. In child care law, children's views on care placements must be heard, and placements without the consent of parents or guardians are conditional upon the consent of the child where she is aged 12 years or older. In family law, the child's views on custody and access decisions must be obtained (depending on age and maturity) where parents disagree. Finnish law also provides that neither custody arrangements nor contact visits can be enforced against the will of children aged 12 and over, or that of younger children who are deemed sufficiently mature⁷⁰⁹.

Brazil's Statute of the Child and Adolescent goes so far as to recognise the right of any child to intervene in a legal matter under the statute which affects her, as well as the right to free legal aid for this purpose⁷¹⁰.

⁷⁰⁷ Ibid.

⁷⁰⁸ University of Liverpool, European responses to global children's rights issues: exchanging knowledge and building capacity European Progress in Achieving Child Friendly Justice, 4 February 2014, Brussels, PP: 3, available at: <http://www.liv.ac.uk/media/livacuk/law/european-childrens-rights-unit/CFJ-, Aoife, Daly.pdf>

⁷⁰⁹ Ibid.

⁷¹⁰ Ibid.

In **England** and Wales children have the right to apply for permission to make an application to the courts concerning their residence, with whom they have contact and other matters⁷¹¹.

Following the above, we will discuss below the judicial Applications Related to child Rights in the Arab countries-

Paragraph I: Algeria

The CRC included the text on the principle of the best interests of the child of article 3. The jurisprudence conducting the comparison considered that the wording of article 3 is self-executing which is not the case for other clauses of the CRC although some jurists rely on article 9 which stipulates that: "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.

With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

Given that the best interests of the child are the reliable criteria, according to which all actions pertaining to children are taken pursuant to article 3 of the Convention on the Rights of the Child, then this interest requires that the child be raised within a family that guarantees the establishment of family bonds. The judgment considered that:

"The family of the child is formed by his close relatives who empower him; they include his father, siblings and half-siblings. The child's family has its own impact and psychological formation in reforming individual behaviour and in bringing life and tranquillity to the child; through it he learns the language and acquires some values and orientations." The Judge then should consider that the father is responsible for the welfare of his children as confirmed by article 8 of the Civil Law and by article %1 of the Juvenile Welfare Law⁷¹²."

⁷¹¹ Ibid.

⁷¹² Samia Bourouba, Jurisprudence, the Application of Human Rights Standards In Arab Courts, PP: 108, available at: www.rwi.lu.se

Algeria has also created several safe mechanisms for reporting VAC. The “I’m listening to you” helpline enables children to express their problems to psychological and social experts. It has also established juvenile protection units on the national and state levels, as well as child protection bureaus affiliated to the judicial police and complaint mechanisms at youth and sports institutions. This is in addition to medical and hospital facilities, which are also required to report incidents of violence⁷¹³.

Algerian law does not explicitly prohibit the use of confessions extracted through torture, the authority of the executive branch exerted over the Supreme Judicial Council, the lack of clear standards for appointing, promoting, or dismissing judges, the lack of standards for making reparations to individuals following wrongful detention or unfair court decisions, the increased use of preventive detention, and the lack of surprise visits to detention centres.

In its 2012 summit, the League adopted the Marrakech Declaration, which affirmed commitment to the CRC and its protocols and adopted tools for advancing children's rights accordingly.

According to the Charter of the Rights of the Arab Child, states submit reports to the General Secretariat (rather than to a treaty body of independent experts) on measures they have taken to give effect to the Charter⁷¹⁴.

Paragraph II: Bahrain

In 2001, in a historic national referendum the population endorsed the National Action Charter, the blueprint for the country's reform programme. In 2002, Bahrain was declared a “constitutional monarchy” with elected parliament, appointed council and independent judiciary system, and municipal and parliamentary elections were held on the same year. As part of the reforms, the setting up of NGOs, including Human Rights Organizations, has been encouraged. Despite these important steps, the UN has identified the protection of human rights, strengthening of government capacity to improve transparency

⁷¹³ League of Arab States (LAS), THE COMPARATIVE ARAB REPORT ON IMPLEMENTING THE RECOMMENDATIONS OF THE UN SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN, PP: 88 available at: <http://srsg.violenceagainstchildren.org/>

⁷¹⁴ Mervat Rishmawi, The League of Arab States in the Wake of the “Arab Spring”, PP: 5-6, available at: <http://www.cihrs.org/>

and participation, and empowerment of women and youth as key governance concerns⁷¹⁵.

The initial CRC report of Bahrain was due on 12 March 1994, but was submitted on 3 August 2000. The second periodic report was due on 12 March 1999. Upon review of the initial report, the Committee on the Rights of the Child issued the following main concluding observations⁷¹⁶:

- The principles of non-discrimination, best interests of the child, survival and development and respect for the views of the child are not fully reflected in legislation and administrative and judicial decisions, as well as in policies and programmes relevant to children.
- The narrow interpretations of Islamic texts in areas relating to personal status law may impede the enjoyment of some human rights protected under the CRC. The Committee is particularly concerned that the Sharia Court system lacks many basic and minimum international safeguards and procedures.
- There is no defined minimum age for marriage and that there are inconsistencies in other areas of Bahraini law with respect to minimum ages. For example, admission to employment (14 years) is less than age for completion of basic education (15 years) and juvenile justice system does not regard 15-18 years old as children and that there is no minimum age of criminal responsibility.
- The National Committee on Childhood is entrusted with the task of coordinating government ministries and NGOs in the implementation of the CRC but does not seem to have a clear mandate in this regard. The Committee welcomed the establishment of an independent monitoring body, the Consultative Council's Human Rights Committee; however, it emitted its concern that it does not have a child rights-sensitive procedure for dealing with complaints under the Convention.
- Insufficient efforts have been made to systematically involve civil society in the implementation of the CRC.

Having thus become part of Bahraini law, the provisions of the Convention can be invoked before the national courts. However, Bahrain does not apply the

⁷¹⁵ Draft Country Programme Document for Bahrain (2008-2011)", UNDP, June 2007,

⁷¹⁶ Save the children, Child Rights Situation Analysis For MENA Region, PP: 25, available at: www.essex.ac.uk

system of adoption as mentioned in the Convention, since the country's laws make provisions for the system of fosterage in accordance with the Islamic (*Sharia*) Law.

The Islamic Sharia courts in the Kingdom of Bahrain derive the law from the Holy Quran, the sayings and actions of the Holy Prophet Mohammed (Sunna) and the consensus of Islamic scholars (Ijma'a), and various other sources including (Qiyas), (Istihsan), (Ijtihad), judiciary precedent and custom and good conscience. There are clear texts which appear in the Holy Quran and/or in the Sunna with respect to particular issues and there are texts from which only the intentions appear, and other issues on which there is no text. This inevitably left women in the Kingdom of Bahrain unprotected from unfair treatment or inconsistencies in the application of the law in the past⁷¹⁷.

The Law of Judicial Authority (2003) establishes the jurisdiction of the Lesser *Shariat* Courts "to rule in rights of custody, protection, and relocation with the child to another country."

Since the *Shariat* accepts the authority of the Koran, these laws are binding upon children of all Muslim sects. However, the Bahraini judicial system takes into consideration the differences between the Sunni and Jaafari branches of Islam. Bahrain also has secular Civil Courts whose jurisdiction includes the "personal affairs of non-Muslims."

In 1998, non-Muslims constituted 18.2% of the country's population. Islamic (*Shariat*) law is not codified and hence does not prescribe any particular procedure to be followed so as to pay special attention to the preferences of a child. However, because the application of the *Shariat* law is interpretive, there exists the possibility that it can be interpreted in a manner favourable to respecting the views of a child⁷¹⁸.

Paragraph III: Egypt

With regard to the legal status of the International Conventions on Human Rights in Egypt, including the African Charter on the Rights and Welfare of the Child, the subject of the Report, the International Conventions in general in

⁷¹⁷ Reem Al Rayes, FAMILY LAW IN THE KINGDOM OF BAHRAIN, PP: 1, available at: <http://www.zeenatalmansoori.com/>

⁷¹⁸ Representing children worldwide, Bahrain, available at: <http://www.law.yale.edu/>

Egypt, are governed by principles stipulated in Article 151 of the permanent Constitution in 1971 by the virtue of which those Conventions, once the Constitutional procedures are completed, shall serve as the laws of the land.

In view of the order of precedence, the relevant International Conventions on Human rights and its freedoms including the African Charter on the Rights of the Child, the subject of the current report, this shall be considered, after being ratified and officially published in the gazette, to be a law passed by the legislative power.

Consequently, its provisions good for implementation and capable of being acted on in relation to all the authorities of the State be it legislative or executive or judicial. Any judicial or administrative action affecting a child capable of expressing his own opinion, care must be taken for the views of this child to be heard whether directly or indirectly through an impartial representative taking part in this action.

It is incumbent upon the competent authority to take his views into consideration in a way that is in agreement with the provisions of the laws in force in this respect. In keeping with the commitment to the international and regional conventions on childhood acceded to by Egypt including the present Charter the Egyptian law No.12 of 1996 in Article 3 on the child provides that the interests of the child be given the priority in all the resolutions and procedures pertaining to the childhood issued or acted upon by which ever organization.

The interest of the child shall be taken into account without any other considerations. This criterion shall apply to all the measures and decisions taken by the judicial bodies when looking into the situations in which the child is involved for a criminal liability. An abuse of this criterion is regarded as discrepancy affecting the decisions and measures taken on this matter and could cause an appeal or a complaint to arise against them in accordance with the procedures legally established.

With respect to listening to the views of the child and taking them into consideration, the Egyptian lawmaker adheres to this matter when conducting the amendments regarding the nursing age. The Law No.4 of 2005 has made it

an obligation to respect the view of the child in determining the extension of the nursing age, be it male or female⁷¹⁹.

Courts in Egypt have relied on regional human rights convention. Despite a country's having not yet ratified it in a Egypt's Administrative Court has referred to the Arab Charter, despite a country's having not yet ratified it in a case. The conduct of the courts and judges in Egypt during the past three years is a critical element to watch as the country pursues its tortuous route toward a pluralistic constitutional democracy.

If an independent, professional judiciary that checks autocratic tendencies and upholds citizen rights succumbs to the corrosive ways of military- or theocracy-dominated autocracy, Egyptians can anticipate only grief in their political future. The conduct of elements of the Egyptian judiciary in recent months has shocked me as well as millions of others across the Arab world⁷²⁰.

There are promising legislative developments, with amendments to the Egypt's 1996 Child Law having been signed by President Hosni Mubarak on 4 March 2008 and passed by the Egyptian Parliament in June 2008. Under the new law, Child Protection Committees will be set up to monitor children at risk and to instigate necessary legal procedures to protect children. The new law criminalizes female circumcision, also known as female genital mutilation (FGM).

Despite ministerial decrees in 1994, 1996 and 2007 banning female genital mutilation in Ministry of Health service outlets, the practice of FGM had remained widespread, with a recent survey showing that 97 per cent of Egyptian women of reproductive age have been subjected to the practice, while 8 out of 10 mothers had either circumcised their daughters or intended to have a daughter circumcised in the future⁷²¹.

⁷¹⁹ African child forum, Arab Republic of Egypt, The Ministry of Justice, The Public Department of Human Rights Affairs, PP: 18-35, available at: <http://www.africanchildforum.org/>

⁷²⁰ Rami Khoury, What are you doing, judges of Egypt, by abetting repression? Available at: <http://www.dailystar.com.lb/>

⁷²¹ Save the children, Child Rights Situation Analysis For MENA Region, PP: 35, available at: www.essex.ac.uk

Paragraph IV: Lebanon

Standards of international law have been utilized to interpret domestic law. This can be seen, for example, in courts' application of the concept of the best interests of the child, drawing from the CRC, in a number of children's rights cases. In Lebanon, the Juvenile Court Judge held that two minors, who were physically and emotionally abused by their father, were in a dangerous situation according to the provisions of national and international law. The judge wrote that the minors were deprived of a standard of living adequate to meet their physical and mental needs, as mandated by Article 27 of the CRC.

Further, they lived in an insecure and unhealthy environment that cruelly harmed their physical, mental and social development, as prohibited by Articles 16 and 32 of the CRC.

The court assigned the legal rights to the upbringing and guardianship of the minors to a care house, thereby incorporating Article 3 of the CRC, which provides that the best interest of the child shall be a primary consideration in all actions affecting the child.

Another case in Lebanon involved two parents who went before a Juvenile Court Judge seeking guardianship of a newborn baby they found in a park after he was abandoned by his birth parents. The Judge referred to Articles 3, 19, and 20 of the CRC in his ruling in favour of the two plaintiffs. The Judge found that abandoning the newborn baby constituted a severe form of physical and mental violence and negligent treatment, as articulated in Article 19 of the CRC.

In accordance with Article 20, alternative care for the baby had to be ensured without any delay, thus giving the plaintiffs guardianship rights of the baby as long as they could provide the necessary support and fulfil the baby's best interests⁷²².

In 2002, the Lebanese Parliament overhauled the juvenile justice system by enacting a self-contained law titled "Protection of Children in Violation of the Law or Exposed to Danger" this law addresses the functions of juvenile courts with emphasis on educational and rehabilitative measures rather than

⁷²² Mohamed Y. Mattar, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, PP: 8-40, available at: <http://harvardhrj.com/>

punishment. The law requires compliance with the following principles in its implementation⁷²³:

1. Juveniles are in need of special help that enables them to play a role in society;
2. under all circumstances, the interest of children shall be taken into consideration to protect them against delinquency;
3. A juvenile who violates the law should benefit from humane and fair treatment; the manner by which the child is prosecuted, investigated, and tried shall be subject to special procedures that save him, to the extent possible, from normal criminal procedures through adopting amicable settlements and solutions, away from liberty depriving measures. The juvenile judge shall have the most discretion in this regard with the authority to amend or rescind whatever measures ordered, based on the results of its implementation on the child.

The juvenile court is the authority in charge of juveniles and the application of the law and the competent ministries provide all necessary means needed to this implementation

Paragraph V: Morocco

The Moroccan Judiciary kept trying to consider the best interest of the child as the basis for any judgment related to children issues and confirmed this on many circumstances such as the judgment issued by the Court of First Instance of Tangier which included the following:

“Whereas, paragraph 1 of article 3 of the CRC that was adopted by the General Assembly of the United Nations on November 20, 1989 and ratified by Morocco on 06/21/1993, stipulates that the Judiciary must take the best interest of the child into consideration when examining child-related disputes.” The right to education was applied by the Moroccan Judiciary text of the judgment. One of the grounds of the judgment indicated that: “The right of children to

⁷²³ Library of congress, Children's Rights: Lebanon, available at: <http://www.loc.gov/>

pursue their studies is one of the major rights that the father and mother should fulfil and are stipulated in the Constitution and all international charters⁷²⁴.

In December 2000, the National Observatory on the Rights of the Child established telephone hotline for children at risk of or suffering abuse. Between January 2000 and September 2001, the Moroccan hotline received more than 200,000 calls, 40,000 of which came from children.

As a result, 728 case files were opened, of which 48 involved cases of sexual abuse. In 2004, the total number of prosecutions for enticing minors to engage in prostitution was 49. The Listening and Protection Centre, which is attached to the National Observatory, receives child victims of physical, sexual and psychological violence, listens to the children and their guardians in person, intervenes with the judicial authorities, and coordinates with lawyers and health care providers.

The recently established Child Protection Units also offer children victims of violence with medical and social assistance. There are no laws to protect men, women and children with disabilities. The Office of the Secretary of State for Families, Children, and the Handicapped is responsible for integrating disabled persons into society. However, most of the assistance provided in practice is through charitable associations.

Reform of the juvenile justice system is currently before parliament. The family law protects and gives rights to abandoned children⁷²⁵.

Paragraph VI: Palestine

At the end of 2012 the Ministry of Justice formed a human rights unit and entrusted it with the task of monitoring the implementation of the rights of the child within the justice system. The Ministry of Social Affairs also follows up on complaints that it receives. Also in 2012 The Independent Commission for Human Rights established an ombudsman for children to investigate, monitor, and receive complaints on violations against children, and to ensure that trained staff addresses these complaints.

⁷²⁴ Samia Bourouba, *Jurisprudence, the Application of Human Rights Standards In Arab Courts*, PP: 108, available at: www.rwi.lu.se

⁷²⁵ Save the children, *Child Rights Situation Analysis For MENA Region*, PP: 81-83, available at: www.essex.ac.uk

Staff receive complaints from children themselves, individuals and organizations, and documents these complaints before following up on them with relevant authorities. There are other monitoring mechanisms, including: child protection networks working in the national monitoring system, the Global Movement for Children and the Family Protection Unit in the Ministry of Interior which refers cases to the Child Protection Counsellor in the Ministry of Social Affairs for follow up⁷²⁶.

Paragraph VII: Tunisia

Tunisian courts made the marriage official through registration and the divorce judicial through a court judgment. Divorce takes place through a judicial authority that issues divorce at the “justice palace”. The legislator seeks towards having noble purposes which lies in protecting the family unity and all family members especially woman and child. Concerning children protection who are the most affected by the consequences of divorce, the state achieved, as a result of litigation in divorce an accurate judicial supervision on the best interest of children regarding their custody, expenses, and residences. The court follows the best interest of the child before anything else in all these decisions. It is noteworthy that Tunisia established child protection delegates (similar to the child ombudsman) according to the Code de l’Enfance passed in 1995, and the child protection delegate can intervene after the approval of the family court⁷²⁷.

Through Tunis ratification of the CRC and the release of child protection measures, the best interest of the child became the main criterion to take judicial and administrative decisions and making the best interest of the child a part of the legal national system in accordance with chapter four of the child protection measures released under the law number 92 of year 1995.

The Jurisprudence of the judiciary considers the right to custody, in case of divorce, that “the right to custody is not the custodian right and it’s not a legal right but the right of the custody child. The jurist has a responsibility to maintain that right and protecting the child from abundance. The right of the

⁷²⁶ League of Arab States (LAS), THE COMPARATIVE ARAB REPORT ON IMPLEMENTING THE RECOMMENDATIONS OF THE UN SECRETARY-GENERAL’S STUDY ON VIOLENCE AGAINST CHILDREN, PP: 78 available at: <http://srsg.violenceagainstchildren.org/>

⁷²⁷ League of Arab States (LAS), THE COMPARATIVE ARAB REPORT ON IMPLEMENTING THE RECOMMENDATIONS OF THE UN SECRETARY-GENERAL’S STUDY ON VIOLENCE AGAINST CHILDREN, PP: 77 available at: <http://srsg.violenceagainstchildren.org/>

child to custody is an objective right that is subject to the jurist diligence and his wisdom in order for the follow up court to be able to apply the laws.

The Jurisprudence of the judiciary enforced objective dealing with the issue of custody knowing the importance of their impact in determining the child future and the conditions of his upraising. Reasons of custody requires from the court to understand all material and literal factors to achieve the protection of the child which is an important issue and requires from the objective jurist search and investigation.

While looking in divorce issues, the family judge allows the person who does not take the custody rights to visit the child during certain times within the judgment text or within the direct decisions during the reconciliation stage. The aim of the legislation behind that is without doubt maintaining family linkages and ensuring the emotional balance of the child.

Despite that the CRC and the protection measures preserved the right of the child to stay in touch with the parents that he is separate of them, however, the judicial measure does not express it in this way, but it make it a right to the person who holds the custody rights. The judicial jurisprudence assured this principle where the following decision sets that “the right to visit is the right experienced by one of the parents who is not given the right to custody”. The judicial jurisprudence looks at the divorce from the psychological and social standpoint and the law provides legal law to an individual decision to stop marriage, and of course, provide a legal provision to the right to marriage and divorce. Hence, the balance that the social legislation offers is absent of the laws that arrange divorce.

While looking in divorce issues , the judiciary makes consideration to the expenses that the father must pay through direct decisions, and the court works on fixing it or revising it when releasing the divorce judgment, in accordance to what the best of interest of the child requires, and according to the available information in the file issue, so that “ Custody as a mental, psychological, and educational protection remains not enough if it did not came in line with material and financial care for a child in order to ensure the provision of what the expenses he needs including food, clothes, residence and education, and all what are expressed as necessities in chapter 50 of the personal status law .

The Jurisprudence of the judiciary allowed A Tunisian child to be adopted by a foreign Muslim, but did not provide concern to the issue of cultural identity and the possibility of getting obliterated as a result of child living in a foreign family which hold different cultural and traditional values, and the extent of adaption of this decision with the best interest of the child raises a philosophical, cultural, and religious controversial that is determined by the convictions of the jurist in the direction of making a judgment with or against the international adoption.

Despite the final state of the adoption judgment, according to the text which is not apt to a veto, the Jurisprudence of the judiciary took a direction that allows stopping adoption by considering the best interest of the child in the first case and a response to the adopted child desire to go back to his natural parents, based on an agreement between the current parents and the original parents⁷²⁸.

In a case related to the protection of the right to non-discrimination on the ground of religious beliefs, the judgment number 7602 on 18 may 2002, the local court in Tunis set that “the claim for neglecting the widow from the heirs list on the basis of religious beliefs contradicts with the provisions of chapter 88 of the personal status law which exclusively identifies intentional killing as the hindrance to heritage...” and that non discrimination based on religion represents a principle of the principles that the Tunisian judicial system refers to and forms a particularity of the characteristics of freedom of religion, according to what chapter 5 of the constitution include and is set by articles 2, 16, and 18 of the universal declaration of human rights, and paragraph 2 of article 2 of the international covenant on the economical, social and cultural rights and paragraph 1 of article 2 on the civil and political rights, and they are the instruments which Tunis approved on⁷²⁹..”

In another case related to considering the best interest of the child in the issues related to the implementation of foreign provisions regarding custody, the court of Cassation found in the decision number 7286 of year 2001, issued on 2 March 2001, that the Tunisian legislator should, in compliance with the CRC provisions, apply the principle of the best interest of the child, and that the Tunisian general system is not affected by the foreign judgment related to child

⁷²⁸ Aida Ghorbel, Ensuring the best interest of the child in family affairs: Tunisia's experience, Thesis for a master's degree in children's rights, Lebanese University, 2006.

⁷²⁹ Refer to the third periodic report of the republic of Tunisia presented according to article 44 of the CRC and presented before the Committee on the Rights of the Child, paragraph 22.

custody to his foreign mother, as long as the only criterion that should dominate in this case is the best interest of the child.

Also in a case related to the protection of the right to non-discrimination on the basis of origin of birth and the right of the child born outside marriage to proof his lineage can be found in the judgment issued in the issue number 16189/53, on 2 December 2003, where the local court confirmed the right to refer to genetic analysis to approve heritage, verifying its judgment considering that adoption is a right of the child which cannot be constrained with the form of relationships chosen by his parents, and then adoption must be understood, as identified by chapter 68 of the Personal Status Law, with its broad meaning according to paragraph 2 of article 2 of the CRC ratified by in 1991, and which protects the child from all forms of discrimination or any penalty stemming from the legal status of his parents, and depriving the child from his right to adoption because the parents are not linked with the marriage linkage, presents a punishment that affects the child and a violation of one of his main rights, without taking into account the discrimination resulting from that among children by using an artificial difference between the legal adoption and the natural adoption”.

Conclusion

State parties must implement the laws through a functioning justice chain that is gender responsive. Institutional weaknesses can be the result of lack of autonomy and independence of the judiciary, poor standards of education and training, lack of regulation of recruitment or appointment processes, poor accountability mechanisms, susceptibility to corruption or militarization or privatization of functions which are the responsibility of the State. Such problems extend throughout the justice chain. Further, officials involved in the administration of justice, namely prosecutors, police, lawyers and judges, may lack understanding on the sensitivities surrounding certain violations of women's rights or even of their justiciability. At the initial phase of the judicial chain, access to justice can be hindered by weaknesses in the operations of the police, prosecutors and entities first encountered by those seeking justice. These weaknesses can manifest themselves in poor investigation, evidence collection, and forensic capacities. Other failures in effectiveness or inaction may result from mere lack of will of the State or a culture of impunity. The justice process

can only be initiated if acts of discrimination and violence against women are duly and systematically reported to the relevant authorities. Lack of reporting and procedures to identify victims prevent prosecution and judicial action to take place. Even when women do wish to pursue their complaints, they are often encouraged or even coerced by prosecutors, police, family or the community to reconciling and compromising on their demands⁷³⁰.

Justice systems are designed to uphold the values and customs of a given society. Therefore, discriminatory social norms and constructions of gender naturally influence the development of justice systems, which, in turn, may perpetuate such norms and constructions. For example, justice systems of a patriarchal nature may lead to negative gender stereotypes and discriminatory attitudes of service providers, including the police and judiciary. Women are also discriminated in the administration of justice and application of the law as a result of lack of understanding on the part of the police, prosecutors, lawyers and judges of the sensitivities surrounding certain violations of women's rights or even of their justiciability. Other manifestations of gender bias in the court system include negative attitudes toward female victims and offenders, trivialization of sexual and domestic violence or re-victimization of women⁷³¹.

Children shall have the right to protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity. This also mirrors CRC Article 12. EU institutions and member states must uphold and promote Charter principles, and such principles apply in the implementation of EU law. Therefore this provision has the potential for progressing the right to be heard in a practical way. Generally children do not have adequate access to justice and therefore cannot take cases the way adults can. For this reason, relevant case law is relatively sparse. However some interesting case law has emerged. It is very positive that children accessed the courts to take this case concerning their rights. States must facilitate the right of children to protest, but also take special measures, e.g. advance planning and training of police, in order to account for their potential vulnerabilities (children's vulnerabilities must be protected under both the CRC and the

⁷³⁰ United nations human rights, Access to Justice – Concept Note for Half Day General Discussion Endorsed by the Committee on the Elimination of Discrimination against Women at its 53rd Session, PP: 11-12, available at: <http://www.ohchr.org/Documents/HRBodies/CEDAW/AccessToJustice/ConceptNoteAccessToJustice.pdf>

⁷³¹ Ibid.

ECHR). However police did not give any special consideration to children in this instance⁷³².

What we have seen (in 18 Arab countries) and what we have studied and analyzed has shown without any doubt that the international women's and children's rights are still almost non-present on the agenda of the national judiciary in the Arab world. Again, we question the effectiveness of international law if the judiciary does not apply the ratified conventions. It is almost useless to ratify if the national judges will not use the ratified conventions in the national courts, bringing thus a real and concrete change in the lives of people, based on the ratified conventions, in particular in the lives of women and children.

Section III: Case study regarding the application of personal affairs in national courts in relation to the primacy of Sharia

The Case

A French couple is residing in Dubai. The husband is Muslim and has in addition to the French nationality the Moroccan nationality. The wife is French and she is Christian. In case of the demise of one of them, what happens in terms of inheritance?

Overview of the legal system in the UAE, governing inheritance.

It is noteworthy to start by stating that the Shari'a is the main source of laws in the United Arab Emirates. Moreover, inheritance is strictly linked to Shari'a. It is in fact considered as an integral part of Shari'a and application of Islamic law in relation to inheritance is mandatory in an Islamic society.

In reference to the above, it should be noted that inheritance rules stem from three sources, which are Qur'an, Hadith (says of the prophet) and Fuqh (Islamic jurisprudence).

According to Shari'a, whatever a person owns at the time of his death (property, money, bonds, gold, shares, personal belongings, etc) falls into his estate.

⁷³² University of Liverpool, European responses to global children's rights issues: exchanging knowledge and building capacity European Progress in Achieving Child Friendly Justice, 4 February 2014, Brussels, PP: 2, 4, available at: http://www.liv.ac.uk/media/livacuk/law/european-childrens-rights-unit/CFJ_Aoife_Daly.pdf

Upon the demise of a Muslim person, the relatives who are eligible for inheritance (whom should be defined immediately) should perform four key duties-

- Pay funeral and burial expenses;
- Pay debts;
- Execute the testamentary will of the deceased (which can only be a maximum of one third of the property); and
- Distribute the remainder of estate and property to the relatives of the deceased according to Shari'a Law.

In Islamic Law, and more precisely in the Maliki Islamic school of jurisprudence, which is the one adopted and applied in the UAE, only relatives with a legitimate blood relationship to the deceased are entitled to inherit. Therefore, illegitimate children and adopted children have no shares in inheritance.

On the other hand, inheritance between persons of a different religion is totally prohibited, according to Shari'a. Therefore, Heirs must be Muslim. In addition, they cannot have willfully caused the death of the deceased Muslim, and if so, they should be totally excluded from inheritance.

In general circumstances, Islamic Law grants the daughter half the share of inheritance of what is granted to a son. Islamic scholars justify the reason for granting the Muslim woman half of what a Muslim man gets in stating that the responsibilities entrusted to women are not the same as the one entrusted to men. A husband in Islam must use his inheritance to support his family while a wife has no support obligations. And if a woman does not get married, then she is entitled to be supported by her brothers.

In case a Muslim person would like to make a will during his life, he is bound by the non-permissibility of totally excluding his primary heirs (spouse, parents, sons and daughters) in addition to other two restrictions-

- To whom he or she can bequeath his or her wealth; and
- The amount that he or she can bequeath (which must not exceed one third of the overall wealth).

Applicable Laws

There are two main laws which govern inheritance in the UAE-

- The UAE Civil Code, Federal Law No. 2 of 1987 (the Code); and
- The Personal Affairs Law No. 28 of 2005 (the Law).

The Code stipulates in Article 17(1) that “Inheritance shall be governed by the law of the deceased at the time of his death”. At a first glance, the issue seems to be very simple, by applying the law of domicile on the inheritance of the deceased foreigner who was residing in the UAE. But in practice, this is far from being simple and clear, especially when one of the two spouses is Muslim. In this case, the Shari’a prevails, and the UAE legal provisions related to inheritance become strictly applicable.

However, in relation to real property, as an exception, Article 17(5) of the Code clearly states that “The law of the UAE shall apply to wills made by aliens disposing of their real property located in the State” (State refers to the United Arab Emirates).

Additionally, Article 1219(2) of the Code stipulates that inheritance and transfers of estates shall be subject to the rules of Islamic Shari’a. Similarly, Article 1258 of the Code stipulates that the rules of Islamic Shari’a and the legislative provisions deriving from it shall apply to wills.

There is almost a consensus on the necessity of making a Will to clarify the wishes of the deceased person regarding his estate. The Will may not necessarily be concluded locally in the UAE, because the UAE courts will only look at the validity of the Will in the country of origin. It is recommended though that wills concluded in the home country be attested by the UAE Embassy there. In the case where there is no will, it will be up to the UAE Courts to decide whether the property is distributed in accordance to the UAE Personal Affairs Law, which follows the Shari’a rules, or to the law of the domicile of the deceased person.

According to the Code, if a foreigner has no heirs, then real property located in the UAE and owned by the deceased person will become the property of the state.

The UAE inheritance laws follow Shari'a, according to which the estate of the deceased person is proportionally divided among family members. The UAE Law of 2005 clarifies that for foreigners, the inheritance laws of the home country should apply. However, when it comes to UAE real estate owned by foreigners, the written will of the deceased will be adhered to, provided it follows the laws and regulations of the country in which it was drafted. This area is still a grey one; The Code stipulates on one hand that the law of the home country will apply to matters of inheritance, and on the other hand it also stipulates that where a will made by a foreigner deals with the disposal of real estate in the UAE, UAE law will apply.

To elaborate more on this issue, it is noteworthy that the Personal Affairs Law did not add any clarity to the provisions of the Civil Code, which confirms that the laws of the home country would apply to matters of inheritance for foreigners, without making a clear reference to real estate located in the UAE. Legal interpretations are divided on whether the Law overrides the Code or not. This adds to the ambiguity and leaves the discretionary power quite broad to the UAE Courts to decide which laws to apply. This leads us to address in what follows the issue of competent UAE courts in relation to inheritance.

Competent Courts and special requirements by the Courts

Cases in the UAE are initially heard by the Court of First Instance and can be appealed at the Court of Appeal and then finally at the Court of Cassation. Court proceedings in the UAE can be lengthy and expensive. All issues of inheritance for foreigners will first be heard at the Court of First Instance.

The UAE courts seek proof of ownership to determine who really owns the property. Therefore, it is necessary to register ownerships at the local Land Department in the UAE. Property does not pass automatically to the surviving joint owner. In this context, Article 11 of the Law No.7 of 2006, Concerning Land Registration in the Emirate of Dubai stipulates "If the estate of a deceased contains Land Rights, then the Certificate of Inheritance shall be registered in the Land Register and disposals by any heir of any of these rights shall not be effective or recognized against third parties unless registered in the Land Register".

In terms of Wills, courts will rely when studying the case on Article 1 of the 2005 Law, which stipulates that "The provisions of this Law shall apply to non-

UAE nationals unless the foreigner elects to apply his or her personal status law”.

Therefore, if a non-Muslim residing in the UAE chooses to apply the law of his/her home country for a property located in the UAE, the successors must follow the following steps to have the will recognized and registered in the Land Register-

- An application needs to be made for a grant of representation in the country of domicile of the deceased person.
- Once probate is obtained, it must be notarized, legalized and/or attested before it may be recognized by UAE authorities as authentic and valid.
- On recognition in accordance with the laws of the country to which the deceased belonged, the trustees or executor have full power to administer the estate of the deceased in accordance with his or her wishes.

It is noteworthy that UAE Courts will not apply any law or any rule of a foreign country which is in contradiction with the rules of public morals. Needless to say that matters relating to personal status such as marriage and inheritance are closely linked to public morals and should not by any means conflict with fundamental principles of Shari'a, which is the foundation of public morals.

In reference to the above, one of the main principles of Shari'a is the non-permissibility of inheritance between different religions. It is very important in this context to mention the following two articles:

- Article 27 of the Code which stipulates “It shall not be permissible to apply the provisions of a law specified by the preceding Articles if such provisions are contrary to Islamic Shari'a, public order, or morals in the State of the United Arab Emirates”.
- Article 28 of the Code which stipulates “The law of the United Arab Emirates shall be applied if it is impossible to prove the existence of an applicable law or to determine its effect”. For instance, concluding a will to transfer an inheritance to a same gender partner would be considered as completely contrary to the UAE public morals and would therefore be rejected. On the other hand, if the heirs fail to prove to the UAE Courts that the law of their home country is an authentic and valid law to apply, such a failure to convince the UAE Courts would lead to the application of the UAE Law and Code.

Courts undoubtedly apply relevant laws. And in the case of the UAE, and of Dubai in specific, laws still need to catch up with the historic decree of 2002, according to which the Ruler of Dubai allowed foreign freehold ownership of real estate in certain parts of the Emirate of Dubai. Similarly, the legal catch up process should cover issues related to inheritance. It should be noted that instructing foreigners purchasing properties in Dubai to conclude wills in order to protect their properties from being distributed according to Shari'a upon their death is just a legal interpretation which may prove to be wrong at any point of time. So just writing a will may not be sufficient, and a wife may very probably end up getting not more than a one sixth share of the property in the case where her husband dies before her. Similarly, daughters would get half of the share of inheritance of what the sons would get.

Scenarios of two spouses of different religions

The UAE Law is very clear and very strict in this matter. Article 318 stipulates that no inheritance is allowed in case of different religion. This is definitely considered as a matter of public morals and public order, in addition to being clearly stipulated in the Law.

Therefore, if one spouse dies while residing in Dubai, there is an evident risk that the other surviving spouse, who is from a different religion, would not be able to inherit the properties located in the UAE. A Will would constitute a solution to this problem; the risk however would still exist as it is explained in section III above.

Conclusion

The practice in the UAE shows that Shari'a is definitely applies on the personal affairs of two spouses and their children, as long as one of the two spouses is Muslim. This means that it is sufficient for one spouse to be Muslim in order for the UAE Courts to consider that UAE personal affairs rules stemming from Shari'a should prevail and should be applied, regardless any other home country or domicile laws.

While there is ambiguity in the UAE amongst lawyers regarding the issue of the application of Shari'a rules on inheritance of properties upon the death of a foreigner; it is evident that the issue of application of Shari'a becomes evident in case the deceased spouse is Muslim. Nevertheless, in the case where the

deceased spouse is non-Muslim, the other Muslim spouse still will not be able to inherit due to difference of religion, and this is what Article 318 of the Personal Status Law No 28 of 2005 clearly stipulates.

A nuance must be noted however; it is related to the scenarios where no legal action is taken in the UAE following the demise of the spouse. In this case, the surviving spouse would take legal action and get a judicial decision from the Court of his/her home country. Then, he/she would bring the judicial decision to the UAE and request for its execution as a foreign judicial decision, with the knowledge that there is a Convention between France and the UAE regarding the execution of foreign decisions at local level.

Having said this, no one can assure the surviving spouse who is a non-Muslim that no legal action would be taken in the UAE, especially in the case where the deceased spouse is a Muslim husband, because in this case his Muslim parents or brothers would have a great interest in applying Shari'a through relevant UAE laws, as their share would be much higher than the wife of the deceased husband. And in the case where the wife is Christian, she ends up by having nothing from the properties of the deceased husband, based on Article 318 (stemming from Shari'a) which stipulates that no inheritance is allowed in case of different religions.

In a nutshell, Sharia/Islamic Law will always have primacy over positive laws, foreign laws respective to the citizenship of individuals residing in the UAE, foreign judicial judgments, and international conventions.

**PART III: RECENT DYNAMICS AND THEIR EFFECTS ON
WOMEN'S AND CHILDREN'S RIGHTS**

Chapter I: Situation of women's political rights in the Arab World

Although many measures have been taken by the majority of Arab countries to enhance women's representation in decision-making positions, women's participation in public life and positions of power have not been achieved the desired level.

The Arab region ranks the lowest in the world in terms of women's participation in parliaments. Many challenges are facing Arab women. Challenges include: cultural factors, the stereotyped image of women, women's low self-confidence, lack of coordination among women's organizations, effectiveness/efficiency of women empowerment programs, shortcomings in the institutional and legal frameworks, practices of political parties and election process, skepticism about the Agenda for Women empowerment, the process of development of Women empowerment strategies. Thus, challenges facing women in politics are immense. They require the consolidation of all efforts with great belief in women's capabilities as human beings who are able to lead and shoulder the responsibility in the building of their nations⁷³³.

Many feminist writers and activists have challenged both the dichotomy, as well as the exclusivity of definition and application of the term 'politics'. The boundaries between public and private are argued to be far less consolidated, consistent, and universal than assumed.

Moreover, what is taken for politics - participation - is wide enough to include a plethora of different activities and interests. It is argued, for instance, that participation, particularly in decision-making, takes place at all levels of any society. Such arguments eventually lead to the by now famous - and still controversial edict - 'the personal is political'. Despite the oddity of these often un-written distinctions, to have arrived at a notion of 'soft politics' is, in and of itself, a massive leap forward. This is because it implies that some of the so-called 'women's issues' are nevertheless, 'political'. Hence, women's political participation has grown to encompass not only women's access to political institutions, but also the nature of the issues that are dealt with. It is undoubtedly the case that many of these issues would not have merited any mention in 'established' political spaces, had it not been for women campaigning,

⁷³³ Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP:1, available at: <http://www.agora-parl.org/>

lobbying, entering, and in some cases, espousing and putting forward some of these issues on the agendas⁷³⁴.

Women's issues are often the most difficult to resolve and, in this Debates on women's issues and gender relations in the Arab region have been going on for some time now. Such matters are often the most difficult to resolve and, in this complicate things further, these debates frequently lead to accusations and counter accusations about cultural authenticity and the degree to which attempts to improve the status of women are indigenous or foreign. Within this environment, Arab women, sometimes assisted by their governments and leaderships, have been trying to pave the way for their political participation. Currently, the Arab region can be characterized as in transition from traditionalism to modernism. Despite the different economic set-ups and histories of the different Arab states, the challenges that this transition process is posing are quite similar. For women in particular, the traditional factors that seem to inhibit their political participation are also analogous, in spite of the differences between the situations of their countries. Although there are differences between the countries, the Arab region in general is noted for the low participation of women in politics. Universal suffrage has become common in most countries, but there are still some Arab women who are denied such rights. Whether at local or national level, women wishing to stand for office confront many obstacles along the way. The number of women in appointed political positions has been increasing at a much steadier rate than that of women in elected positions except where special measures have been adopted, which would automatically reflect a marked rise in the number of elected women⁷³⁵.

Although 'state feminism' is often criticized for trying to co-opt the women's movements⁷³⁶, it cannot be denied that it has been at the forefront of most attempts to increase women's political participation in the Arab world. Regardless of the reasons behind state benevolence towards women, the benefits that women have reaped from such policies far outweigh the losses.

⁷³⁴ Azza Karam, Ph.D., Queens University Belfast, Strengthening the Role of Women Parliamentarians in the Arab Region: Challenges and Options, PP: 8-9, available at: <http://www.euromedgenderequality.org/>

⁷³⁵ IDEA, The Arab Quota Report: Selected Case Studies, presented at a Workshop held on 5-6 December 2004, in Cairo Egypt, available at http://www.quotaproject.org/publications/Arab_Quota_Report.pdf

⁷³⁶ Brand, Laurie, 1998. Women the State, and Political Liberalization: Middle Eastern and North African Experiences. New York: Columbia University Press. The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Selected Case Studies, PP: 9, 11 available at: <http://www.quotaproject.org/>

There are very few studies on electoral trends vis-à-vis women in the Arab world. It can be discerned that the participation of women in voting is gradually improving. Only three Arab countries do not recognize the right of women to vote and to stand for elections. Two of the three states, Saudi Arabia and the United Arab Emirates (UAE), do not hold elections in the first place, leaving Kuwait as the only country that holds regular elections but excludes women. Some Middle East states recognized the political rights of women relatively early—Syria in 1949, Lebanon in 1952, Egypt in 1956, and Tunisia in 1957. One study shows that, while educational and income levels do not have a direct impact on voting, they tend to enhance the participation of women in campaign organizations and in the memberships of non-governmental organizations (NGOs)⁷³⁷.

Despite certain positive amendments to legislation in various Arab countries, legal discrimination still remains a significant obstacle to women's advancement. The linkage between such discrimination and the low participation of women in legislatures, even in countries that have given women full suffrage, has not been fully researched or recorded⁷³⁸.

Arab countries severely curtail the political rights of all their citizens, men and women. Even when recognized on paper, they are rarely respected in practice. Here, Except for the Gulf countries, Arab nations recognized the political rights of women around the same time as most other developing countries. What is clear, however, is that few women stand for office even when they are allowed to do so by law and that few are appointed to ministerial positions. The presence of women in parliaments and ministerial positions ranges from none in most countries to a maximum of about 12 percent in a few cases. Governing remains an overwhelmingly male prerogative in Arab countries—but it is worth bearing in mind that this is true in most of the world⁷³⁹.

⁷³⁷ Tiltne, Uga, 2000. 'Women and Political Participation in Jordan', in Hussein Abu Rumman (ed.), Arab Women and Political Participation. Amman: al-Urdon al-Jadid Research Centre. The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Selected Case Studies, PP: 11 available at: <http://www.quotaproject.org/>

⁷³⁸ Linkages between legislation (covering various areas such as family law and social security) and labour force participation are discussed in World Bank, op. cit. One can draw comparisons between constraints pertaining to labour force participation and those pertaining to political participation. The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Selected Case Studies, PP: 11 available at: <http://www.quotaproject.org/>

⁷³⁹ Marina Ottaway, WOMEN'S RIGHTS AND DEMOCRACY IN THE ARAB WORLD, PP:6-7, available at: <http://carnegieendowment.org/>

Section I: Situation of Arab women in the parliaments

In further pursuit of women's rights, the Millennium Development Goals (MDG's) in 2000 clearly specified the importance of women development in its Goal 3; to promote gender equality and empowerment of women. Other MDG's have not explicitly stated gender as a target; however, women's issues are addressed implicitly in many areas of the MDG's such as poverty, education, and health⁷⁴⁰.

The Arab region was not in isolation from the global debate on women and human rights, where the political will has played a major role in enhancing Arab women development. Arab countries have witnessed major shifts over the past decade in political, economic, and social development. The League of Arab States established a Women Committee in the Secretariat of the League in the early seventies of the twentieth century and adopted the Arab Strategy for the Advancement of Women till the year 2000. This was followed by approval of the Arab Cooperation program, where priorities for the advancement of Arab women were approved by the Arab ministerial high-level meeting in Jordan in 1996. The Arab ministerial high-level meeting focused on three main domains; the economic, political and social domains. Many organizations have succeeded in initiating modifications in some laws, in lifting reservations on CEDAW, and in introducing general strategies/plans for a gender component in national plans. For example, to enhance the legal status of women in Jordan, the Jordanian National Commission for Women's Affairs, in coordination with official women institutions and civil society organizations, prepared a list of demands to the members of the Fifteenth Parliament. The aim of this initiative was to strengthen the relationship and develop a dialogue with members of the parliament regarding empowerment issues regarding policies and legislation within the priorities of the National Strategy for Jordanian women to enhance women status in Jordan. As a result of this initiative, the parliament approved main legislations issues between the years 2004 – 2009, such as Law of Civil Pension rate, Municipalities law, the civil service system, Protection from Domestic Violence Act, Office of the Ombudsman, the Public Health Law, the

⁷⁴⁰ UNIFEM , Beijing +15, The Shadow Report, Madiha El Safty, <http://ngocswny.files.wordpress.com/2010/02/beijing-15-final-completed-versionto-new-york-with-cover-all-another-version.pdf>. Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP:2, available at: <http://www.agora-parl.org/>

Law on prevention of trafficking in human beings, the election law and others⁷⁴¹.

An important measure of women development is their access to voice in the decision making sphere, as measured by their participation in public life and in professional associations. A common definition of political participation is as an activity intended to - or result - to influence the work of the government, either directly by influencing the policy-makers or implementation of policies, or indirectly by influencing the selection of persons who make these policies. Like many countries in the world, politics in the Arab world is identified with the public sphere which men occupy and continue to dominate. The participation of women in politics and decision-making was one of the central and crucial areas of focus of the Beijing Platform for Action in 1995, reaffirmed in 2000 by the Millennium Development Goals (MDGs). The MDGs also draw attention to the importance of women's empowerment and women's role in governance. Women's participation in public life and decision-making processes is critical for achieving women's empowerment, gender equality and other developmental goals⁷⁴².

In a region witnessing such political ferment and grave socio-economic conditions, Arab women have had to create their own path into the public sphere. Women's participation in the labour force in the region is generally low, but their political participation - whether in appointed or in elected positions - is even lower. The regional average women's participation in Arab states is currently below percent, less than half the world average. There have been some breakthroughs during the past decade in both quantitative and qualitative terms, as well as in terms of more concerted efforts to achieve increased participation, yet the obstacles such efforts face appear to be much greater than they are in other regions. The difficulties faced in aligning national legislation with the stipulations of the CEDAW in Arab states that have ratified the agreement stand out as the most striking example of the underlying tensions that exist regarding the advancement of women⁷⁴³.

⁷⁴¹ Jordanian National Commission for Women's Affairs, Jordan national report for Beijing +15, (Amman: Jordan, 2009). Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP: 3-5, available at: <http://www.agora-parl.org/>

⁷⁴² International Institute for Democracy and Electoral Assistance, Women in Parliament: beyond numbers, (Stockholm, Sweden, IDEA, 2005). <http://www.iiav.nl/epublications/2005/women>. Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP: 8, available at: <http://www.agora-parl.org/>

⁷⁴³ Amal Sabbagh, The Arab States: Enhancing Women's Political Participation, PP:3, available at: <http://www.idea.int/>

Minorities and women in the Arab world are largely not fairly represented in political institutions. Although those groups participated in the revolutions of the Arab Spring, their role in the post-revolutionary period remains marginalized, and in certain cases has worsened. Electoral law reform in post-revolution Egypt eliminated the pre-revolution women's quota system governing parliamentary representation, resulting in the election of just nine women in the parliamentary elections of 2011; Article 10 in Egypt's 2012 Constitution opens the door for limiting women's participation in public life through declaring that "the State is keen to preserve the genuine character of the Egyptian family, its cohesion and stability, and to protect its moral values, all as regulated by law. However, women still face the challenge of equitable participation in other avenues of public life"⁷⁴⁴.

Women in the Arab world today enjoy the smallest share of parliamentary seats worldwide. They occupy only 5.7% of all parliamentary seats in the region⁷⁴⁵, as compared to 15% in sub-Saharan Africa and 12.9% in Latin America and the Caribbean countries. Women preside over 3/128 (2.3 %) seats in Lebanon, 6/110 (5.4%) seats of the lower house and 7/55 (12.7%) seats of the upper house in Jordan, 11/454 (2.4%) of the lower house in Egypt, 24/389 (6.2%) seats of the lower house in Algeria, 30/325 (9.2%) in Morocco, and 30/250 (12%) in Syria. Most of the Gulf countries do not hold elections, and Kuwait does not allow the women the right to vote."

In Tunisia, a "zipper" list system alternating female and male candidates was applied to the 2011 parliamentary elections, but because 94% of the lists were headed by male candidates, fewer women won seats in 2011 than during the period of Ben Ali rule. Libya, on the other hand, implemented a zipper electoral system in 2012 that also required women to be included at the top of candidate lists, resulting in a 17% representation of women in Libya's first General National Congress. Some Arab countries have tried to increase the representation of women in key positions. Some countries adopted some form of affirmative action, such as party quotas or reserving seats for women in

⁷⁴⁴ See generally Kathryn Spellman-Poots, *Women in the New Libya: Challenges Ahead*, 50.50 INCLUSIVE, DEMOCRACY, Dec. 23, 2011. LINA KHATIB, *POLITICAL PARTICIPATION AND DEMOCRATIC TRANSITION IN THE ARAB WORLD*, PP: 18-19, available at: <http://iis-db.stanford.edu/>

⁷⁴⁵ *Women in National Parliaments*, 2003. Amaney Jamal, Dept of Politics, Princeton university, *Women, Gender and Public Office: Arab States*, PP:1, available at: www.princeton.edu

parliament to ensure their political participation, as in Jordan, Egypt, Morocco, Jordan, Palestine, Mauritania, Sudan, and Somalia⁷⁴⁶.

Other countries do not adopt this measure; consequently, the average percentage of female participation in the Arab legislative branches is the lowest in the world. Despite this, as of September 2010 and according to the IPU, only 19.2% of the world's parliamentarians are women and the Arab region ranks weakest, with the inclusion of women in Parliament accounting for only 12.4% compared to 6.5% five years ago.

Rwanda had the highest percentage of women in Parliament in the world (56.3%) followed by Sweden (45.0%) in 2010. In 2010, only 24 countries in the world achieved the target of at least 30% representation by women in parliament.

Recently, Arab countries like Morocco and Jordan have adopted quotas that guarantee the representation of women. Both Morocco and Jordan have reserved parliamentary seats specifically for women; Morocco has set aside 30 of a total 325 parliamentary seats and Jordan, 6 out of 110. The number of female politicians elected at the communal level in Morocco's 2003 elections rose from 84 to 127, but this remains out of a total of 22,944 elected officials. Lebanon's women hold less than 1% of all seats at the municipal level. Egypt has instituted different forms of quotas, but none are currently in effect.

At the ministerial levels, Arab states employ a larger concentration of women in key public offices; in fact, Lebanon ranks 4th in the world, while Jordan is 8th. Egypt employs women as prominent judges in the Female Shoura Assembly. Although women are under-represented in elected or appointed positions, their employment in key government offices is on the rise. Women, for instance, occupy prominent positions in the United Arab Emirates Ministry of Education. The UAE Ministry of Planning reported that female employees exceeded male employees in the more than 25 federal ministers; in 2001, 16223 workers were women, and only 9,518, men. The limited presence of women in parliament has raised considerable concern among observers and policy makers.

⁷⁴⁶ Lina Khatib, Political Participation and Democratic Transition in the Arab World, Article 2, Volume 34, Journal of International Law, 2013, available at <http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1042&context=jil>

In Morocco, women's parliamentary participation hastened the adoption of the family code provisions of 2004. Yet, a recent examination⁷⁴⁷ of the last four reigning Egyptian parliaments seems to imply that female presence has had no direct effect on the levels of gender issues raised in parliamentary sessions.

Arab women active in political life are not content with the current status quo. Complicating issues is that most women do not see the formal legislative process as a viable means to improve their condition. 68% of Arab women MPs are dissatisfied with the current level of women's political participation. And 80% of women active in public life claimed that they could accomplish their goals without having to participate in formal state institutions. Several political, material, social, and cultural conditions continue to stifle women's ability to attain their goals. Political parties remain weak and ineffectual, thereby reducing their impact on policy. The rule of law, too, remains weak in the Arab world, and though few laws guaranteeing women's participation in the public sphere exist, they need to be enforced. The lack of legislation promoting women's presence in parliament also explains their continued marginalization.

Only one in every two women in the Arab world is literate; as a result, their overall political awareness is quite low. Reactionary forces seek to exclude women from the public and political spheres, and many current political regimes promote these conservative elements. Prior to unification, half of the judges in South Yemen were women, but since, conservative forces have reappointed these women to clerical positions⁷⁴⁸.

In fact, the patriarchal political environment is not favourable towards equal participation in the political sphere. Other factors, including the lack of political party support for and backing of female candidates, have hindered women's formal participation. Further, deficient media support and limited democratic norms result in the manipulation of electoral processes and their results. A disjunction between women's civil organizations and current women MPs encumbers the advancement of women's issues in legislative processes.

Finally, the dismal state of Arab economies structures women's access to the public sphere. As standards of living decline and employment rates rise, women

⁷⁴⁷ IDEA: <http://www.idea.int/women>. Amaney Jamal, Dept of Politics, Princeton university, Women, Gender and Public Office: Arab States, PP:2, available at: www.princeton.edu

⁷⁴⁸ United National Development Program: Program on Governance in the Arab region: Yemen: Women in Public Life. (2003), Amaney Jamal, Dept of Politics, Princeton university, Women, Gender and Public Office: Arab States, PP:2, available at: www.princeton.edu

are becoming unable to afford the education necessary to enhance their human capital. As a result of depressed economic conditions, the digital gap between Arab countries and the rest of the world has widened.

This technology gap disadvantages Arab women in particular; without the ability to network virtually, they cannot participate in key transnational debates about gender empowerment. The impediments to meaningful gender representation are thus located in the political, economic, and cultural realities of the region.

The level of political representation of women in different legislative bodies around the world varies greatly, standing at 16.9 percent in the world's legislatures in 2006 on average. Since 2004, a lot has happened in the Arab region. Women in Kuwait were given the right to vote for the first time in 2005.

In the parliamentary elections in Bahrain in 2006, 18 female candidates stood; one woman entered parliament. Progress can be seen in the Arab region with increased women's representation and increased awareness of the need for women to participate in politics, but there is still a long way to go⁷⁴⁹.

Many Arab countries have introduced measures to improve the representation of women in parliament. These measures include the reform of the electoral system. In addition to the amendments of election laws, the most significant change that was made in some Arab countries was the introduction of a gender quota in parliament, with a number of seats reserved for women. Political parties have also introduced measures to promote women's representation in parliament. Full participation of women at all levels of the decision making cycle and political life is considered a critical drive for achieving international benchmarks including. (Al Maaitah, 2005, UNIFEM, 2004):

- The Beijing Platform for Action (BPFA)
- The UN CEDAW
- UN Security council Resolution 1325 which highlights the importance of bringing gender perspectives to the centre of all United Nations conflict prevention and resolution, peace-building , peacekeeping ,rehabilitation and reconstruction efforts

⁷⁴⁹ The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Selected Case Studies, PP: 5, available at: <http://www.quotaproject.org/>

- The twenty-third special session of the General Assembly entitled women 2000: Gender equality , development and peace for the twenty-first century, which called for the full participation of women at all levels of decision-making in peace processes, peace keeping, and peace building(United Nations, 2002)
- The Millennium Declaration and the Millennium Development Goals (MDGs) identified gender equality and women's empowerment as central cross cutting goals that are essential in achieving the eight goals of the MDGs.

Arab countries have achieved progress in women's status, since the Beijing conference, albeit the variations in the different areas. It is essential that a fair representation of women occurs at all political and leadership levels including the executive branch and parliament (where all laws are formulated) to give women an equal voice in shaping the policies that affect their lives and choices. This will ensure more practical and targeted policies dealing with women's issues to be implemented on the ground. Women must have a role in shaping the policies and strategies that affect their lives. Parliament is the key institutional forum where laws are formulated and where significant influence can be exerted in the policy making process therefore, a fair representation of women is essential in national parliaments to allow their voices and issues to be clearly heard to promote gender equality and ensure that the rights of women are respected and encoded in law.

Significant national initiatives related to women empowerment have emerged, led by the women, political figures, the public and local communities.

While still under-represented in the parliaments, Arab women are rapidly increasing in political systems. In recent years, women in the gulf countries have achieved significant breakthroughs by participating in parliamentary elections and right across the Arab world. Kuwait has recently granted women the right to vote and run in elections, after street protesters demonstrate in favour of women's rights. In a short time after granting them the right to run in elections, four courageous women broke the foundries and won the election through tough competition with their fellow men. The debate about women in politics has become absolutely vital to public debate and a cornerstone of the Arab governments' economic and social agenda. The number of seats allocated to women in the Arab world varies in the different countries.

Women quota in its constitution in 2005 rather than the election law as in other countries. On the other hand, the rest of the Arab countries ranked under the international average. No women in the lower house of parliament in Oman, Qatar and Saudi Arabia. Interestingly, the quota system is still a debatable issue. However, the experience of Morocco, Tunisia, Sudan, and Jordan suggests that quotas are a good mechanism to increase women's representation in legislative bodies.

While women's participation in political institutions in the ESCWA region remains low, in the past decades there has been progress in the conditions that make greater political involvement possible. Some states have introduced over the years policies that benefited women in their nation-building plans, especially literacy programs (which have been credited as enhancing the agency of women and increasing their capacity for political and economic participation). For example in the United Arab Emirates, illiteracy which affected 85 per cent of women in the early 1970s has fallen to 7.6 per cent in 2005.

Women also make up the majority of students attending university at a rate of 70.8 per cent. Development plans have also reflected positively on women's economic participation, despite evidence of ongoing low representation of women in the labour force. For instance, in Saudi Arabia women own 40,000 of commercial registers, an increase of 77 per cent from 2007. While the percentages of women's representation in elected legislatures remain very low in all ESCWA member states, they are sometimes better represented in institutions where they are appointed, such as upper houses and cabinets. This trend may be traced to the desire of leaders to show progress in women's political involvement, especially after the Arab League summit of 2004 where participating officials pledged as part of their promises of political reform, to increase women's contribution to the political, economic and societal fields. This was the first time Arab leaders jointly expressed their firm commitment to enhance women's role in politics.

In addition, the Arab Human Development Report of 2005 showed the reality of women's conditions in Arab societies, and seems to have provided an additional incentive to improve the status of women in the region. The phenomenon of appointing women to cabinets or upper houses is perhaps best exemplified in the nomination in early 2013 of 30 women to the Shura Council in the Kingdom

of Saudi Arabia, a consultative body without legislative powers. These women are highly educated with a majority holding doctoral degrees. This is in keeping with the findings of scholars who argue that across all countries, the majority of women in high political positions tend to come from privileged backgrounds. While Saudi Arabia did not declare that it was implementing a women's quota, the end result is effectively one. Indeed, these 30 women now make up 19.87 per cent of the Saudi Shura Council.

In cabinets in the ESCWA Region, women have been often appointed as ministers of state without a portfolio, or offered service ministries such as education, health, social affairs or human rights. One explanation for these appointments is that these domains are often perceived as an extension of the woman's role inside the home. However, in a sign of positive change, women have in the past decade been assigned the leadership of so-called "sovereign ministries". For example, in Lebanon a woman was allocated the finance portfolio in 2009, while another had been assigned the economy portfolio in the United Arab Emirates in 2004. Women were also allocated important portfolios such as Planning in Jordan and Kuwait, and Labour in Sudan, and as such indicating an increasing willingness to grant women cabinet positions that have traditionally been the domain of men⁷⁵⁰.

On the other hand, Many Arab parties tend to ignore women candidates on their lists based on the beliefs that women are not capable of winning seats in elections because they lack leadership skills, with the assumption that this might affect the party chances in winning elections. However, Political parties are still young in many countries of the Arab world and the majority of men in the Arab world do not rely on their parties, they largely use the community based structures of personal family networks and tribal or regional affiliations to rally support among voters.

Cultural factors usually intervene in elections of women candidates to parliaments. Furthermore, women's access to positions of decision-making and leadership, in the executive branches or others outside the legislature structure, is affected by the political will and its confidence in women's efficiency.

⁷⁵⁰ ESCWA , ECONOMIC AND SOCIAL COMMISSION FOR WESTERN ASIA (ESCWA), PP: 4, available at: <http://www.escwa.un.org/>

Many Arab women have succeeded in proving their capabilities in these positions; however, some women have reached top leadership positions because of their kinship ties and connections with the regime.

By 2011, the vast majority of Arab countries have female ministers ranging from 2-6 women ministers in cabinet. Women in some countries occupy other top executive positions, as in Jordan and Algeria, where women are appointed governors, and in Jordan and Sudan where women occupy top judicial positions, and Egypt where many women are working in the diplomatic corps. As for the head of State position, three female candidates participated in presidential elections in Algeria, Mauritania and Lebanon with no luck.

Definitely, there is still a long way to go before Arab women hold the same number of seats or occupy offices at the highest levels, such as presidents or prime ministers. As for the development of civil society organizations, their status depends on the status and development of the people. The role of civil society organizations is no less important than that of political parties or parliaments, bearing in mind that civil activism and strengthening the role of civil societies means increasing women's benefits and enhancing their capabilities to influence policy at the government level.

The percentage of women in the boards of directors in the NGOs differs from one country to another with Lebanon on the top list (45%) followed by Palestine (41%). Egypt has a percentage of (18%) and Jordan (22%). the differences between Arab countries in relation to women's participation in public and political life generally correlate with the percentage of educated females, the intensity of prevailing cultural and traditional gender norms, and the availability of a supportive environment⁷⁵¹.

Section II: Challenges Impeding Arab Women Participation in Politics and Decision Making

For a number of years the women's movements in some Arab and other countries have linked the weakness of women's political participation and representation to the prevailing patriarchal mentality, or the prevalence of

⁷⁵¹ United Nations Development Fund for Women/UNIFEM, Progress of Arab Women, (Egypt: UNIFEM Arab state regional office, 2004). Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP: 13, available at: <http://www.agora-parl.org/>

culture, tradition and values, instead of linking it clearly to political will and legal mechanisms. The inadequate representation of women in local and legislative institutions is not due to sociological or cultural factors, or to the lack of an Arab political model for women; rather, we must look first and foremost at the lack of political will on the part of the political parties⁷⁵².

The political parties have continued to believe that natural evolution will lead to political participation; they have linked the incorporation of women into institutions to various transformations that society will experience. Arab women's entry into the political arena is not without difficulties. With the lowest regional average of women Members of Parliament in the world, the Arab world ranks at 3.5% only⁷⁵³, according to the statistics from the Inter-Parliamentary Union. As such, Arab women face a number of challenges:

Paragraph I: Social Restrictions

Illiteracy among women makes it difficult for women MPs to reach out to other women, limits women's political awareness, and leads to the majority of women not being registered on the electoral register.

The study showed that 44 per cent of women MPs interviewed said that, due to their household responsibilities, they did not attend parliamentary sessions as often as male MPs.

Legislation constitutes one of the main social obstacles facing women. Women are still discriminated against in laws concerning the family, nationality, the right to travel, and the right to work. This makes women unable to participate independently in public life. The political environment plays a major role in supporting reactionary values at one moment and enlightened values at another moment, and this, in turn, affects women's rights. The current political environment in Egypt and Jordan does not support women because it recalls reactionary values and traditions from the past which are a major obstacle to women MPs and women in general. The prevalence of certain traditional notions in some communities, like the Bedouins in Egypt or some tribes in Jordan, Egypt, and Lebanon, sometimes prevents women from going out or

⁷⁵² Taken from an online survey available at

<http://www.un.org/esa/socdev/publications/FullSurveyEmpowerment.pdf>

⁷⁵³ Azza Karam, Ph.D., Queens University Belfast, Strengthening the Role of Women Parliamentarians in the Arab Region: Challenges and Options, PP: 3, available at: <http://www.euromedgenderequality.org/>

from mixing with men. An Egyptian woman MP reported that the head of a certain tribe told her that he would mobilize his entire tribe to prevent a woman from running in the elections. A Lebanese woman MP said that the most important obstacle facing Arab women is the fact that traditions make women regard themselves as second-class citizens. The public lives of MPs are defamed and, according to a Jordanian woman MP, this issue is more sensitive for women MPs⁷⁵⁴.

Paragraph II: Culture and Politics

A prevailing attitude and a culture of discrimination against women still exists in the Arab region, in spite of the empowerment programs and national efforts to enhance women status and end this discrimination. The Arab culture is still characterized by a male dominated culture and patriarchal in nature and is driven by tribal customs and tradition that are mostly unfriendly and reluctant to the involvement of women in politics. Therefore, power and authority resides in the hands of men as they are supposed to control the decision making position in the legislative, executive institutions and the judiciary.

This is evident in the lower number of women in politics and in many practices such as the conduction of primaries within many tribal groups to guarantee their electoral seats and voices in the parliament. The lack of clarity in cultural and social concepts about roles, functions and rights remains an obstacle to the rise of women.

Like in most countries, politics in the Arab world is identified with the public sphere which men occupy and continue to dominate. The culture of many Arab countries still set a dichotomy between the personal and public sphere. The personal sphere focuses on women responsibilities for the family in the household while the public sphere is the men world.

Therefore, women are not allowed to work in the public sphere in general and in political life specifically. According to Gomaa in 2001, unlike women problem in the industrialized countries regarding the glass ceiling in professional mobility, Arab women suffer from a thick wall that prevent them from moving from the private to the public sphere. The Arab woman has to prove herself

⁷⁵⁴ Gehan Abu-Zayd, *In Search of Political Power – Women in Parliament in Egypt, Jordan and Lebanon*, PP: 4-5, available at: <http://www.vintob.com/>

many times in all aspects of work and life before she can gain the acceptance of her peers. However, the report of the International Institute for Democracy and Electoral Assistance on Women in Parliament: beyond numbers in 2005 revealed that woman's place is a worldwide problem "Societies all over the world are dominated by an ideology of a woman's place. According to this ideology, women should only play the role of working mother, which is generally low-paid and apolitical"⁷⁵⁵.

In addition, in some countries, men even tell women how to vote; "This is a real impediment to the achievement of gender relations in the Arab countries, and makes the tremendous efforts of women's empowerment programs strategies in the Arab aspirations difficult elusive. It is worthy to note that, the permeability of the boundaries between the public and private spheres has been argued by women activist and supporters. This permeability provides a mixed zone between the private and political spheres leading to the fact that every area of interaction is a political sphere which involves power and authority"⁷⁵⁶.

The main political restrictions lie in⁷⁵⁷:

1. Restrictions on political parties have led to a weakness in democratic participation, and this in turn is an obstacle to greater women's political participation.
2. Low rates of literacy for women, and as a result low political awareness, can lead to women's votes being used by others.
3. Traditions force women into roles that lead to their exclusion from direct decision-making processes.
4. Political support for women is inconsistent and linked to the international agenda.

⁷⁵⁵ Rowaida Al Maaitah, Hadeel Al Maaitah, Hmoud Olaimat and Muntaha Gharaeibeh, Arab Women and Political Development, Article 2, Volume 12, Mar-2011, Journal of International Women's Studies, Bridgewater State University, available at <http://vc.bridgew.edu/cgi/viewcontent.cgi?article=1110&context=jiws>

⁷⁵⁶ Azza Karam, Strengthening the Role of Women Parliamentarians in the Arab Region: Challenges and Options, <http://www.undp-pogar.org/publications/gender>, Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP: 13, available at: <http://www.agora-parl.org/>

⁷⁵⁷ Al-Hadidy, Hana'. 1996. "Research on Public Participation of Arab Women". In Al-Hadidy. ed. Al-Mar'a Al Arabiya wa-l-Hayat Al-Ama (Arab Women and Public Life). Cairo: Ibn Khaldun Center. p. 59, Gehan Abu-Zayd, In Search of Political Power – Women in Parliament in Egypt, Jordan and Lebanon, PP: 4, available at: <http://www.vintob.com/>

5. Reactionary powers influence society and push for the marginalization of women and the restriction of their role, opposing their political participation, whether inside or outside parliament (e.g., in Jordan).
6. Lack of legislation to promote and ensure women's participation in parliament, despite many amendments.
7. Emergency laws stunt democracy and political development, which in turn impacts on political awareness. In the Lebanese experience, all women parliamentarians are somehow linked to a certain male figure and are considered an extension of him, even if he is dead.
8. Politics has become linked to parliamentarians' abilities to provide services, rather than any ideological considerations. This applies to both women and men.
9. Women's political role has been ignored in times of crisis, preventing the development of their political experience and leading to frustration (e.g. in Lebanon).

Paragraph III: Religion

Islam has often been cited as the main culprit behind the slow/incremental development of the status of women in the region. Delving into the various interpretations of Islam and Islamic feminism is beyond the scope of this case study; suffice it to state that Islam has not deterred women in non-Arab Islamic countries from reaching top elected positions. It can also be added that some Islamist political parties in the Arab world have promoted their women members as parliamentary candidates. One can question whether Arab non-Muslim women have had better chances than their Arab Muslim sisters, or whether they all face similar challenges in their quest to improve their lot and advance their political careers. It has been rightly pointed out that 'what is at issue is not so much the religion per se, but a broader aspect of neopatriarchy; it is not culture alone that impacts on women's political participation, but a whole host of other factors combine to render the situation as it is'⁷⁵⁸.

⁷⁵⁸ Amal Sabbagh, *The Arab States: Enhancing Women's Political Participation*, PP:4, available at: <http://www.idea.int/>

Paragraph IV: Women's movement

Although, the advocacy of women's organizations and NGO's have succeeded in initiating positive modifications in some laws, albeit gaps still exist. Women's organizations and NGO's support women females to participate in politics, by providing awareness-raising programs, helping women with funds and strengthening their skills in managing their election campaign as Jordan, Egypt, Bahrain and other countries. These programs, however, need to be modified for better effectiveness/efficiency at the national and regional levels. It was reported that the work of women's organizations and non-governmental organizations have moved slowly towards awareness-raising activities and advocacy, training and building human and institutional capacity. There are areas that need more serious efforts from the Women's organizations and NGO's especially with regards to media⁷⁵⁹.

In addition, the AWO report in 2006 reported that all women projects and programs in the Arab region suffer from the absence of strategic vision, poor strategic planning, poor follow-up, monitoring and evaluation, poor coordination among stakeholders, inadequate and imbalances in the implementation and funding at the level of governments and civil society institutions and the private sector.

Therefore, women's organizations and NGO's should react to address these gaps, improve measures, and confront cultural and legal constraints that impede women participation in politics and decision making⁷⁶⁰.

Paragraph V: Media

The role the media plays in promoting women politicians is still highly problematic. Mirroring all the prejudices in society is unhelpful for women wishing to further their political careers. To that end, increased networking and training for women politicians with media personnel remains a need.

⁷⁵⁹ United Nations Development Program, Arab Human Development Report 2005: Empowerment of Arab Women, (New York, USA: UNDP, 2005). Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP: 14, available at: <http://www.agora-parl.org/>

⁷⁶⁰ Abu Zeid, Projects of Arab women empowerment: current status and future progress, Arab Women Organization, (Cairo, AWO, 2008), Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP: 14, available at: <http://www.agora-parl.org/>

Images of women in the media are a subject which has attracted increasing attention over the last few years from many writers. The Arab world has its fair share of these studies, although the material available about women in the media and the impact on political participation is not as much. A symposium was held in Cairo towards the end of 1997, as a regional follow-up to the international Cairo and Beijing meetings earlier on.

The seminar was entitled 'Arab Women in Public Life', and it brought together several women members of parliament, political parties, as well as researchers from Tunisia, Yemen, Egypt, Jordan and Lebanon. The symposium, which was followed by a series of follow-ups and similar gatherings in the region, is notable largely because of its failure to address the issue of women and media. In a similar gathering in Amman in 1997, the importance of media was mentioned almost only in passing. All women - researchers and politicians alike - would agree that women are portrayed in all manner of media as "either angels or whores", the strong characters are presented as domineering, sly and generally untrustworthy and unpleasant; whereas the nicer characters are usually the quieter, loyal mothers and obedient, long-suffering housewives.

Another feature of Arab media is the fact that it is directly or indirectly controlled by the respective governments. This means that what gets portrayed in the different forms of media, is that which is allowed and approved by the state, and forms a large part of state-ideology. States themselves are often the strongest proponents of women's 'natural' roles in society, in addition to their tradition of conditional support for formal gender-equality.

The most important condition for state-support being that the particular gender-equality issues are not controversial to the conservative religious establishments, most of which are meant to support the state's 'Righteous Religious Male' image. By the selective courting of the religious establishment on gender-equality issues, Arab states use gender issues as a bargaining chip, whereby the biggest losers are women⁷⁶¹.

⁷⁶¹ Mariz Tadros, in a discussion in a meeting organized by the Women's Feature Service in Holland, in October 1998. Azza Karam, Ph.D. ,Queens University Belfast, Strengthening the Role of Women Parliamentarians in the Arab Region: Challenges and Options, PP: 17, available at: <http://www.euromedgenderequality.org/>

Paragraph VI: Women Empowerment Strategies

It is known that the national strategies to enhance women development in the Arab countries has been drafted by mainly the elite group of women, and often endorsed by the "political will higher up". To some extent, women at the grass roots have remained in isolation in terms of planning, development and evaluation of project and programs focusing on women issues.

They have become recipients of services and programs designed by the "elite", therefore, there is no sense of ownership for many strong initiatives for women development in the Arab world. This is evident with the high number of the Arab women votes that go to men candidates to parliament. Unfortunately, policies and actions target the progress of Arab women are not only encountered by many difficulties and challenges related to cultural and other issues, but also there is a suspicion on the agenda for women development where some people perceive gender equality as a western imposition that is inappropriate to the religious and cultural context of Arab states.

Many Religious extremists have suspected the rights already gained by women who have led women and supporters to clarify their stand through strong debates and clarifications about women's rights in Islamic thought as well as the CEDAW from the perspective of Islam. Despite certain positive amendments to legislation in various Arab countries, legal discrimination still remains a significant obstacle to women's advancement⁷⁶².

There are existing gaps and discrepancies between legislation, implementation and social practices. For instance, in various countries, there are still problems related to the legal age of marriage, divorce, alimony, custody, visitation procedures, inheritance rights, female genital mutilation (FGM), and violence against women.

A gap also exists between policy formulation and strategy implementation in many Arab countries due to lack of solid qualitative and quantitative data about women in the Arab world, lack of clear performance indicators for monitoring and evaluation of progress and results budgetary limitations to implement programs, and lack of effective means to link the efforts of mainstreaming gender with other national policies and plans⁷⁶³.

⁷⁶² Arab Women and Political Development, cited earlier.

⁷⁶³ Madiha El Safty, UNIFEM, Beijing +15, The Shadow Report, <http://ngocswny.files.wordpress.com/2010/02/beijing-15-final-completed-version-to-new-york-with-cover-all->

Paragraph VII: Tribal Politics and Economic Restrictions

Women are usually marginalized in political party life which is evident in the lack of party support of women who have been largely absent from the party leadership there. Therefore, women representation in politics in the Arab region is still low. In some Arab Countries, political parties have introduced measures to promote women's representation in parliament by allocating a specific percentage of women in their party lists which definitely promotes women's representation in parliament. In addition, the electoral processes itself is another issue for women participation in politics in the Arab region as it possess certain characteristics that discriminate against women. This is evident in the practice of Tribal Primaries.

Many Tribes in many Arab countries organize Tribal Primaries which aims at ruling out weak candidates with the least opportunity of winning in order to concentrate on strong candidates with better winning opportunities. This practice provides "a safety net" for the tribes to survive in a challenging political environment in some Arab countries such as Jordan, Kuwait, United Arab Emirates, Iraq, and Bahrain. Given the rising cost of running an effective campaign and the lack of confidence in women candidates, these pose other serious hurdles for women in the Arab countries. Interestingly, the last few year have showed a shift in such practices⁷⁶⁴.

Women should learn and re-evaluate their strategies to invest in this "comfort Zone" and build bridges among themselves and develop coalitions with existing political forces such as tribes, religious group, parties and community⁷⁶⁵.

On the other hand, an analysis carried out in 1995 based on the testimonies of Arab women who participate in public affairs, indicated that women are capable of achieving their political goals in more than 80 per cent of their attempts, if they have a clear vision and goal. The obstacles they face are mostly social, cultural, and material, and are not linked to the actual presence of women within parliament. It indicates that economic obstacles constitute 75 per cent of the

another-version.pdf , Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP: 16, available at: <http://www.agora-parl.org/>

⁷⁶⁴ Arab Women and Political Development, cited earlier.

⁷⁶⁵ Majed, Ziad (ed.), 2005, Building Democracy in Jordan: Women's Political Participation, Political Party Life and Democratic Elections; http://www.idea.int/publications/dem_jordan/index.cfm#toc. Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP: 17, available at: <http://www.agora-parl.org/>

problems faced by women MPs, in terms of the high cost of living and the need to manage their income for their families.

The study found that 64 per cent of women said that economic difficulties left them with insufficient time to be interested in public affairs. In addition to this, women lack the resources that would enable them to participate politically, since the cost of political and social work is high. Women's financial independence alone is thus not a sufficient condition to enable them to participate in parliament. She must also possess a high enough level of financial resources to allow her to carry out her parliamentary role, especially the role of providing services.

This is the principle obstacle agreed upon by Egyptian and Lebanese woman MPs. Economic policies have negatively affected women in terms of their standards of living, incomes, and unemployment rates. This has weakened their abilities to compete, since women are prevented from access to suitable educational and training opportunities and women continue to be economically dependent on their husbands⁷⁶⁶.

Islamic women's activism also runs the risk of exacerbating local political power games and of being instrumentalised politically in unintended ways. For instance, it may bolster rather than challenge local patriarchal institutions and discourses (Kirmani, 2011: 57–63). Islamic women's activists working within the confines of institutions controlled by the authoritarian states may well have unique chances of influencing state policies and legislation – but they (and their collaborators) also run the risk of legitimizing the authority of the incumbent authoritarian regimes. Yet, it must again be highlighted that external support for, or collaboration with, liberal/secular women's activists also involves a risk of contributing in unintended ways to local political dynamics⁷⁶⁷.

Besides supporting women's situation, this support has also in many instances contributed to the legitimization of incumbent authoritarian elites and regimes. In other words, external collaboration with or financial support to local

⁷⁶⁶ Gehan Abu-Zayd, *In Search of Political Power – Women in Parliament in Egypt, Jordan and Lebanon*, PP: 4, available at: <http://www.vintob.com/>

⁷⁶⁷ Julie Elisabeth Pruzan-Jørgensen, *ISLAMIC WOMEN'S ACTIVISM IN THE ARAB WORLD POTENTIALS AND CHALLENGES FOR EXTERNAL ACTORS*, DIIS REPORT 2012:02, DIIS . DANISH INSTITUTE FOR INTERNATIONAL STUDIES, available at <http://subweb.diis.dk>

women's activists is rarely apolitical – irrespective of whether local partners work from a religious or a liberal/secular perspective⁷⁶⁸.

Among the most prominent obstacles in some of the Arab countries can be described below:

In Lebanon, analysis of the reasons why Lebanese women are prevented from reaching positions of political decision making. The following are the principal obstacles.

1. The first is the stereotype of women as more suitable to be mothers and housewives than to enter public life or play a role in political life. Their upbringing reinforces these ideas in the mentality of men and young people, as well as some women, who accept the traditional role laid out for them and the reality of men controlling their options and capabilities; they inherit this mentality.
2. Most men think little of the capabilities and role of women. Some think women are weak and should be protected from the interaction and pressure that they might face from their male colleagues if they become involved in mass political action.
3. Illiteracy among women remains high, at 17.8 percent, compared to 6.9 percent for men, although illiteracy rates in general in Lebanon have dropped over the last decade. Involvement in public life still remains greater among men due to the historical imbalance that women have experienced during their long absence from public life and the related lack of opportunity to build up expertise.
4. Women's financial capabilities and resources are weak. Many families and sects traditionally do not allow women to inherit as much as men. This phenomenon is not limited to Lebanon; female poverty is an international trend, and it is common knowledge how much money is spent on election campaigns and advertising.
5. No political parties honestly adopt policies such as strengthening the political and social role of women in their programmes.

⁷⁶⁸ Julie Elisabeth Pruzan-Jørgensen, cited above, PP: 64-65

6. The principal obstacle is still the sectarian–family make-up of the state. This logic has established the rise of family–sectarian–regional blocs that control the institutions and divide them up between themselves. They enact election laws that are suited to specific individuals, and the leaders of these blocs have traditionally been men, even if there are better qualified women in their families and sects.

7. Women still come together during elections on a sectarian or political basis more than a gender-related basis.

The Lebanese Women's Council has worked to change this phenomenon but has not succeeded in forming a genuine pressure group to negotiate like any sectarian, family or regional group whose weight must be taken into consideration. This requires the creation of an effective and flexible network of communication with the largest possible number of women, in all parts of the country, to form the basis for mobilizing women nationally. Thus most of the obstacles are of a social nature. Developing society's awareness of the role of women and changing its stance towards this role requires a long and hard effort in the long term. However, in addition to this long-term work, we should also look at directing the role of women towards more effective participation in society's affairs. This should be done by drafting more modern laws that guarantee women access to decision-making positions⁷⁶⁹.

In Jordan, in spite of the multiplicity of Jordanian parties nowadays and in spite of their various agendas, there is almost no presence for women in leadership positions. Women's issue is not mentioned in their announced programs (Al-Quds Center, 2007). The Provisional election Law of 2010 is a positive step in many aspects, with regard to women, raising the number of seats allocated for women quota reflects a tendency to extend women's representation in the Jordanian House of Deputies pursuant to the demands of the Jordanian feminist movement who has always called for increasing women's representation and re-considering the mechanism of counting winners through quota.

On the other hand, what can be taken against the new law is that it created 15 electoral units (12 governorates and three closed constituencies for Bedouin) while it allocated 12 seats for women quota, with no more than one quota seat

⁷⁶⁹ The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Case Studies, PP: 88-89, available at: <http://www.quotaproject.org/>

for each governorate or constituency, which might lead to underrepresentation of some electoral constituencies – with three as maximum.

Furthermore, the new law continued to adopt the “one vote” mechanism, which might not help women gain access to the House of Deputies on a Competition basis, especially with clannish style prevailing over the elections, and political money playing an undeniable role in it. In both cases, women are the weaker link. It should be emphasized also that within the one vote law does not help guarantee political parties access to the Jordanian Parliament, and that would undermine the capabilities of the parties and restricts available opportunities for them.

Despite the political reforms and changes that the country witnessed over the last two decades, political opportunities available for women are still limited, and women's participation in political life is bound by the conditions of the society in which they live. In spite of the government's adoption of the so called “positive discrimination” represented in the women quota, the relative absence of Jordanian women's participation in political life is not merely due to political obstacles, but also to structural and cultural ones which prevent the achievement of equality between men and women, of which: social obstacles; for societies in general, and the Arab societies in particular, are affected by the social- cultural heritage which with time turned into an ideology that formed cultural patterns restricting women to specific typical roles excluding women's participation to the private domain driving women away of the public domain, in particular decision-making positions. Al- Othman (2011), addressing the political participation of Jordanian women, refers to the role of the phenomenon of the patriarchal power in the societies in the appearance of social inequality on basis of gender, which in turn has negative impacts on individuals opportunities to education and work, and thus on achieving an appropriate level of living. Al- Othman stresses the fact that women, as a group, have fewer opportunities to access resources – power, income, wealth and social status⁷⁷⁰.

In syria, Despite recent progress, there are some persistent challenges that women face in accessing positions of power. A number of women do not take part because of social conditions and the burdens associated with raising families. Additionally, some prevailing customs and traditions, such as the

⁷⁷⁰ Abeer Bashier Dababneh, Jordanian Women's Political Participation: Legislative Status and Structural Challenges, PP: 7-8, available at: <http://www2.ju.edu.jo/>

traditional male mentality, hinder participation by women. For this reason, state institutions and organizations and civil society associations are making efforts to convince women of the need for them to participate actively to a greater degree. Many measures have been taken and continue to be taken in drafting and executing development plans on all levels, such as incorporating the General Women's Federation in all national committees. Women participate in all committees and councils of workers' unions, where their rate of representation ranges from 12 to 34 percent. In addition, gender equality officers have been appointed to all government ministries and the number and proportion of women in decision making have increased⁷⁷¹.

In Algeria, indicators concerning the participation of women in decision making spheres show that inequality is more evident at managerial level than at the level of employees. It is even clearer in power spheres (parliament - government and local councils). Many and multiple reasons account for women under-representativeness at the level of decision making positions; it can be summarized as follows:

- The recent opening of the political domain in Algeria;
- The little presence of women in parties as activists, due to the difficulty of reconciling public and family lives;
- Women's suspicion with regard to political parties, due to lack of political training;
- An unfavourable electoral system;
- Other obstacles prevent women from having access to the highest spheres of the State and Companies: constraints related to senior functions, mainly availability and mobility. They are often bound to make choices: either they give up career perspectives and exclude themselves from decision making positions, or they scarify their family lives, or accumulate charges and work double; the conservatism of society, political parties and the administration; women's access to decision making spheres means at the same time an important renewal of the leading staff and new approaches in the definition of policies and in political practices; the absence of co-option system adapted for women.

⁷⁷¹ The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Case Studies, PP: 96, available at: <http://www.quotaproject.org/>

They are often excluded from informal networks, which are real co-option areas.

- As for the quota technique, the issue was discussed in meetings held by public authorities or by associations. Some Algerian policies plead in favour of positive actions juridical techniques, based on the equity principle, by stating that the Constituent and the Legislator shall be ingenious enough to enforce the equality principle. Others plead for the blind enforcement of equality in politics, as a consequence of the juridical equality.
- Some parties have proven to be more modernist than others, as they included in their statutes or programs the quota system or set a threshold for women. However, the current electoral system that has been in force since 1997 has not markedly increased women rates at the Legislative Assembly (APN). The proportional list ballot can be favourable for women only if two conditions are fulfilled: A good representation of women candidatures, mainly on lists of parties likely to win seats; An adequate classification. It is therefore up to the main parties, providers of candidates, to present more women candidates and offer them eligibility opportunities. The current electoral law does not provide for any positive discriminatory measure to rectify and partially correct the process that has kept women away from vote. In addition, the type of ballot that has been adopted does not favour the election of women, neither to the Parliament, nor to Wilayas Assemblies (APW) or communal assemblies (APC)⁷⁷².

Section III: Political participation of women in Arab counties

Paragraph I: Algeria

No legislative or legal provision prohibits or restraints women's participation in the country political life. The right to vote and be elected is guaranteed to women by the Constitution since Algeria's independence in 1962. Article 50 states: "Any citizen fulfilling legal conditions shall be an eligible voter". The organic law n. 91-17 dated October 14, 1991 modifying and complementing Law n. 8913 dated August 7, 1989 relating to the Elections Code, bans elections

⁷⁷² Boutheina Gribaa, Strengthening women's leadership and participation in politics and decision making process in Algeria, Morocco and Tunisia, PP: 22-23, available at: <http://www.genderclearinghouse.org/>

through proxy a process that used to prevent women from fully enjoying their political rights by effectively participating to the electoral operation; the new law has therefore enabled women to freely express their political choices⁷⁷³.

According to a national study conducted in 2004 by the Delegate Minister in Charge of family and Women Conditions concerning women's economic and social integration, nearly 60% of all Algerian women personally vote. The April 2004 results of the presidential elections give an idea about women's participation reaching a rate of 46.49% of the electoral structure. In the framework of its policy aimed at the promotion of women's rights in their entirety, the Ministry of Women considers women's participation to decision making and their access to the State's higher positions as a key priority in its strategy.

This has led to women reaching high profiled positions: four (04) ambassadors including two (02) assigned abroad, one (01) Wali or Governor, for the first time in 1999 followed by two (02) other unassigned Walis, one Deputy (01) Wali, eleven (11) community - daïra- leaders, one (01) woman is a Secretary General of a Ministry, five (05) Ministries' Cabinet Chiefs of Staff, six (06) women advisors at the Economic and Social Council, three (03) secretaries general of Wilayas, three (03) wilay as general inspectors, etc The Vice-Governor of the Algerian Central Bank is a woman, who is also member of the Faculties of Natural Sciences and Arts, and the University of Sciences and Technology are chaired by women; In the field of magistracy, women hold the following positions: President of the State Council (01); Presidents of Courts (03); Presidents of Tribunals (33); Prosecutor (01); Examining Magistrate (137) over a total of 404 hence more than one third; Presidents of Sections (09) including five (05) sitting at the State Council and four (04) at the Supreme Court. Algerian women judges represent today nearly 50% of all judges.

In Algeria, the presence of women in the Government is limited, as is the case in Arab and Maghreb countries. Very few women have access to the highest spheres of political decision making. No woman was member of the first 9 Algerian Governments. It was only in 1984 that Algeria saw for the first time the appointment of a woman minister. There is no constancy in the progressive progression in the number of women in the Government. We noted between

⁷⁷³ Boutheina Gribaa, Strengthening women's leadership and participation in politics and decision making process in Algeria, Morocco and Tunisia, available at: <http://www.genderclearinghouse.org/>

1987 and 2002 the emergence of one, sometimes two women, in Governments, but contemporarily their disappearing from executive governments. We had to wait for the 26th Government, in June 2002 to see 5 women appointed members of the Government. Only one was Minister, and all other four were delegated Ministers (Vice-Ministers). This number even dropped again in April 2006, as only 3 women were members of the Government including one Minister and two Minister Delegates. As is the case for the number of elected women at the Parliaments, the number of women sitting in Chambers' and Commissions' Boards has been very limited in all various legislators. Women's under representativeness within legislative bodies can mainly be explained by their poor presence on political parties' electoral lists. In spite of barriers, and namely cultural barriers, 30 women actually (2008) have access to Parliament; they could have access to the Chairmanship and vice chairmanship of parliamentary commissions and the parliamentary groups of their political parties⁷⁷⁴.

Paragraph II: Djibouti

Djibouti uses a Party Block Vote (PBV) electoral system. This is a 'plurality/majority system using multi-member districts in which voters cast a single party-centred vote for a party of choice, and do not choose between candidates. The party with most votes will win every seat in the electoral district. For this reason, the law obliges all political parties to include women on the lists they present in elections so as to ensure that women obtain 10 percent of the seats in the National Assembly. Several difficulties were experienced in the implementation of the law, both by the president of the republic and the prime minister and by the political parties, especially in forming the lists of candidates for elections. Despite the negative attitude towards women's participation, the opposition finally accepted having seven women on its list, out of fear of the list being viewed as unlawful and hence rejected by the electoral authorities⁷⁷⁵.

Participation in political life and the exercise of political power by women should be encouraged and facilitated by awareness-raising, including civic and

⁷⁷⁴ Boutheina Gribaa, Strengthening women's leadership and participation in politics and decision making process in Algeria, Morocco and Tunisia, PP: 17-21, available at <https://www.yumpu.com/en/document/view/21492164/strengthening-womens-leadership-and-participation-in-politics-and-15>

⁷⁷⁵ The ACE Encyclopedia: Parties and Candidates, ACE Electoral Knowledge Network, 2013, available at file:///C:/Users/ghassan/Downloads/Parties%20and%20Candidates%202013.pdf

political education. This would enable women to learn about their rights and to become fully conscious of their capacity to become direct protagonists in political life. The government, legislature, parties and political organizations, trade unions, international organizations and the media can contribute to this process⁷⁷⁶.

The young republic has seen considerable progress with respect to the promotion of women since the election of President Ismaël Omar Guelleh, with the creation of the Ministry for Women's Promotion and the adoption of the Strategy for Women's Integration: the latter became law on 7 July 2002. Djiboutian women have had the right to vote since 1946. However, even though the Constitution grants them the right of election, they have historically never had the opportunity to participate in elections. The first women took their seats in parliament as late as 2003. The idea of having women participate in the National Assembly emerged after the adoption of a National Action Plan, providing for the participation of women in decision making. The move was vital, especially considering that, according to the statistics kept by the Inter-Parliamentary Union (IPU) Djibouti was among the countries where women's participation in parliament was zero (prior to the January 2003 elections). When the question how to remedy this problem was raised publicly, some people said 'you mustn't dream', while others found it impossible to imagine a woman representing the people. That was the situation in 2002. The law on quotas that was passed requires women to hold 10 percent of the seats in parliament. It establishes that 'the minimum number of either women or men candidates in each political party's list must be equivalent to 10 percent of the seats to be filled'.⁷⁷⁷

Paragraph III: Egypt

Despite the fact that women in Egypt were granted citizenship and full political rights in the 1956 Constitution, the social and economic environment in the country has worked against women exercising their political rights. Values encouraging the participation of women in public affairs have coexisted with more reactionary values, and the conflict between the two has varied over time.

⁷⁷⁶ See International IDEA, 2005. 'Table of Electoral Systems Worldwide', available at <<http://www.idea.int/esd/world.cfm>>. The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Selected Case Studies, PP: 32, available at: <http://www.quotaproject.org/>

⁷⁷⁷ See Inter-Parliamentary Union (IPU), 2002, The World of Parliaments. Issue 8, December, available at <http://www.ipu.org/news-e/8-3.htm> The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Selected Case Studies, PP: 30, available at: <http://www.quotaproject.org/>

In the last two decades this conflict has become more intense, mainly due to the political and economic situation in Egypt. Many argue that Islamists are using this network of services to push forward a political ideology hostile to women, calling for their return to the home. Finally, women's economic participation has declined and women have been marginalized into certain fields that do not allow them to reach senior positions or to acquire sufficient relevant experience. This is an ongoing obstacle to women's participation in political forums. The current political environment in which women parliamentarians operate has been formed by two major eras: the era of the nationalist movement, 1919–1952 and the one-party state in the postcolonial period, 1952–1976. Women became active in the nationalist movement through their family ties to male political activists. However, women were not regarded as pivotal members of the nationalist movement and had little access to decision-making processes. Women leaders did not put forward policies that demonstrated a true understanding of women's needs and problems. Islamic women's activism in the political sphere is far from a new phenomenon⁷⁷⁸.

Political Islamic women's activism has seen an important upsurge in recent years, where women have become increasingly active and (in some places) influential within the Islamist movement. Yet, this upsurge has by and large constituted a 'hidden' phenomenon to the outside world. The importance of this 'hidden' development has increased after recent dramatic changes in the Arab world, as Islamist actors are likely to gain a more prominent position in official politics, for instance in post-Mubarak Egypt⁷⁷⁹.

The call for the increased empowerment of women in political participation and decision making has grown, and serious efforts to put such steps into practice have intensified. These efforts have led to an increase in the numbers of women registering to vote, as well as the numbers of women standing for election, as indicated above. On every occasion, the political leadership has called for the role of women to be boosted, for women to engage in political participation and decision making, and for all forms of discrimination to be eliminated. Seminars and training sessions have been held and permanent and ad hoc committees for political participation have been formed. Meanwhile, a new and strong trend has arisen in the shape of demands for a quota of parliamentary seats to be set aside

⁷⁷⁸ Gehan Abu-Zayd, *In Search of Political Power – Women in Parliament in Egypt, Jordan and Lebanon*, PP:1-2, available at: <http://www.vintob.com/>

⁷⁷⁹ Julie Elisabeth Pruzan-Jørgensen, *ISLAMIC WOMEN'S ACTIVISM IN THE ARAB WORLD*, 2012, PP: 45-46, available at: <http://subweb.diis.dk/>

for women once again, despite opposition on the pretext that such a move would be unconstitutional. The case for restoring the quota is supported by a detailed study of the verdict of the Higher Constitutional Court and a detailed understanding of the correct interpretation of articles 4 and 7 of the 1979 CEDAW passed by the United Nations⁷⁸⁰.

Egypt signed CEDAW according to Presidential Decree no. 345 of 1981. The Alexandria Declaration of 15 March 2004, issued by the Fourth Conference of the National Council for Women, in the area of political participation, affirmed the need to work to implement article 4 of CEDAW. Egypt is committed to this goal, which involves taking temporary steps to achieve equitable representation in legislative bodies in line with the percentage women make up in society and their contributions to development. These calls are continuing and are being renewed; they are serious and growing, and enjoy widespread support throughout Egyptian society. However, they have not been implemented, once again because of reservations about their constitutionality. It is not enough to say that allocating seats for women in order to boost their political participation or role in decision making is the optimal, only solution⁷⁸¹.

True progress and capacity building for women are therefore two requirements for expanding the scope of political participation by women and their role in decision making, even if this only has an impact in the long run. Egypt is in fact following this strategy of empowering women and expanding the scope of their political participation. Thus, the lawmaker should achieve a balance between equality of opportunities and achieving equality. For example, allocating seats for women in parliament and local councils has to be seen in the context of achieving equal opportunities for men and women. This link between equality before the law and the state's commitment to guaranteeing equality of opportunity is contained in the introduction to the constitution, which says that 'The principle of equality and the equality of opportunity are two faces of the same coin'. Likewise, it states that 'in its essence, equality is a settlement between those who are alike and a violation between those who are different'. Abstract general principles are implemented as promoting equality between the sexes, the actual result is a bias towards men, because legal texts that do not take into account the difference between the situations of the sexes will not end

⁷⁸⁰ The Arab Quota Report: selected Case Studies, cited earlier.

⁷⁸¹ Ibid.

discrimination; on the contrary, their neutrality might lead to its being consecrated⁷⁸².

The law can achieve true equality among people in two directions:

- The first is known as 'raising' equality, which means raising the level of the weak to that of the strong.
- The second is known as 'lowering' equality, which means lowering the level of the strong to that of the weak (after the French expert in jurisprudence Colard).

Can we consider the allocation of quotas of parliamentary and local council seats for women a form of raising equality? The answer is definitely yes. There is no doubt that the position women are in requires not only this raising from the legislative standpoint but also the boosting of a role that already exists and asocial position which various inherited factors have worked to weaken or eliminate⁷⁸³.

Women's political activities centered on acts of charity and providing social services; in fact there was little distinction between women's political activities and their charity activities. Different mechanisms have been used to facilitate the entry of women into parliament in Egypt, including the following four:

1. The allocation of seats for women: 30 seats in parliament were reserved for women according to a presidential decree in 1979;
2. Nominating women on party lists and abolishing the allocation of seats for women;
3. Women running as individual candidates in parliamentary elections;
4. Women appointed to parliament by the president, who has the right to appoint up to 10 members of parliament, a proportion of whom are always women. These four mechanisms were evaluated based on the relationship between the number of women members in parliament, the number and kinds of issues they raised, and the techniques they have used to raise issues⁷⁸⁴.

⁷⁸² Ibid.

⁷⁸³ The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Case Studies, PP: 77-82, available at: <http://www.quotaproject.org/>

⁷⁸⁴ Gehan Abu-Zayd, In Search of Political Power – Women in Parliament in Egypt, Jordan and Lebanon, PP:1-2, available at: <http://www.vintob.com/>

Paragraph IV: Jordan:

The first appointment of a woman member to a Jordanian government came in 1979. In 1993, three women stood and one, Tujan Faysal, won office in the capital, Amman, for a seat set aside for the Chechen and Circassia communities. In fact, not a single woman won any seats in these elections. The reasons for this are among those that have been discussed in this handbook, including:

- The male political culture which militates against women's equal participation in the political
- Lack of party support and backing;
- Lack of media support;
- Lack of confidence among voters that women can actually deliver on their election promises;
- Stunted democracy which allows for manipulation of electoral processes and results; and
- Lack of networking and cooperation between women's organizations and women MPs⁷⁸⁵.

Although these results are discouraging, they provided an incentive to search for solutions to the problem of guaranteeing political participation by women. These solutions range from appointment, which has been implemented in municipal councils since 1995, to setting aside a quota of seats for women in the parliament elected in 2003. Ninety-nine women were appointed to local office—three in Greater Amman and 95 others in 95 municipalities, while the final woman was appointed mayor of a municipality⁷⁸⁶.

A male candidate who has tribal, political or financial influence can work to eliminate a woman candidate's chances. In the short term, there is no hope other than retaining the quota for women and increasing their share of representation in parliament. Jordan made a positive move regarding the quota during the government of Ali Abu Ragheb in early 2003. After this report, the government submitted a draft to amend the 2001 Election Law with Law no. 11 of 2003; the amendment made provision for a quota of women's seats to be set aside. It was as follows:

⁷⁸⁵ Gehan Abu-Zayd, *In Search of Political Power – Women in Parliament in Egypt, Jordan and Lebanon*, PP:2, available at: <http://www.vintob.com/>

⁷⁸⁶ Ibid.

1. Six seats were set aside for women and not restricted to a specific geographical area or specific electoral districts. Instead, the seats were based on the percentages of votes in a district gained by women candidates. The winners of the six highest percentages would gain seats.
2. The seats allocated are the minimum guaranteed by the law to represent women in parliament. In addition, women can compete for all seats in the legislature, and the seats that they win in competition against men are not counted towards the quota. Thus, women are not assigned to the quota seats until after the election and vote tabulation for all candidates, so that seats won by women are not deducted from the quota⁷⁸⁷.

The results of the 2003 elections, with all that they implied for the quota system and the need to improve the quota for better female representation in parliament, coincided with the formation of a new government by Faysal al-Fayiz. It pledged to make political development one of its top priorities and to ensure genuine and active participation by women. In spite of the disagreement of the various intellectual streams regarding mechanisms to advance women, they all agree that enhancing women's political participation and ensuring her presence in decision-making positions is one basic factor supporting the development process. On that account, Jordan's reform policies have adopted strategies to advance women, thus being the first country regionally to take equality and democracy a methodology for its policies and be a model for many countries in the region (Al-Miqdad, 2006). In spite of the positive results of those government policies – the last of which was the amendment of the Election Law – as mentioned previously- by introducing the quota system, the frequent results of the House of Representatives all indicate the Jordanian woman still have low representation level in decision-making positions, in particular in cases of competition. This can be attributed to the lack of awareness and consideration on the part of the male social structure of the needs and rights of gender in general, and woman in particular in terms of political participation as first-class citizens. As for women's representation in The Senate, it witnessed a qualitative jump represented in raising the number of the Senate female members to (9), a percentage of % 15 in the year 2010, and thus Jordan occupied rank 5 on the

⁷⁸⁷ Ibid.

level of the Arabic countries in terms of the number of women in the Parliament⁷⁸⁸.

In countries, where Islamists were allowed to join the formal political sphere, women were also drawn in by male leaders who realized that women could attract new voters. This was, for instance, the case in Jordan, where the Muslim Brotherhood (MB) affiliated Islamic Action Front (IAF) initially welcomed a quota of female parliamentarians as a strategic means to enhance their own numbers (Taraki, 1996: 140–158).

Women have no formal leadership role within the MB itself; no women are members of its executive committee or Shura council. Instead, women members of the MB are organized in the independent, parallel and largely insignificant women's section. However, the MB leadership remains internally divided on women's participation in general and about their formal/leadership roles in particular. In fact, this issue constitutes one of the key dividing issues within the MB. Conservative views (according to which women are not to assume posts of public authority) clash with more reformist views which, based on modernist interpretations of Islamic jurisprudence, argue for the permissibility of women's participation and leadership. In this, they refer to the internal 2005 document "the vision of the Islamic movement for reform in Jordan" which for the first time reaffirmed the equality of men and women (Abu Hanieh, 2008: 100–101)⁷⁸⁹.

In short, one can say that women's right to political participation and engagement is based on the possibility of overcoming the various structural and cultural obstacles. Hence, it is necessary to take practical and effective measures to enable Jordanian women to participate effectively in political life and contribute to decision-making through adopting and implementing the following recommendations:

1. Emphasizing the need to develop a national action plan to activate women's rights and empower them politically.

⁷⁸⁸ Abeer Bashier Dababneh, *Jordanian Women's Political Participation: Legislative Status and Structural Challenges*, PP: 5, available at: <http://www2.ju.edu.jo/>

⁷⁸⁹ Julie Elisabeth Pruzan-Jørgensen, *ISLAMIC WOMEN'S ACTIVISM IN THE ARAB WORLD*, 2012, PP: 46–47, available at: <http://subweb.diis.dk/>

2. The need to work towards reviewing the Jordanian Election Law and amend it in a way that ensures women's ability to overcome the obstacles facing the process of their political empowerment.
3. Activating the role of the civil society organizations in supporting Jordanian women's political participation and engagement.
4. Raising the Jordanian society awareness of the concepts of human rights and women's rights in particular, and linking that awareness to the development and its outputs.
5. Providing the necessary financial support to enable women to prepare organized electoral campaigns.
6. Continuously reviewing and developing school curricula that would enhance the concepts of partnership, leadership and citizenship to all male and female students.
7. Developing clear strategies and taking the necessary measures to achieve gender mainstreaming in a manner that would guarantee gender equality in all institutions of the society.
8. Supporting the conduct of necessary qualitative studies to identify institutional obstacles that impede women's access to decision – making and leadership positions and devising instruments to overcome those obstacles.
9. Enacting the role of media to effectively address the field of women's right⁷⁹⁰.

Paragraph V: Lebanon

Lebanon has ratified a number of international agreements on human rights in general and women's rights in particular, and Lebanese women have successfully and increasingly become active participants in most sectors.

⁷⁹⁰ Abeer Bashier Dababneh, Jordanian Women's Political Participation: Legislative Status and Structural Challenges, available at: <http://www2.ju.edu.jo/>

However, women remain marginalized when it comes to decision making posts and participation in political life⁷⁹¹.

In the political arena, their participation continues to be limited and to have little effect. It does not correspond to women's numerical weight in society (more than 52 percent), their level of educational attainment (women university graduates outnumber their male counterparts), their presence in the workplace and in production (they account for about 30 percent of the labour market), or their social role; Article C of the introduction to the Lebanese constitution states that men and women are equal in terms of rights and duties⁷⁹².

Lebanese women have been in parliament since 1992, following the 17-year civil war that destroyed many democratic practices. In the 1992 elections, women won three seats, that is, 2.3 per cent of total seats. This was the first time women arrived in parliament and it constituted a fundamental transformation, since women were only present in parliamentary life twice in the period from 1952 to 1962. The decline in the number of women MPs in parliament was a challenge to the three who won seats, and they had to struggle to create a channel through which women's issues could be heard. This resulted in a positive environment that contributed to the development of legislation relevant to women. However, the three MPs were not satisfied with the extent of women's success, saying that they still needed to work on broadening their support networks and on establishing a joint solidarity movement to unify efforts. They noted that women had not yet reached ministerial positions, had not yet eradicated discrimination between women and men in personal status legislation. Whilst being successful in other fields such as administration, business and commerce, women were not as effective in politics⁷⁹³.

Women's participation in decision making remains seriously deficient at most levels. This reflects the quasi-patriarchal structure which Lebanese society, like other Arab societies, still exhibits. A society half of whose members are marginalized when it comes to political decision making cannot achieve progress and development. And, since customs and traditions cannot be changed

⁷⁹¹ Megan Alexandra Dersnah, *Women in Political and Public Life*, available on the page of the Office of the High Commissioner for Human Rights at www.ohchr.org

⁷⁹² Arab Quota Report, cited earlier.

⁷⁹³ Gehan Abu-Zayd, *Personal interviews with Lebanese Members of Parliament Ms Maha Al-Khuri and Ms Bahiya Al-Hariri*, Cairo, 1994., In *Search of Political Power – Women in Parliament in Egypt, Jordan and Lebanon*, PP: 8-9, available at: <http://www.vintob.com/>

by force or by importing values, it remains necessary to adopt and actively implement the laws that can accelerate progress towards achieving the development that is needed for the health and continuity of society. The situation of women in centres of decision making in Lebanon can be summarized as follows:

1. Female representation in parliament is low: in 2004 it stood at only three out of 128 seats, or 2.3 percent (this number increased to six out of 128 seats in the 2005 elections). This share is lower than the international average, although Lebanese women have performed with distinction as deputies. In fact, women have usually entered parliament because of specific circumstances, in particular their connection to the men in their lives-fathers, husbands or brothers. This happens after the death of the man, as the woman continues the political line of the family while waiting for a male to come of age, or if the man in power has selected the woman for a political role.

At the leadership bodies of the different political parties, most of their members are men. All political parties give their blessing in principle to participation by women voters, and no party hesitates to announce its approval of women candidates. However, we must continue to question the actual participation by women in political parties when it comes to the make-up of their leadership bodies or the selection of candidates for local and parliamentary elections. In the judiciary, women judges make up roughly 28 percent of the membership of the judicial courts and 19 percent of the members of the Shura Council. In the judiciary as a whole, there are 434 judges, of whom 124 are women. Finally, when the last government was formed, and Adnan Addoum, the chief public prosecutor, was appointed minister of justice, a woman, Rabia Ammash Qaddoura, was named to replace him until his ministerial duties were concluded. This was the first time a woman had been named to the post⁷⁹⁴.

Paragraph VI: Morocco

The women's quota, as a political mechanism of positive action, has prompted many discussions of equality and difference in modern democracy. However, the concept has evolved over the last 20 years, and the answer which it can

⁷⁹⁴ The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Case Studies, PP: 87- 88, available at: <http://www.quotaproject.org/>

provide to the low level of political participation by women has led to renewed discussion of the traditional concept of equality, as this notion does not take into consideration the factors that govern the relationship between the sexes. However, this natural or automatic evolution in which the parties believe led to a political scene within Moroccan society which completely excluded women from state executive and legislative institutions, affiliated regional bodies, the party organizations that provide them with political frameworks and political life in general.

In the 1990s, the ADFM's Casablanca branch began to specialize in the field of women and political decision-making positions. It set a goal for raising women's representation in legislative and elected bodies. The association, along with the Movement for Women's Rights, helped to transform the debate about discriminatory measures into an organized demand. They began to raise the issue with the political parties, the government and various decision makers in order to take tangible steps to improve women's representation. In 1999, a 30 percent quota system was incorporated into a draft law to involve women in development, whether at the level of parliament, the political parties, the unions or the councils at national level (the Social Council, the Human Rights Advisory Council, etc.). In 2001, 20 women's rights and human rights organizations called for 33 percent of parliamentary seats to be set aside for women in elections and for the quota to be made effective in the executive bodies of the political parties and labour unions. In 2002, the parliament approved a government draft law setting aside for women 30 seats on the national list. In response to the mobilization by women ahead of the elections, the political parties agreed to set aside all the places on the national list (30 seats) for female candidates. As a result, 35 women in total were elected to the legislature in the 2002 election, 30 elected via the national list and five elected via local lists. This meant a 17-fold increase in the number of women elected compared with the 1997 election, when only 0.66 percent of those elected were women. This gives Morocco one of the highest levels of representation of women in the Arab world⁷⁹⁵.

⁷⁹⁵ The International Institute for Democracy and Electoral Assistance (International IDEA), *The Arab Quota Report: Case Studies*, PP: 58-61, available at: <http://www.quotaproject.org/>

The introduction of the quota system has led to an increase in the percentage of female MPs in Morocco from 1% in 1995 to 10.5% in 2010, bringing 34 women to the parliament⁷⁹⁶.

Moroccan political parties that adopted a quota on their election lists have provided a great example for other Arab political parties.

Morocco women have gained a quite prominent role as political activists within the Islamist movement. For instance, the ORWA (affiliated to the MUR) became publicly known and played an important role during the recent Moudawana reform process (1999–2004), where its women activists staunchly fought a socialist family law proposal which they judged to be too secular and in contradiction with Islam. Women also play a very visible role in the PJD, which has one of the highest percentages of female parliamentarians among the Moroccan parties. Some of them, such as the ORWA president Bassima Hakkaoui, staunchly fight to promote women's situation based on an Islamic approach. However, only two women are members of the party's general secretariat and all six female MPs were voted in via the special 'national list' (which was established by the Moroccan state to ensure a minimum of 10% female parliamentarians). It does seem quite significant that the Moroccan state has chosen to appropriate and 'officialise' an Islamic discourse as a part of its many recent efforts to promote women's situation in society⁷⁹⁷.

By using an Islamic discourse, the regime has been successful in countering patriarchal traditions and introducing legislation and reforms, not least within the deeply controversial area of Islamic family law reform (Pruzan-Jørgensen, 2010a). In this sense, it does indeed seem as if the regime activism has contributed to empowering Moroccan women and to enhancing their situation.

Furthermore, while the new Islamic women's activism of the state can be considered as a means of competing with the Islamist movement, it can also be viewed as reflecting a certain responsiveness of the state to increasing demands from religiously-based women's activists in recent years (Eddouada & Pepicelli, 2010). Yet, it is also clear that the new, state-sponsored Islamic women's activism may at the same time represent drawbacks, not least for liberal/secular

⁷⁹⁶ <http://www.ipu.org/wmn-e/world.htm> and United Nations Development Fund for Women/ UNIFEM). 33 Progress of Arab Women, (Egypt: UNIFEM Arab state regional office, 2004). Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP: 12, available at: <http://www.agora-parl.org/>

⁷⁹⁷ ISLAMIC WOMEN'S ACTIVISM IN THE ARAB WORLD, cited earlier.

groups working to promote women's situation from a non-religious perspective⁷⁹⁸.

Paragraph VII: Sudan

In general, Sudanese women have a long history of participating with men in all aspects of life, yet not enjoying the same rights. At this point, one should note that the advancement of women in Sudan is closely related to the type of governance in existence. Authoritarian and military governments tend to suppress women and reduce their participation to token representation⁷⁹⁹.

Since 1965, Sudanese women have succeeded in making practical strides in the areas of political and economic rights. Nevertheless, factors such as political destabilization, the absence of development plans that view women as essential participants, the dominance of Sharia law and the absence of democracy have all served to lower the status of Sudanese women. Statistics reveal that the gender gap with respect to women's political participation remains great, despite the constitutional and legal rights that women have gained. Although women were granted the right to vote in 1955, and the right to stand for election in 1965, the number who have entered parliament is negligible. Political participation here focuses on⁸⁰⁰:

- The proportion of women in parliament, at the national level;
- The proportion of women in the central and state governments;
- The proportion of women in decision-making positions; and
- The proportion of women in the leaderships of political parties.

Women do, however, play a greater part in election work than their parliamentary representation would suggest. Women participate in party meetings, serve on political committees within parties, participate in women's caucuses within parties, sit on executive committees and are members of decision-making structures. Additionally, they have represented parties in negotiations (within and outside Sudan), they have been members of

⁷⁹⁸ Julie Elisabeth Pruzan-Jørgensen, *ISLAMIC WOMEN'S ACTIVISM IN THE ARAB WORLD*, 2012, PP: 54-55, available at: <http://subweb.diis.dk/>

⁷⁹⁹ The Arab Quota Report, cited earlier

⁸⁰⁰ Women in Parliament: Beyond Numbers, IDEA International, available at http://www.idea.int/publications/wip2/upload/WiP_inlay.pdf

underground political cells and they have taken up arms with the political opposition located outside Sudan⁸⁰¹.

According to the approved interim national constitution (2005), Article 2-2-2, the sources of legislation are Sharia law and community consensus, without reference to the international conventions. It is clear from this agreement that the national legal system and proposed laws that lay the groundwork for Sharia law will form the legal regime based on the 1998 constitution. There have been criticisms and studies critical of this constitution by the northern Sudanese women's movement, as it does not provide for any women's rights, except for a mention of women under a general paragraph which is non-binding constitutionally. The opportunity for women to lay the groundwork for greater inclusion, to participate in the framing of a new future for Sudan by bridging the gender gaps, and to play a part in drawing up the Sudanese constitution, reforming the legal system and ensuring women's participation. This cannot be achieved without drawing on international instruments and conventions as sources of legislation and a broad grass-roots base. Support to women must come through legislating seriously for legal guarantees to ensure their social, political and economic inclusion⁸⁰².

Paragraph VIII: Syria

Recent decades have seen tangible progress in women's political participation indecision-making positions at the government, international and non-governmental organization (NGO) levels. The proportion of women holding seats in national parliaments has increased in the past ten years, reaching 16 percent in 2005. The number of women presiding over parliaments has also increased, with more than 25 women holding this position. In this context, the topic of women's participation in decision making commands special importance in the new world order and is giving rise to increasing calls for modernization and development, particularly in developing countries⁸⁰³.

A decision making position is not an end in itself but a means to encourage the development of a cadre of women who are capable of assuming posts in

⁸⁰¹ The Arab Quota Report, cited earlier

⁸⁰² The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Selected Case Studies, PP., 35-41, available at: <http://www.quotaproject.org/>

⁸⁰³ The Arab Quota Report, cited earlier

government: they form one half of society, and the opportunity of participation in government is a fundamental human right that women must be able to enjoy. The low level of participation by women in parliaments and decision-making positions in certain countries does not necessarily indicate discrimination against women or reflect their social position. Among the reasons for this low rate of representation is the failure of large numbers of women to enter political life, which in most cases is the entry point to representation in leadership bodies at the state level⁸⁰⁴.

Article 45 of the permanent constitution of the Syrian Arab Republic (1973) guarantees the right of women to work and enjoy equal opportunity with men, without discrimination; it states that 'the state guarantees for women all opportunities to participate effectively and fully in political, social, cultural and economic life and works to remove all obstacles that prevent progress and participation by women in building society'.

Despite Syrian women's relative progress in entering public life compared to the situation in other Arab countries, the Syrian government continues to support women when it comes to representation in decision-making positions by seeking to improve their conditions. The government incorporated the issue of women clearly for the first time in the country's Ninth Five-Year Plan by setting specific goals to strengthen the participation of women in economic development and in the executive, legislative and judicial branches of government, and different decision-making positions in public life. Syria's Commission for Women's Affairs set out a national strategy to promote Syrian women up to 2005; women and decision making is one of the components of this strategy. The plan affirms the need to work to strengthen the participation of women in the three branches of government and all decision-making positions, with 30 percent representation set as the target⁸⁰⁵.

⁸⁰⁴ Division for the Advancement of Women, Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership, 2005, EGM/EPDM /2005/REPORT, available at <http://www.un.org/womenwatch/daw/egm/eql-men/FinalReport.pdf>

⁸⁰⁵ The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Case Studies, PP: 92-96, available at: <http://www.quotaproject.org/>

Paragraph IX: Tunisia

According to Tunisian Law, Tunisian women and men are eligible voters alike. Tunisian legislation bans all forms of discrimination towards women's political participation.

In July 2001, the Tunisian Government included 9.25% of women, or two women of a total number of 29 Ministers and three women out of 25 Secretaries of State. Later, the Government included only one (01) Minister out of 30 Ministers and five (05) women Secretaries of State out of 18, as follows:

- Minister of Women Affairs, Family, Childhood, and the Elderly;
- Secretary of State in charge of Childhood and the Elderly;
- Secretary of State in charge of Social promotion;
- Secretary of State in charge of Hospital Institutions;
- Secretary of State in charge of Computers, Internet and Freeware;
- Secretary of State in charge of American and Asian Affairs.

Recent statistics show that out of 100 functional positions, 23.59% were granted to women in 2007, versus 21.3% in 2004. We note however that women proportion decreases the higher positions are: in 2007, women represented only 8.27% of all General Managers, 20.97% were Managers, 24.62% were deputy Managers, versus respectively 7,76%, 17,86% and 22,59%, in 2004.

According to Article 6 of the Constitution, all citizens are equal before the Law in terms of rights and duties. The legislative power in Tunisia is performed in Tunisia by the Chamber of Deputies and the Chamber of Counsellors. In Tunisia, there is no discriminatory measure against women interested in working in this sector. The first woman judge was appointed in 1968. Since 1988, the various jurisdictional instances have included a rate of 24% of women magistrates. Women are present at all jurisdiction levels and constitute nearly 15% of senior responsibility positions. Women's position in other judiciary professions remains limited. In 2005, Tunisia had: 509 women judges out of 1764, hence a rate of 28%; 1303 women lawyers, of a total of 4295, hence a rate of 30%; 53 women legal experts, out of 1863, or 2.5%; 185 women notaries out of 994, or a rate of 19%; 94 women bailiffs out of 796, hence a rate of 13%; 20

women sworn translators out of 81, or 24,5% ; 7 women proxy agents and official receivers out of 76 hence a rate of 9%⁸⁰⁶.

In order to consolidate women's presence in local structures, and make of them a full pledged partner acting for the development of local democracy and public life, both regional and local, the rate of women in Governorates' local councils has been increased to 23%. In municipal councils, the rate of women advisors increased from 13.3% in 1990 to 16.6% in 1995 to reach 26% in 2005.

The proportion of Tunisian women's representativeness in municipal elections is more the result of the President of the Republic decision to bring women's presence in municipal councils to 25% at least of the seats. Political parties were also instructed towards this action. The Presidential Party, or RCD, increased the rate of women on its lists to 25%, and is expected to pull other parties on this track. In the Tunis Declaration of the Arab Summit held in May 2004, Arab State leaders, for the first time in their Arab summit, expressed their commitment to enhance women's participation in the political, economic, social, and educational fields and reinforcing their rights and status in society.⁸⁰⁷

In the May 2005 municipal elections, women candidates represented 35.67 % on RCD electoral lists, their presence in municipal councils grew from 21.48% in 2000 to 29.09 of RCD elected representatives in 2005⁸⁰⁸.

Conclusion

Although many measures have been taken by the majority of Arab countries to enhance women representation in decision-making positions, women's participation in public life and positions of power have not been achieved the desired level which requires further efforts from the governments, civil society and the private sector. Even in the presence of a strong political will in many Arab countries, cultural constraints may dominate and women are still represented a small percentage of the total elected legislators and officials assigned to the various bodies and institutions of society. The integration of

⁸⁰⁶ Boutheina Gribaa, Mapping of the situation of women participation in politics in Algeria, Morocco and Tunisia, 2008 – 2009, UN-INSTRAW and CAWTAR, available at <http://www.genderclearinghouse.org/En/>

⁸⁰⁷ United Nations Development Fund for Women/ UNIFEM), Progress of Arab Women, (Egypt: UNIFEM Arab state regional office, 2004). Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP: 8, available at: <http://www.agora-parl.org/>

⁸⁰⁸ Boutheina Gribaa, Strengthening women's leadership and participation in politics and decision making process in Algeria, Morocco and Tunisia, PP: 90-95, available at: <http://www.genderclearinghouse.org/>

women in public and political life requires solid political interventions aiming at empowering women and raising the awareness of men and women in the Arab world about the value of women role not only in the private but also in the public sphere⁸⁰⁹.

The challenges Arab women face with respect to political participation are numerous and are often interconnected. The list is endless. Many of these obstacles stem from the patriarchal nature of society, which has permeated into formal and informal organizations in addition to being the major force within family structures. Although there are myriad differences between the Arab countries in the political and economic realms, patriarchy seems to be a common feature. Patriarchy is still a major force hindering Arab women's advancement. A combination of patriarchy, conservative religious interpretations and cultural stereotyping has built a very strong psychological barrier among Arab populations regarding women's participation in the public sphere⁸¹⁰.

The hierarchical social relations intrinsic to any patriarchal system have resulted in women's social identities becoming dependent on their relationship with a man, as a father or husband. Such relationships have encouraged the view that the oppression of women is the cornerstone of such systems and that their liberation is an essential condition for overcoming it⁸¹¹.

Increasing the level of female representation and participation in decision-making bodies requires well-developed strategies and information on which measures have worked successfully in different countries with different political systems. In addition, the outcomes and impact of women empowerment programs as well as positive discrimination measures for women should be studied in terms of real changes in the lives and status of women. However, the challenge remains in integrating findings of research into future policies and programs. In addition, serious efforts are needed in the area of developing gender-sensitive indicators to measure the gender outcomes as well as establishing a solid gender-relevant monitoring and evaluation mechanism. The

⁸⁰⁹ Rowaida Al Maaitah, Hadeel Al Maaitah, Arab Women and Political Development, PP: 13, available at: <http://www.agora-parl.org/>

⁸¹⁰ Amal Sabbagh, The Arab States: Enhancing Women's Political Participation, PP:4, available at: <http://www.idea.int/>

⁸¹¹ Sharabi, Hisham, 1988. Neopatriarchy: A Theory of Distorted Change in Arab Society. New York: Oxford University Press. The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Case Studies, PP: 13, available at: <http://www.quotaproject.org/>

International Institute for Democracy and Electoral Assistance (International IDEA) is committed to providing further comparative information on how to advance gender and democracy issues in general, and how to promote the participation and representation of women in political life in particular.

Since 2003 IDEA has participated in a global research project in collaboration with the Department of Political Science, Stockholm University that has led to the generation of comparative practical knowledge on electoral quotas for women. More information and research about quotas and women's participation in politics is needed, especially regarding the Arab region⁸¹².

⁸¹² The International Institute for Democracy and Electoral Assistance (International IDEA), The Arab Quota Report: Selected Case Studies, PP: 5, available at: <http://www.quotaproject.org/>

Chapter II: Women's and Children's Rights after the Arab Spring

When citizens in the Middle East and North Africa (MENA) took to the streets in early 2011 in demonstrations that toppled autocratic regimes, one after another, a new democratic rule with more rights and representation for all, including women, were chief among the demands. The people of the region seized onto the importance of political empowerment and many saw an opportunity within the newly evolving political order to positively impact universal human rights, especially the rights of women and ethnic minorities.

Movements against dictatorships across the Middle East, North Africa, and the Gulf region were raised. These movements call for democratization, new constitutions that protect equality, free speech and assembly, and fair elections. Women have been an integral part of these revolutions, organizing and marching alongside men. Now, as countries in the region are in the process of building new governments, women's activists know they must fight to play a substantial role⁸¹³.

Women played an important role in the Arab Spring in Arab countries like Egypt, Tunisia, Libya, Syria and Yemen. However – as everyone soon came to recognize – the transition to a more democratic and inclusive society remains a challenge throughout the region, and women have seen the window of opportunity for true and equal partnership in the transition continue to close⁸¹⁴.

Reports indicate that the status of Arab women, after long decades of struggle, is currently experiencing a decline, compared to the past. Furthermore, women who fought in the revolutions subsequently found themselves, in some countries, living in primitive ages of ignorance. This is where the Arab Spring turned into a “dark autumn” in some countries, and went many steps backwards, so much so, that women have become afraid and concerned in spite of their prominent presence and the role they played in these revolutions. Furthermore, women found themselves deliberately excluded from reaping the fruits of their strong involvement in many of these post-revolution countries. Women of the so-called Arab Spring fear that the bright future which they aspired for, is

⁸¹³ United nations senate committee, foreign relations, Women's Rights, and the Arab Spring ,Fact Sheet on Egypt, Tunisia, Morocco and Jordan, PP:1, available at: <http://www.foreign.senate.gov/>

⁸¹⁴ Ambar Zobairi, International foundation for electoral systems, The Status of Women's Rights – Post-Arab Spring, available at: <http://www.ifes.org/>

turning into a grim present under the cover of religious extremism which spread in many of these countries, such as Tunisia, Egypt and Libya”⁸¹⁵.

Section I: Situation of Human rights after the Arab spring

Human rights defenders, union activists, and civil society activists in general continued to face arbitrary forms of legal and security harassment in many of the countries under study; a number of these activists were subjected to arbitrary arrest and prosecution.

While there was a clear decline in violations against such activists and their organizations in Tunisia and Yemen, the “Arab spring” did not positively affect the situation of human rights organizations and civil society activists in Egypt.

Female protesters in Egypt endured humiliating, invasive practices like virginity tests when they protested against military rule after President Hosni Mubarak stepped down. In Libya, as fighting intensified between former president Muammar Gaddafi's forces and the rebels, women provided medical, logistical and other support to armed opposition groups. Most notably, women were at the epicenter of demonstrations where they organized student rallies against then Yemini President Ali Abdullah Saleh.

The National Transitional Council (NTC) in Libya drafted legislation to support the freedom to form non-governmental organizations and to carry out their activities independently from governmental oversight, yet this law was not officially adopted. Even so, Libya witnessed an explosion in the number of non-governmental organizations in the country, including the establishment of dozens of groups working in the fields of human rights and humanitarian relief⁸¹⁶.

Although the outcomes for nations involved are nuanced, and most demands remain unresolved, many of the pro-democracy movements across the MENA region have encouraged advances in human rights, particularly in the areas of civil and political rights, and access to remedies for victims of abuses. King Abdullah's recent announcement that Saudi women will be allowed to exercise

⁸¹⁵ The national, Arab Spring countries among worst for women's rights, November 12, 2013, available at: <http://www.thenational.ae/>, Read more: <http://www.thenational.ae/world/middle-east/arab-spring-countries-among-worst-for-womens-rights-poll#ixzz2yTHBoQFP>

⁸¹⁶ Essam El-Din Mohamed Hassan, Delivering Democracy: Repercussions of the 'Arab Spring' on Human Rights, Human Rights in the Arab Region Annual ,Report 2012, PP: 30-33, available at: <http://www.cihrs.org/wp-content>

their right to vote and run for municipal office for the next term is attributed to the Arab Spring, as is the decision of Sudanese President Omar al-Bashir not to seek re-election in 2015 and political reforms in Jordan and Morocco.

The UN Human Rights Council recently recommended the reinstatement of Libya under the leadership of the Libyan Transitional Council, after the nation's March suspension over the actions of former ruler Muammar al-Qadhafi. In Tunisia, elections are monitored by the Tunisian League for Human Rights, a civil society organization banned for the past 11 years after being dissolved by the totalitarian government of Zine El Abidine Ben Ali.

In the three transitioning nations—Tunisia, Egypt and Libya—the role of civil society is steadily increasing, representing an important facet of institution building and the development of sustainable human rights protection mechanisms⁸¹⁷.

In the UN system the General Assembly, the Human Rights Council and the High Commissioner for Human Rights all have a mandate to promote and enhance respect for human rights by Member States, whereas within the Arab League's system, this power has been devoted to only one political organ, the Arab Permanent Human Rights Commission, which does not have a history of effectively examining the human rights records of States, nor of engaging in human rights issues.

In March 2011, the League of Arab State (LAS) Council adopted a resolution calling upon the General Secretariat to set forth suggestions on an effective review of the role of both the Permanent Committee and its affiliate sub-committee of experts. However, it would be irrelevant and counter-productive to strengthen the Permanent Commission's mandate on human rights promotion and protection without properly amending the Arab Charter on Human Rights. Thus, reform should be operated on two parallel but simultaneous trains: Charter reform and strengthening the organs. In addition to developing its relationship with national human rights institutions in Arab League Member States, the Department is starting to interact more with civil society organizations.

It could further benefit from them by setting up informal briefings on human rights issues and convey concerns and recommendations to a higher political

⁸¹⁷ Faith Lemon, right news, The Uncertain Future of Human Rights in the Arab Spring, available at: <http://hrcolumbia.org/>

level. The principle of the establishment of a Court on human rights has been adopted by the Arab League's Member States during the Arab Summit in Doha in March 2013⁸¹⁸.

We will present below facts about specific Arab countries following the Arab Spring.

Algeria:

Algerian authorities lifted a nineteen-year long state of emergency in February 2011. However, more progress is needed to restore basic civil liberties. Particularly problematic are the repressive laws that restrict freedom of expression, association, and assembly (BBC, 2011a; HRW, 2011a). On the 15th April, the President announced reforms to strengthen democracy, including: the revision of electoral law; the appointment of a constitutional reform committee; a new law on information; and a reform of the law on civil society organizations (AI, 2011a). However, the law on information has been criticized by human rights organizations.

Whilst the imprisonment penalty has been abolished, freedom of opinion and expression are still restricted due to large fines, which range from EUR 300 to 5000, an extortionate sum for most Algerian journalists (Sanchez, 2011).⁸¹⁹

In Algeria, the authorities adopted new legislation which imposed further restrictions on associations and non-governmental organizations. Security harassment and the threat of being tried before a judiciary which lacks independence continued to be used to intimidate and persecute activists, rights defenders, and union leaders. Indeed, several prominent members of the Algerian League for the Defense of Human Rights, a number of union activists, and members of committees working to defend the rights of the unemployed were sentenced to prison⁸²⁰.

Bahrain:

In Bahrain, dozens of human rights defenders and those who called for democratic reform remained targeted by escalating harassment and intimidation following the pro-democratic uprising which started in February 2011. The

⁸¹⁸ Fidh, The Arab League And human rights: Challenges Ahead, February 2013, PP: 7,9, available at: <http://www.fidh.org/>

⁸¹⁹ -Shivit Bakrania, Governance and social development resource center, Helpdesk Research Report: The Arab Spring and its impact on human rights in the MENA region. 14 October 2011, available at: <http://www.gsdc.org/>

⁸²⁰ Essam El-Din Mohamed Hassan, Delivering Democracy: Repercussions of the 'Arab Spring' on Human Rights, Human Rights in the Arab Region Annual Report 2012, PP: 30-33, available at: <http://www.cihrs.org/wp-content>

Bahraini authorities practiced defaming and bringing criminal charges against rights activists, including those who cooperated with the United Nations mechanisms to expose the situation of human rights in Bahrain⁸²¹.

In November 2011, after receiving the final report of the Bahrain Independent Commission of Inquiry (BICI) and in an attempt to evidence its willingness to show greater commitments to respecting human rights, the Kingdom of Bahrain proposed the establishment of an Arab Court on Human Rights. The LAS Secretary General responded by appointing a committee of experts to look into the legal establishment of such a Court.

Their report was discussed in a meeting convened in Manama at the end of February 2013⁸²².

Egypt:

Some progress with respect to human rights appears to have been made in Egypt. Parliamentary elections began on the 21st November 2011. In addition, the notorious State Security Investigation Service (SSIS), which has been blamed for decades of human rights abuses, has been disbanded (BBC, 2011b). However, for many, the pace of progress has not been quick enough and new measures introduced by the Supreme Council of the Armed Forces (SCAF), have actually curbed some aspects of human rights. Human rights abuses continue in the form of the use of excessive violence against protestors, a clamp-down on free expression and criticism of the military government, accompanied by increased rhetoric and restrictions on NGOs and human rights organizations, and the continuing use of military trials (AI, 2011b)⁸²³.

Jordan:

Hundreds and sometimes thousands of Jordanians staged peaceful protests. Demands initially focused on economic reforms but evolved to calls for the resignation of the Prime Minister, political reforms (including full elections), and freedom of speech and association (AI, 2011a). Human rights challenges remain, and free speech is still being stifled. In June 2011, an anticorruption agency was created with powers to punish people with up to six months

⁸²¹ Essam El-Din Mohamed Hassan, Delivering Democracy: Repercussions of the 'Arab Spring' on Human Rights, Human Rights in the Arab Region Annual Report 2012, PP: 30-33, available at: <http://www.cihrs.org/wp-content>

⁸²² Fidh, The Arab League And human rights: Challenges Ahead, February 2013, PP: 7,9, available at: <http://www.fidh.org/>

⁸²³ Shivit Bakrania, Governance and social development resource center, Helpdesk Research Report: The Arab Spring and its impact on human rights in the MENA region. 14 October 2011, PP:5, available at: <http://www.gsdrc.org/>

imprisonment who spread “unjustified” rumors about corruption (Wilcke, 2011a).

Kuwait:

Kuwait's democracy suffered through two hectic years, 2011 and 2012, with the dissolution of two parliaments, the emir unilaterally changing the electoral law and a subsequent opposition boycott of elections. The legal framework for assembly rights had relaxed in May 2006 after the constitutional court declared parts of the law on public gatherings unconstitutional. Since 2011, however, the government has increasingly used measures to suppress public displays of dissent.

According to Human Rights Watch, the Kuwaiti government also issued repeated warnings that bidoons should not gather in public, after the group had staged frequent public demonstrations asking for more rights. The largest human rights problem by far is the treatment of, as well as the lack of legal protection for, foreign and unskilled domestic workers. A step toward greater inclusion came in March 2011 when the government granted bidoons the right to basic services, such as free health care and education, among others.⁸²⁴

The statelessness issue remains one of the most hotly contested in Kuwait. On one hand, local activists condemn the humanitarian consequences of Kuwaiti government policies towards the Bedoon. On the other hand, some Kuwaiti citizens have protested against naturalizations that have already occurred, expressing that they would have had the effect of bolstering particular tribal constituencies. Regardless, government in action towards the plight of the Bedoon means that there are yet to be policies instituted that work towards remedying the problem.

Thousands remain deprived of their basic political, economic, and social rights, limiting their ability to contribute to Kuwaiti society. As Mona Kareem, a Bedoon rights activist stated, Kuwaiti officials continue to emphasize that naturalization is “a sovereign decision and a right for the state to decide in accordance to its higher interests.” But instead, what must be clarified is that the naturalization of Bedoon does not need to be a sovereign decision, but a systematic process that meets the basic needs and demands of the Bedoon themselves⁸²⁵.

⁸²⁴ The world bank, Kuwait Country Report, 2014, PP: 7, available at: <http://www.bti-project.org/>

⁸²⁵ Human Rights Watch, “Prisoners of the Past – Kuwaiti Bedoon and the Burden of Statelessness,” op.cit. samiha kamel, Kuwait's Bedoon and the Arab Spring, PP:3, available at: <http://cemmis.edu.gr/>

Libya:

Conflict continues in Libya and the key issue here is whether parties involved are respecting international humanitarian law and applicable human rights law. There are an array of security forces operating in Tripoli and western Libya without effective oversight or experience, and with varied human rights records. Meanwhile, the task of setting up a justice system able to provide prompt judicial review of all detainees has not been given high priority (HRW, 2011g).

Morocco:

On the 9th of March 2011, King Mohammed VI announced constitutional reform, which was subsequently voted in by referendum with 98 percent in favour of the reforms (BBC, 2011g; 2011h). Key human rights reforms included:

- (1) New powers for the parliament, including more oversight of civil rights, electoral and nationality issues;
- (2) Strengthening and protecting the independence of the judiciary;
- (3) Guaranteeing women's "civic and social" equality with men;
- (4) Guaranteeing freedom of religious practice to all faiths; and
- (5) Recognizing Amazigh, the language spoken by the Berber minority, as an official language (BBC, 2011g; Achy, 2011; Ottaway, 2011).

In addition, in March, the King set up a new National Human Rights Council (Middle East Online, 2011)⁸²⁶. Even though Morocco is one of the few Arab countries in which human rights organizations are allowed a margin of freedom and independence in which to carry out their work, the authorities continued to be hostile to rights organizations working in the Western Sahara, including by refusing to allow such organizations to legally register. Rights activists working on the region continued to face arbitrary arrest, physical attacks, and unfair trials⁸²⁷.

State of Palestine:

In the State of Palestine, rights activists continued to be arbitrarily targeted by the Israeli authorities as well as by the governments in both the West Bank and Gaza Strip. Severe restrictions were imposed on the freedom of movement and the ability of prominent rights advocates to travel. A researcher with the Dameer

⁸²⁶ Essam El-Din Mohamed Hassan, Delivering Democracy: Repercussions of the 'Arab Spring' on Human Rights, Human Rights in the Arab Region Annual Report 2012, PP: 30-33, available at: <http://www.cihrs.org/wp-content>

⁸²⁷ Essam El-Din Mohamed Hassan, Delivering Democracy: Repercussions of the 'Arab Spring' on Human Rights, Human Rights in the Arab Region Annual Report 2012, PP: 30-33, available at: <http://www.cihrs.org/wp-content>

Association for Human Rights was subjected to torture while under arrest, and the offices of the Dameer Association for Human Rights, the Palestinian Non-Governmental Organizations Network, and of the Union of Palestinian Women Committees were raided and their equipment and files confiscated.

The offices of the Palestinian Human Rights Foundation (Monitor) in the West Bank were also closed, and rights activists were subjected to harassment, threats, and assaults while carrying out field monitoring. In Gaza, a researcher with the Al Mizan Center for Human Rights was physically attacked after receiving death threats⁸²⁸.

Saudi Arabia:

In Saudi Arabia, the authorities maintained their policy regarding legal recognition of independent rights organizations, refusing to allow the Adala Center for Human Rights and the Monitor for Human Rights in Saudi Arabia to obtain licenses to work.

The authorities particularly targeted the Saudi Civil and Political Rights Association, and a number of its leaders were referred to court on various charges, including working with an unauthorized association, tarnishing the reputation of the country, and inciting international organizations against the Kingdom. Several activists were also banned from travelling to participate in the proceedings of the international rights mechanisms⁸²⁹.

In response to the February protests, King Abdullah bin Abdul Aziz Al-Saud announced that women will be able to participate in municipal elections in 2015. He also announced that women may become full voting members of the consultative Shura council (Khalife, 2011). There is concern about the human rights implications of the draft Penal Law for Crimes of Terrorism and Its Financing of 2011. It has serious flaws, which will further undermine freedom of speech, peaceful assembly and association, and the right to a fair trial (HRW, 2011j)⁸³⁰.

⁸²⁸ Essam El-Din Mohamed Hassan, Delivering Democracy: Repercussions of the 'Arab Spring' on Human Rights, Human Rights in the Arab Region Annual Report 2012, PP: 30-33, available at: <http://www.cihrs.org/wp-content>

⁸²⁹ Essam El-Din Mohamed Hassan, Delivering Democracy: Repercussions of the 'Arab Spring' on Human Rights, Human Rights in the Arab Region Annual Report 2012, PP: 30-33, available at: <http://www.cihrs.org/wp-content>

⁸³⁰ Shivit Bakrania, Governance and social development resource center, Helpdesk Research Report: The Arab Spring and its impact on human rights in the MENA region. 14 October 2011, PP:9, available at: <http://www.gsdc.org/>

Sudan:

In Sudan, arbitrary arrest and torture were used against numerous human rights defenders, and a rights defender was referred to court following her role in providing humanitarian assistance to those living in Kordofan and in uncovering violations occurring in the region. The authorities also expelled a number of foreign humanitarian organizations working in Darfur and in the east of the country. The Arry Organization for Human Rights and Development was banned from carrying out its activities, and six of its employees were arrested. Similarly, the registration of the al-Khatim Center for Enlightenment and Human Development was cancelled, it was removed from the general registry of licensed voluntary organizations, and its assets were confiscated.

Syria:

In Syria, numerous human rights defenders were subjected to arbitrary arrest, enforced disappearance, and torture. The office of the Syrian Center for Media and Freedom of Expression was raided, and its director, Mazen Darwish, was arrested, along with fifteen others. Darwish's fate, as well as that of a number of his colleagues, remained unknown until the end of the year. Seven other employees of the Center were referred to a military court based on the charge of "possessing material banned from publication." The rights activist Adnan Wahba was killed by unknown armed assailants, and Khalil Ma'touq , the executive director of the Syrian Centre for Legal Studies and Research, was arbitrarily arrested⁸³¹.

Tunisia:

Some advances in human rights have been made since the revolution. The following have been cited by Amnesty International as key actions that need to be addressed in Tunisia: An overhaul of police and law enforcement bodies, with increased transparency and accountability in the structure of command; the combating of torture; an end to incommunicado detention and ensuring that detainees have access to their families, legal representation and medical care; a repeal of laws that criminalize free assembly, association and expression; a reform of the justice system with the introduction of fair trials and an end to the practice of trial by military court; the introduction of a law forbidding violence against women; and the abolishment of the death penalty (AI, 2011g).

⁸³¹ Essam El-Din Mohamed Hassan, Delivering Democracy: Repercussions of the 'Arab Spring' on Human Rights, Human Rights in the Arab Region Annual ,Report 2012, PP: 30-33, available at: <http://www.cihrs.org/wp-content>

Even relatively secular In Tunisia the legal reality is unchanged, “acquired rights are being threatened by repeated attacks by Salafist groups on those they consider infidels or on behaviour they deem contrary to Islamic morality.” But it's not only the Salafists that represent a threat to women's rights: a young woman was allegedly raped by police officers in September 2012.⁸³²

Yemen:

The human rights situation in Yemen has deteriorated rapidly in 2011. Protests calling for reform have been met with brutal repression. Up to 225 have been killed and hundreds injured after security forces have repeatedly used live ammunition to break up demonstrations. Investigations have been announced into the killings but inspire little confidence - little has been made public about the nature and scope of the investigation and there are serious questions as to whether the investigating body has the ability to conduct thorough, independent and impartial investigations (AI, 2011a; 2011b) The pro-democracy movement has been hi-jacked by three elite factions, which brings increased risk of civil war with little hope for improving the human rights situation for civilians (Tayler, 2011, BBC, 2011)⁸³³.

Section II: Arab spring revolutions - A transition period

Women played a prominent role in the Arab uprisings, but as the protests led to political transitions and societies entered a state of flux, the future of women's political empowerment became uncertain.

The Arab uprisings show evidence of a declining gender gap in unconventional forms of political participation, but the post-revolution environment demonstrates that significant barriers, such as inequalities in education and employment levels, as well as cultural attitudes, still exist for women and limit their participation in traditional forms of political behaviour. Therefore, broader efforts at economic and social development must be the starting point for women's rights⁸³⁴.

⁸³² Aida Alami, “Women Face Fight to Keep Their Rights in Tunisia,” New York Times, February 20, 2013, Marwa Shalaby, Journal of Women and Human Rights in the Middle East, fall 2013, PP:13, available at: <http://bakerinstitute.org/http://www.nytimes.com/2013/02/21/world/middleeast/women>.

⁸³³ Shivit Bakrania, Governance and social development resource center, Helpdesk Research Report: The Arab Spring and its impact on human rights in the MENA region. 14 October 2011, PP:9-11 available at: <http://www.gsdrc.org/>

⁸³⁴ Marwa Shalaby, Journal of Women and Human Rights in the Middle East, fall 2013, PP:4, available at: <http://bakerinstitute.org/>

Women's status in Arab countries is far from being uniform, ranging from a broad acknowledgement of rights to a negligible legal capacity. That situation has a dual consequence.

On the one hand, demands concerning women's rights and efforts to guarantee them will obviously have a different intensity in each country, and therefore the transitional process will serve either to achieve rights or to consolidate them - or both - depending on the particular domestic circumstances and backgrounds.

On the other hand, women's role in the transition may vary depending on the level of freedom and rights they had under the previous regime: if they already enjoyed to some extent the right to participate in public issues, they expectably will be able to channel their demands in a fruitful way; if they didn't, the fight will need to focus in becoming visible and heard in the public arena⁸³⁵.

The Arab Spring Revolutions showed the importance of a more inclusive approach to transitional processes. The Arab uprisings enhanced the ability of women to involve themselves and to make better use of their capacity and their full potential to contribute to change. For example, the success of the Arab uprisings in Tunisia, Egypt, Yemen and Libya during 2011 could not have been possible if not for the women (Von Rohr 2011).

Women activists of the Arab Spring have come from all social classes. From my experience, they were well-organized and actively participated in Arab uprisings – some came to protest with their children – to demand change. Thousands of men joined the demonstration out of solidarity with the women. During the revolutions, women's participation side-by-side with their fellow male protestors helped in creating a sense of equality and lessened gender differences.

Women have made their voice heard in the Arab spring revolutions at many levels; however, the 'gains' for women in terms of gender roles can be lost in the post-revolutions period, when 'going back to normal' is the priority. Women need to explore the political, strategic and analytical dimensions of the uprisings if they want to ensure that when democracy works, it works to the present and future benefit of all women and men.

⁸³⁵ ROSA ANA ALIJA FERNÁNDEZ, OLGA MARTÍN ORTEGA, WOMEN'S RIGHTS IN THE ARAB SPRING: A CHANCE TO FLOURISH, A RISK OF HIBERNATION, PP:5, available at: <http://www.journalofdemocracy.org/>

In the wake of the Arab Spring, there is an emergence of new opportunities for the mobilization of women. Women's involvement in transitional processes will contribute to the advancement of women's rights, to giving a voice to voiceless women, to initiating legislation that concerns their gender, as well as to pushing for law reforms and justice in the society.⁸³⁶

The reality of Arab women, in light of the Arab awakening, puts more than a question mark over their real participation and future role in shaping the transitional period to achieve the objectives and aspirations of the Arab Spring. Arab women and children actively participated in revolutionary efforts to end tyranny in Syria, Egypt, Libya, Yemen, Iraq, Tunisia, and elsewhere. However, their contributions faced the savage fury of state repression.

Hamaza Al Khateeb's case in Syria is one of thousands of Arab children who are abused, tortured, murdered, starved and displaced around the world. Arab women suffered systematic violence including rape, torture, starvation, murder, and extermination at the hands of authoritarian regimes and paramilitary groups in Syria, Egypt, Yemen and other parts of the Arab world. This third Special Issue seeks to examine the impact of Arab Spring rebellions and the counterrevolutions' impact on women and children in particular.

Arab women and children continue to be victims of revolutionary change and instability in the region. This is not to exclude the victimization of men, as we see in the cases of Syria, Egypt, Libya and elsewhere, but the impact of war on women and children is catastrophic. Hundreds of thousands of Syrian women and children are scattered around the world in refugee camps. An entire Syrian generation of children is lost.

Statistics of Syrian children who lost their parents and families are staggering; children live alone, homeless in refugee camps in Jordan, Lebanon, and Turkey. The level of abuse on women and children is unprecedented in modern history.

Systematic rape, exploitation and starvation goes unnoticed by an international community that continues to claim high moral grounds, and sits idle, passive, silent and deaf to the human rights violations committed against women,

⁸³⁶FATMA OSMAN IBNOUF, E-international relations- MAY 21 2013, Women and the Arab Spring, available at: <http://www.e-ir.info/>

children and men in Syria, Egypt and elsewhere within the context of Arab Spring revolutions⁸³⁷.

The female revolutionaries, journalists, protestors, commentators and citizens did also have the spotlight shone upon them as the Arab Spring began to sweep the Middle East. Yet with this spotlight came intense scrutiny from the brutal elements of their society and resultantly reports of rape, sexual assault, physical attacks as well as verbal assaults and other such anguishes became an all too common occurrence.

The female actors in the protests were perhaps regarded as easy targets, though it should be noted that the brutality was not limited to women. These reports were not limited to police and regime attacks; there were also cases of women being attacked by protestors and other people present during the marches and protests in the various squares and streets of cities across the region.

The Egyptian experience perhaps brought a magnifying glass upon these attacks; Egyptian military doctors subjected some female demonstrators to invasive 'virginity tests', following the police having arrested them for demonstrating.

These tactics were used to frighten off the growing presence of women during the Egyptian protests. Though losing the lawsuit, Ibrahim's case did garner the media's attention and interest. Alongside these reports came stories of sexual assault of female journalists. Further stories were reported of a young British journalist, Natasha Smith, and American-Egyptian commentator, Mona el-Tahawy, having been subjected to attacks. These were some of the better reported stories, but of course there were many more that began to circulate during the Arab Spring.

Egypt was not the only case. Women in Tunisia, Libya, Yemen, Bahrain, Syria all reported similar instances having occurred during protests and demonstrations.

These very physical challenges posed extra burdens upon the female protestors - not only were they facing the challenge of removing the dictatorial regimes, like their male counterparts - but traditional, patriarchal attitudes towards women,

⁸³⁷ Sangeeta Sinha, *Journal of International Women's Studies*, Introduction: Children and Arab Spring, December 2013, available at: <http://vc.bridgew.edu/>

along with physical threats to their safety certainly made their situation far more challenging. These are examples of some of the more immediate challenges that women participants of the Arab Spring faced. Yet despite that, the female actors in the revolutions continued to keep up their demands for reform and revolution and hoped to play a significant role in the political change that came after the revolts⁸³⁸.

The so-called "Arab Spring" is leaving behind a double transitional scenario, from non-democratic regimes to democracy (i.e. in Tunisia or Egypt) and from internal conflict to peace (i.e. in Libya). In both cases, though, the professed aim is to build a sustainable peace through the instauration of the rule of law and democracy. Transitions are times of political but also social transformation.

Therefore, attention should be paid to their gender-reshaping potential and the capacity to transform gender relations in society, in order to achieve changes not only in the socio-political post-conflict arena, but also in the traditional configuration of gender relations within the society in transition⁸³⁹.

Unfortunately, women did not fare as well in traditional processes of political participation post revolution. Not only have transitional councils failed to include women or prioritize their involvement, but also women running for public office have suffered at the polls.⁸⁴⁰

Since Arab women are living through historical transformations that could bring forth social changes, is it possible to expect that their new situation will be aligned with the vision that envisages "a world where societies are free of gender-based discrimination, where women and men have equal opportunities, where comprehensive development of women and girls is ensured so that they can contribute to be active agents of change, where gender equality and

⁸³⁸ Mohsen, Habiba (2012). "What made her go there? Samira Ibrahim and Egypt's virginity test trial", Al-Jazeera English (16 March) <http://www.aljazeera.com/indepth/opinion/2012/03/2012316133129201850.html>, Shazia Arshad, memo middle east monitor, The Arab Spring: What did it do for women?, Available at: www.middleeastmonitor.com

⁸³⁹ See C. BELL & C. O' ROURKE, "Does Feminism Need a Theory of Transitional Justice? An Introductory Essay", *International Journal of Transitional Justice*, vol. 1, 2007, pp. 23-44; N. CAHN & F. NÍ AOLÁIN, "Gender, Masculinities, and Transition in Conflicted Societies", *New England Law Review*, vol. 44 (1), 2009, pp. 1-23; S. HARRIS RIMMER, "Sexing the Subject of Transitional Justice". ROSA ANA ALIJA FERNÁNDEZ, OLGA MARTÍN ORTEGA, WOMEN'S RIGHTS IN THE ARAB SPRING: A CHANCE TO FLOURISH, A RISK OF HIBERNATION, available at: <http://www.journalofdemocracy.org/>

⁸⁴⁰ Zvi Bar'el, "For Egypt's women, the Arab Spring does not spell freedom," Haaretz, April 18, 2012, <http://www.haaretz.com/news/features/for-egypt-s-women>. - Marwa Shalaby, Journal of Women and Human Rights in the Middle East, fall 2013, PP:11, available at: <http://bakerinstitute.org/>

women's empowerment are achieved and where women's rights are upheld in all efforts to further development, human rights, peace and security".

It is now clear that the rapid transformation that seemed so close at the start of the "Arab Spring" is in fact likely to be a process of gradual change that will take months, if not years with great challenges not to say clear dangers. Women's rights activists have to act in this complicate framework.

Nobody could deny that women's advancement increased, in the past two decades, at both governmental and civil society levels and many legal, judiciary and policy reforms and achievements related to gender, human rights and development are undergoing even though with different degrees of transformation but with "political Islamism" gaining more and more power, especially in Tunisia, Egypt,

Libya and Morocco with various more or less successful attempts in other countries (e.g. Syria, Jordan and Gulf countries...), the Arab women's movements are concerned that efforts to advance women's rights may be halted and even reversed. Violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men." Based on their commitment to implement different international standards (conventions, internal conferences, PoAs, etc.) including the Beijing Platform, significant actions have been undertaken by countries that declared a commitment to fight VAW/GBV⁸⁴¹.

Violence against women in form has been on the rise in the many countries but this increase does not necessary reflect new cases but is a result of heightened awareness and more involvement by governmental bodies, press, research institutions, NGOs and other stakeholders in identifying, reporting, and ending violence against women thanks to the efforts of the civil society and women human rights activists.

In most of the countries to only quote Algeria, Morocco, Tunisia, Lebanon, Iraq, Jordan etc., the Governments released - through the years - ministerial declarations stating government's will to tackle GBV issues or pledging that it will endeavor to address legal reforms or to adopt plans to combat violence against women. These explicit commitments have been in some cases fully or

⁸⁴¹ <http://www.ohchr.org/Documents/HRBodies/CEDAW/RegionalConsultationAmmanJan2013.pdf>

partly fulfilled, and they however attest increasing engagement by the States to respond to their obligations, as duty bearers with respect to GBV⁸⁴².

Algeria:

In January 2011, Algerian women organized campaigns and participated side-by-side with men in demonstrations demanding democratic reform and the end of the regime. Women were among those arrested and beaten by police, and several women activists were specifically targeted by the authorities. Unfortunately the demonstrations did not lead to the yearned for result. In spite of more campaigns to withdraw existing repressive laws restricting freedom and civil liberties, and in spite of protests to prevent the Algerian government to further restrict civil liberties, a new law on association, political parties and information was adopted by parliament in January 2012, prescribing new restrictions to civil liberties, such as receiving foreign funding, Laws in Algeria are based both on French and Islamic law (Sharia)⁸⁴³.

The Ministry for the Family and the Status of Women is the main governmental organization responsible for promoting and protecting the rights of women in Algeria. Despite the progress made in reforming discriminatory laws the Algerian family code continues to contain provisions based on Islamic Law that causes inequality between women and men.⁸⁴⁴

Bahrain:

Bahrain's stillborn revolution received less international attention; demonstrations which started in February 2011 following the revolutions in Tunisia and Egypt. Women participated along sidemen in these demonstrations and subsequently organized as leaders, protesting against unlawful arrest and detention and demanding release of political prisoners.

The solidarity movement, in which both Sunni and Shiite citizens participated at the start; quickly devolved in a sectarian rift by the exploitation of Sunni fears of being overwhelmed by the Shiite majority should representative democracy

⁸⁴² UN women, Women Human Rights in Situations of Conflict and Post Conflict contexts, AMMAN, JANUARY 2013, PP: 9,14, available at: <http://www.ohchr.org/>

⁸⁴³ Rabia el Morabet Belhaj and Anje Wiersinga, M.D., Wishes, Demands and Priorities of National and Regional Women's Organisations in the MENA Region, international Alliance of Women, January 2013, available at https://www.coe.int/t/ngo/Source/IAW_arab_spring_report.pdf

⁸⁴⁴ Rabia el Morabet Belha, International alliance of women, Wishes, Demands and Priorities of National and Regional Women's Organizations in the MENA Region, PP: 9, available at: <http://www.coe.int/>

be implemented. Some (Sunni) say the sectarian problem should be solved first, others (Shiite) that the sectarian problem will be eliminated if there is more democracy. Bahrain has a Sunni monarchy with a Shiite majority (60-70%). Shiites have been protesting for years against long-standing perception of discrimination in many areas of life, amongst other in employment opportunities. Of the unemployed 95% are Shiites. One of the burning issues between Sunni and Shiite is the Family - Personal Status Law, which defines – limits – women's rights⁸⁴⁵.

Egypt:

During the revolution Egyptian women acted as agents of social change, not passive victims of “culture” or “religion.” The women involved in the Egyptian revolution are of all ages and social groups - they participated because they want an end to poverty, state corruption, rigged elections, repression, torture, and police brutality. Since the revolution began, women have led marches, participated in identity checks of state supported thugs, and patrolled the streets to protect homes from looters and vandalism. They helped create human shields to protect the Egyptian Antiquities Museum, the Arab League Headquarters, and one another. They helped organize neighbourhood watch groups and committees nationwide in order to protect private and public property⁸⁴⁶.

Women bloggers have played key roles in mobilizing demonstrations, and many investigative journalists, including those who have faced beatings and arrests by police, are women. Professional women offered specialized services—physicians set up clinics and lawyers informed people about their rights under the law. Mothers of martyrs have also been at the forefront of the revolution⁸⁴⁷.

Although women participated alongside men in the revolution leading to Mubarak's resignation, they have been excluded from the political transition. In light of the risks of regression of their rights, women's organizations and activists have been urging the Egyptian government and parliament to include women and women's rights in bilateral and multilateral political dialogues, and

⁸⁴⁵ Rabia el Morabet Belha, International alliance of women, Wishes, Demands and Priorities of National and Regional Women's Organizations in the MENA Region, PP: 37, available at: <http://www.coe.int/>

⁸⁴⁶ Nadine Naber, Women and the Arab Spring: Human Rights from the Ground Up, Volume I, Issue I, International Institute Journal University of Michigan, Fall 2011, available at <http://quod.lib.umich.edu/i/ij/11645653.0001.104/--women-and-the-arab-spring-human-rights-from-the-ground-up>

⁸⁴⁷ Nadine Naber, Women and the Arab Spring: Human Rights from the Ground Up, PP:2, available at: <http://www.lsa.umich.edu/>

recognize equal rights between men and women as the very foundation of a democratic society⁸⁴⁸.

In the spirit of broadening the analysis of gender and human rights in the Middle East, women of the Egyptian revolution are conceptualizing human rights and the theories of many critical feminist legal scholars and activists across the globe⁸⁴⁹.

Jordan:

Jordan was one of the first countries to which Tunisia's popular mobilization spread. Jordan in 2010 was characterized by vigorous political mobilization, including protests by teachers and organized labor, public criticism of the government by a group of retired officers, and a broad opposition boycott of what were generally viewed as sham elections.

After long-time rulers were toppled in both Tunisia and Egypt, Jordan seemed a good candidate to be next in line. Yet by the summer of 2011 Jordan's Arab Spring had blown over. The key turning point in Jordan's Arab Spring came on March 24, 2011. Protests had ebbed and flowed since January, and despite significant numbers of protestors, political pressure did not escalate as it had in Tunisia, Egypt, Libya, Yemen and Bahrain. On March 24 Jordanian protesters, using the march 24 hashtag, attempted to emulate Egypt's Midan Tahrir popular takeover by camping out in front of the Interior Ministry, only to be dispersed by pro-government thugs⁸⁵⁰.

Tunisia:

Women's legal status in the first Arab country where popular uprisings overthrew the dictatorial government, Tunisia, is considered to be a model in the Arab world. Equality of all citizens before the law is guaranteed by its Constitution (Article 6). In practice, though, patriarchal attitudes and deep-rooted stereotypes persist as well as high rates of violence against women and domestic abuse.

⁸⁴⁸ Rabia el Morabet Belha, International alliance of women, Wishes, Demands and Priorities of National and Regional Women's Organizations in the MENA Region, PP: 21, available at: <http://www.coe.int/>

⁸⁴⁹ Women and the Arab Spring, cited earlier

⁸⁵⁰ Lucas Winter, JORDAN AND SAUDI ARABIA AFTER THE ARAB SPRING, PP:3, available at: <http://fmso.leavenworth.army.mil/>

They also suffer from socioeconomic inequality and are underrepresented in public life. Indeed, their active participation in early 2011 demonstrations is just a continuation of their struggle and resistance against oppression under Ben Ali's regime. Tunisia is not without its problems. Since the revolution, reports of sexual, verbal and physical violence against women has multiplied, and some blame the growth of Salafism as a main reason. The Yasmine Revolution in the Arab world started in Tunisia in December 2010 and spread from Tunisia to other Arab countries. Under the slogan of "Dignity, Liberty and Equality" it led to the fall of President Ben Ali's regime in January 2011. Tunisian women participated in great numbers with men in the protests demanding democratic change and during the transition period women continued to advocate and demonstrate for full participation in the democratic process leading up to the election of a new parliament in October 2011. The demand by Tunisian Women's organizations to lift reservations to CEDAW was met with the immediate announcement by the interim government in August 2011 that this was agreed on; however it has not yet been formally registered with the U.N. Women's lobby the electoral law included the requirement of parity with the alternation of female and male candidates on each list. The Islamist Ennadha Party won the October 2011 elections but thereafter maintained in official statements their commitment to women's rights⁸⁵¹.

During the wave of protests that started in December 2010, after Mohamed Bouazizi set himself on fire in Sidi Bouzid (Tunisia), women have played a crucial role. The demonstrations that have been spreading throughout the Arab world have seen women protesting alongside men to fight for their rights. This situation can be explained by the fact that before the Arab Spring the women's living context was very different from one country to another and from one social environment to another. Tunisia, for instance, after gaining independence from France in 1956, was one of the most progressive countries in the Arab world in terms of women's status.

Women were given the right to divorce and vote; and the country banned the hijab, or headscarf, in state offices and at universities. In Libya, under Gaddafi's regime, women's conditions were quite different.

⁸⁵¹ Rabia el Morabet Belha, International alliance of women, Wishes, Demands and Priorities of National and Regional Women's Organisations in the MENA Region, PP: 13, available at: <http://www.coe.int/>

Dr. Kian observed, "We often forget that in Libya, under Gaddafi, laws concerning women and family were largely inspired by Islamic laws. For example, polygamy has never been abolished in Libya." Women currently fear the loss of their rights. Although their inclusion in the labor market shouldn't evolve, their involvement in politics is under threat. The official employment rate of women is about 25% in the Arab world, but women are largely involved in the informal economy.

Islamist parties shouldn't make the situation change, in the opinion of Azadeh Kian. "In Tunisia, in Egypt, in Iran, women work at home. They sew; they prepare dishes for restaurants. Women actually work, because there is a strong economic crisis in the region; and lots of families cannot survive without women's income. I don't think parties like Ennahda, in Tunisia, or the Muslim Brotherhood, in Egypt, can go so far as to prohibit women from working. They are Islamist parties, conservative for sure, but they are not radical⁸⁵²."

Libya:

The 17 February 2011 Libyan revolution culminated in November 2011 with the end of Muammar Al-Qaddafi's 42 year rule. Libyan women participated massively in the 17 February revolution for equality, justice and democracy and the struggle to overthrow the regime. Women were communicating information from one town to another, smuggling weapons, organizing relief and support for families and the injured. Some women took up arms and fought alongside men.

The transition in Libya offers a rather different starting point than in Tunisia and Egypt. As uprisings and repression intensified, the situation in the country entered a new scenario, namely, an internal armed conflict. The shift is not from dictatorship to democracy, but from dictatorship, then to an armed conflict, and finally, expectedly, to democracy⁸⁵³.

Saudi Arabia:

Small protests among the country's eastern Shi'a population began as early as February 2011 and continued throughout the year. Tensions spiked in the fall,

⁸⁵² Voice of Russia radio, Political and social rights: women after the Arab Spring, 25 March 2013, available at: <http://voiceofrussia.com/> Read more: http://voiceofrussia.com/2013_03_25/Political-and-social-rights-women-after-the-Arab-Spring-2013/

⁸⁵³ ROSA ANA ALIJA FERNÁNDEZ and OLGA MARTÍN ORTEGA, WOMEN'S RIGHTS IN THE ARAB SPRING: A CHANCE TO FLOURISH, A RISK OF HIBERNATION, available at <http://revistaselectronicas.ujaen.es/index.php/rej/article/viewFile/636/563>

when armed clashes between residents and security broke out in the restive town of al-‘Awamiyya. The cycle of protest and repression continued through 2012, peaking again in July, when prominent Shi’a religious leader Shaykh Nimr al-Nimr was wounded by a gunshot to the leg during his arrest. Since then, low-level protests have continued in several Shi’a-majority towns in the country’s east although not in the mixed Sunni-Shi’a urban centers⁸⁵⁴.

The mobilization that arguably received greatest international attention was a protest against the ban on female driving. On June 17, 2011, nearly 50 women took to the wheel as part of a civil disobedience campaign in various Saudi cities. Although a woman’s right to drive may seem of little consequence to regime survival, the fact that female driving is outlawed in Saudi Arabia is symptomatic of broader tensions that have been heightened by the Arab Spring, specifically, the uneasy coexistence of modernity and elite extravagance on the one hand, and an austere and intolerant primitivism perpetuated by the religious establishment on the other. This delicate balance, by which the Wahhabi establishment grants the ruling Al Saud family religious legitimacy to rule over Mecca and Medina in exchange for the Wahhabization of social order, has thus far held up. The Arab Spring, with its broad message of popular empowerment and broader citizen participation, however, poses new challenges to this arrangement⁸⁵⁵.

Syria:

In the chaos and destruction created by the government’s violent repression of the recent protests and demands for freedom and democratic reform, survival is the main concern of many citizens next to the resignation of President Assad with the end of the present regime and the end of violence and chaos. The protests currently taking place in Syria are not being carried out exclusively by men. Women also play an important role. While the Syrian authorities have described from the beginning the anti-regime protests that have swept the country as being organized by Salafis or terrorist groups - which in itself is a self-fulfilling prophecy - these have not been exclusively carried out by men. Large women marchers were organized by urban and rural women to protest the detention of sons, husbands and male relatives and sometimes they were joined

⁸⁵⁴<http://fmso.leavenworth.army.mil/documents/Jordan-Saudi-Arabia-After-Arab-Spring.pdf>

⁸⁵⁵ See: Jason Bourke, “Saudi Arabia women test driving ban,” The Guardian 6/17/12. Available at: <http://www.guardian.co.uk/world/2011/jun/17/saudi-arabia-women-drivers-protest> (accessed 2/28/13). - Lucas Winter, JORDAN AND SAUDI ARABIA AFTER THE ARAB SPRING, PP: 6, available at: <http://fmso.leavenworth.army.mil/>

by other male relatives. These women carried placards demanding the release of all political prisoners, the lifting of the emergency laws and the introduction of greater freedoms. Covering the head is a traditional rather than a religious statement in southern Syria, but many women did not wear a headscarf during the demonstrations and appeared unveiled on the streets.

Women in Syria have not only been active in the demonstrations. They have also played an important role in promoting political and human rights. Female political activists did this by promoting the demands of the Syrian people by appearing on Arab and non-Arab news channels and explaining the goals of Syrian protesters. Meanwhile, female human rights activists documented violations carried out by the security forces and female lawyers worked on behalf of the protesters and document human rights abuses⁸⁵⁶.

The Syrian authorities maintain that the protests currently sweeping the country are part of a foreign plot to foster sectarian strife in the country, and they insist that Salafistelements are responsible for carrying out violent acts and instigating the protest, a self fulfilling prophecy.

The Syrian women taking part in the protests against the regime have emphasized that they do not belong to any political group. Rather, they seek the freedom that has long been denied to all, men and women alike. Despite their illegal status, independent groups do operate in varying degrees of secrecy. The Syrian Women's League (SWL), for instance, has carried on its work continuously since 1948. However, this precarious existence has made it difficult for such groups to function. Unregistered groups have problems raising funds, particularly in light of a ban on accepting grants from abroad. They also face significant obstacles in attracting members and mobilizing women to claim their rights⁸⁵⁷.

Yemen:

The Nobel Peace Prize finally has an Arab female winner. In a year of protest and change across the Arab world, it was only right that the efforts, and sacrifices, of the millions of Arabs who have come out onto their streets and

⁸⁵⁶ Final Arab Spring Report, cited earlier.

⁸⁵⁷ <http://weekly.ahram.org.eg/2011/1047/re2.htm>. Rabia el Morabet Belha, International alliance of women, Wishes, Demands and Priorities of National and Regional Women's Organizations in the MENA Region, PP: 29, available at: <http://www.coe.int/>

faced their government's bullets were recognized. Frankly, it is also right that the Yemeni Yasmine revolution, often ignored, has been recognized.

Yemen has had female rulers in its long history, in pre-Islamic time Bilquis, the famous Queen of Sheba. Less well known and noteworthy are two women who ruled from 1066 to 1138 with the blessing of the Caliph as Heads of an Islamic Yemeni State whereas the Khutba (Friday prayer) was recited in their name. While Yemeni women haven't quite reached that level in the modern era, they have certainly made giant strides in 2011. Women are a sizeable part of the protest movement, and are visible – up to 30% -throughout the various protest squares around the country, and on marches.

Female protesters have stood atop government vehicles during protests, and faced water cannon and bullets. They have kept the field hospital running around the clock. There was a recent show on Arab satellite television debating the various issues concerning women in the Arab world. A Saudi woman spoke of wanting to drive, a Yemeni woman of overthrowing a dictator⁸⁵⁸.

Section III: Situation of women and child rights after the Arab spring revolutions

Women were concerned with how to make progress in achieving greater rights, while at present they are concerned with how to protect and preserve the rights that they already achieved. Nevertheless, Arab women are able to take a stand and face the challenges despite the very difficult situation which they are currently facing. These women see in this critical situation an opportunity which gives a further impetus to change the course of these transitions. This is where the voice of women has a greater presence, and this is associated with improvement of civil and political rights in the region generally⁸⁵⁹.

“The Arab Spring,” promised greater freedoms for many in the region, including women. While there have been some advances in women's rights, the promise in many cases has not been realized. While the new constitutions in Egypt and Tunisia guarantee greater rights for women, the laws that keep

⁸⁵⁸ Rabia el Morabet Belha, International alliance of women, Wishes, Demands and Priorities of National and Regional Women's Organizations in the MENA Region, PP: 33, available at: <http://www.coe.int/>

⁸⁵⁹ Najat Abu Baker, PARLIAMENTARY ASSEMBLY OF THE MEDITERRANEAN, 3rd Standing Committee on Dialogue among Civilizations and Human Rights, “The Role of Women in the Arab Spring”, PP: 3, available at: <http://cdn02.abakushost.com/>

women safe are often not enforced. On the one hand, revolution took conservative forces which do not empathize with women at all. On the other hand, the new political ground empowers women and provides a chance for shift. While the Gulf is often considered more conservative when it comes to women's rights, attitudes may be shifting. Opposite to these countries where revolutions jeopardized and even rolled back recently achieved rights for women, in Gulf's Arab Dynasties people have seen greater social and political reforms. Women rights are, then, a hot issue not only in Arab Countries but in the whole international community⁸⁶⁰.

Women's rights are an intrinsic part of the universally acknowledged human rights, however on the ground, women's conditions remain far from ideal, and discrimination against them still exists in alarming levels. Based on this, it is imperative to deal with issues like women's rights as a priority in post-revolution societies.

According to the first Arab Human Development Report of 2002, the 'lack of political freedoms', 'poor education' but also the 'lack of women's rights' are the main reasons hampering progress in the Arab world. For many women, the optimism of the Arab Spring has been followed by a disappointing autumn.

One must not ignore the suffering of Palestinian women in the Gaza Strip, in the light of the coup carried out by the Hamas faction, and all the violations committed under the excuse of religion. In Egypt, with the rise of the Muslim Brotherhood, women lost one of the most prominent achievements that they have been longing to for years. The parliamentary quota that had been earmarked for 64 seats was abolished, dropping women's representation in parliament from 12 % to 2 % after the 'Freedom and Justice Party' of the Muslim Brotherhood, as well as the Salafis obtained the largest number of parliamentary seats⁸⁶¹.

Egypt emerged as the worst country to be a woman in the Arab world, followed closely by Iraq and Saudi Arabia. Egypt scored badly in almost every category, including gender violence, reproductive rights, treatment of women in the family and their inclusion in politics and the economy.

⁸⁶⁰ UNESCO chair, women rights after the Arab spring, available at: <http://unescochair.blogs.uoc.edu/>

⁸⁶¹ Najat Abu Baker, PARLIAMENTARY ASSEMBLY OF THE MEDITERRANEAN, 3rd Standing Committee on Dialogue among Civilizations and Human Rights, "The Role of Women in the Arab Spring", PP: 3, available at: <http://cdn02.abakushost.com/>

Syria and Yemen ranked 18th and 19th, respectively - worse than Sudan, Lebanon, the Palestinian territories and Somalia, which scored better on factors such as political and economic inclusion, women's position in the family, reproductive rights and sexual violence. Libya and Tunisia came in 9th and 6th. While the situation is dire, some activists see reasons for optimism. For one, the revolts led more poor women and those on the margins to be aware of their rights. "The big challenge women faced led to women's issues being discussed on the street by ordinary women and illiterate women, To date male practices in some of these countries, have disappointed women dreadfully, and have not given any tangible sign that they will engage women as partners and citizens with rights to participate in the formation of the future of their countries.

In countries that have witnessed Arab Spring revolutions, women's presence in transitional councils, new governments, and parliaments is almost non-existent, especially when compared to their role during the revolutions. These actions have created disappointments and frustrations among women as their aspirations in building their societies based on the principles of social justice and equality have been hijacked. In some cases, under the former regimes in MENA countries, preserving women's rights was more of an attempt to create a better image of the regimes in the eyes of their Western allies⁸⁶².

Economic discrimination is a universal issue, as 50% of working women in the world hold vulnerable jobs. As for the salary gap, it is still between 10 and 30%. What is even more important to mention, is that the gap between men's employment and that of women is still huge. This issue is particularly important in the Southern Mediterranean. Not only is it the perfect opportunity to highlight it, but also because the numbers are more alarming in this region: in North Africa only 23.1% of women are employed while 72.6% are inactive, 4.3% being unemployed. For the Middle East, the statistics are almost the same, the numbers being respectively 21.6 %, 74.6% and 3.8%. The Middle East and North Africa have the highest male to-female labour force participation rates differential (almost 50%). Despite recent efforts to address gender inequality, female employment in Morocco and Lebanon is still significantly lower than that of men. In Lebanon, women make up less than 20% of the workforce and get paid substantially less than men for comparable work Economic

⁸⁶² PARLIAMENTARY ASSEMBLY OF THE MEDITERRANEAN, *The Role of Women in the Arab Spring*", 3rd Standing Committee on Dialogue among Civilizations and Human Rights, Report unanimously adopted during the 8th PAM Plenary Session in Marseille, 21 January 2014.

empowerment for women is a very important factor linked to women's freedom and capability. This is again linked to education, where women should be prepared to take an active role in society. This depends on the state and civil organizations, which have the responsibility to eliminate discriminatory laws, to monitor the private sector in order to assure equality in wages, and to help women in their quest for jobs in general⁸⁶³.

More efforts have been made to reinforce constitutional equality between citizens -men and women - while legislative reforms have been conducted to ensure equal participation of women and men both in the public and private life (constitution, nationality, family and election specific codes and laws. Other laws (education, labour, health...) are also based on the principle of equality between all citizens who are equal before the law with equal opportunities and right to personal freedom, education, health, welfare and work in public offices and many other rights and duties including political and economic participation with right to capital to get credit, right to enjoy inheritance and right to property⁸⁶⁴.

However equality between men and women is not obvious except clearly stated or at least subject misinterpretation due to the gender-blind language itself. As a matter of fact while most countries have made significant progress in securing and improving the legal status and rights of women through law reform and policy formulation, there is still a big gap between what is contained in the law, its enforcement and/or various policies and what happens in practice, in addition to the existing contradiction between Constitution and positive laws related to public life from one part and the family and other laws (e.g. penal) from another part. In addition to that contradictions are noted within the national legislation system and between the national laws and the international commitments of the State Parties covered by this exercise with no exception, including for the countries that ratified CEDAW with no reservation⁸⁶⁵.

After years of global action to advance the protection of women's rights, the Arab Spring offers a great opportunity to assess whether gender issues are today properly taken into consideration in post-conflict periods and how peace processes and transitions in the countries involved can address women's needs

⁸⁶³ UN Women, Annual report 2010-2011, Najat Abu Baker, PARLIAMENTARY ASSEMBLY OF THE MEDITERRANEAN, 3rd Standing Committee on Dialogue among Civilizations and Human Rights, "The Role of Women in the Arab Spring", PP: 7, available at: <http://cdn02.abakushost.com/>

⁸⁶⁴ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-12_en.pdf

⁸⁶⁵ <http://www.ohchr.org/Documents/HRBodies/CEDAW/Womenconflictsituations/RegConsultation/Jan2013.pdf>

and concerns. During the protests, women have been extremely active, have taken positions in the public arena and put forward their demands. But once the protests are over and transitions towards new regimes are starting, the big question is what role women will be allowed to play in building peace and democracy.⁸⁶⁶

Women have been largely eclipsed in the transitions in Tunisia, Egypt and Libya, which is all the more striking given that these revolutions were carried out in the name of dignity and social justice. In the context of post revolutionary emancipation, local populations feel for the first time that they have their political and economic future in their own hands. However, this same empowerment has so far failed to apply to women. After playing a prominent role in the initial phase leading to the overthrow of their autocratic leaders, female activists have been marginalized in the political space and their voices sidelined. Progress on women's rights is a crucial indicator of democratic development and a powerful symbol of increased pluralism. Women are losing the battle to turn their ideas into political influence and to sustain the active role they played initially, although to a different extent in each of these three countries. With decolonization, Tunisia and many other countries in the region granted voting rights to both men and women simultaneously. Since the promulgation of the law on Personal Status by President Habib Bourguiba in 1956, women have seen discrimination against them diminish greatly. The law granted women more rights in matters of marriage, divorce and abortion, but did not extend to inheritance. The road to empowerment for women has been a bumpy one, as progress typically depended on the regime's short-term political calculations. Women's rights, rooted in the Personal Status code, have become entrenched in the country's social fabric and have become part of its political and social identity⁸⁶⁷.

Turning the clock backwards, in the case of Tunisia, is not only unlikely; it is a scarcely plausible hypothesis. Although extremist Islamist social and political forces such as the Salafists exist in the margins and contest the place of women in society, their message has limited appeal and is not likely to succeed in

⁸⁶⁶ ROSA ANA ALIJA FERNÁNDEZ1, OLGA MARTÍN ORTEGA, WOMEN'S RIGHTS IN THE ARAB SPRING: A CHANCE TO FLOURISH, A RISK OF HIBERNATION, PP:2, available at: <http://www.journalofdemocracy.org/>

⁸⁶⁷ Ruth Hanau Santini, What Women's Rights Tell Us About the Arab Spring, Centre on United States and Europe at BROOKINGS, 2011, available at http://www.brookings.edu/~media/research/files/papers/2011/11/10%20arab%20awakening%20women%20santini/1101_arab_awakening_women_santini.pdf

limiting women's rights. Currently, women's associations are well represented in the social landscape. They articulate a variety of demands and are involved in awareness-raising projects throughout the country. In comparison to other nations in the region, Tunisia is considered enviably progressive regarding women's rights. In Egypt, women are still struggling for basic human and civil rights. There were, however, several formal improvements between 2004 and 2009: Egyptian women married to foreign men were allowed to pass on their nationality to their children, women were allowed to become judges, the minimum age for marriage was increased to eighteen years and female genital mutilation was outlawed. In practice, though, the weight of conservative social norms weakens the enforcement of these reforms and hinders a national debate over widening them. Women still struggle to get a fair divorce in Egypt - it was only ten years ago that women gained the right under the —Khul' Law to file for divorce without their husband's consent, (while men do not even need to go to court). In such situations, however, if a mutually-agreed divorce cannot be reached, the women must waive any financial right and give back the dowry that was paid to their family when they were married⁸⁶⁸.

If Sharia law were the only source of legislation, divorces granted by courts but without the consent of the husband would be outlawed. The application of CEDAW, which Egypt signed in 1981, has responded to the same logic; while Egypt is a signatory to the international convention, it has refused to implement some of its parts (mainly linked to women's rights within marriage) due to⁸⁶⁹.

From 2005 to 2010, 14 of 17 countries in the MENA region reported gains for women (Freedom House data), but conditions have become harder with increasing dangers for women in Yemen, Iraq and Gaza. The issues of improvement for women have included many things: equal inheritance; marriage and divorce laws; child custody; representation in government; and discrimination against a tide of out-dated patriarchal prejudice. All of these issues constitute reachable goals for women who are working to bring positive change to their regions. Women have offered sustainable thoughts, designs and concepts to improve society during the Arab Spring. Women are often the ones who bear the suffering of their families. And no one knows this better than

⁸⁶⁸ Ruth Hanau Santini, United states and Europe at Brookings, What Women's Rights Tell Us About the Arab Spring, PP:2-4, available at: <http://www.brookings.edu/>

⁸⁶⁸ Lys Anzia, woman voices on the Arab spring, available at: <http://www.vitalvoices.org/>

⁸⁶⁹ Ruth Hanau Santini, United states and Europe at Brookings, What Women's Rights Tell Us About the Arab Spring, PP:2-4, available at: <http://www.brookings.edu/>

women from Iran, Egypt, Yemen, Tunisia, Syria, Libya, Bahrain, Morocco and so many other parts of the MENA region reservations justified on the grounds of respecting Islamic law.⁸⁷⁰

A few specific examples illustrate that religious conservatism is a significant barrier to women's rights. A women's march held in Egypt on March 8, 2011, to celebrate International Women's Day ended poorly when protestors were harassed and beaten by a mob of angry men who told them that women's rights contradicted Islamic principles. Around this same time, the Egyptian military "rounded up scores of women demonstrators, and in a show of raw intimidation, subjected many of them to 'virginity tests.'" Then a female protestor was brutally beaten in December of 2011 by Egyptian military forces. In the latter case, however, the response to this brutality was overwhelming—thousands of women marched in Tahrir Square to protest the victim's treatment. This became the largest female protest in Egypt since 1919.

Vigilant groups have formed to patrol the streets of Cairo and stop men from harassing women. These groups have been criticized for resorting to violence and encouraging vigilantism rather than a government response to harassment, but many Egyptians recognize the need to bring the problem of violence against women into the public debate⁸⁷¹.

Of course, there is much more that all these different women want to achieve, but the Arab Spring has provided the first leap towards their myriad of goals⁸⁷².

European Union (EU) through Euro-Mediterranean Partnership (EMP) and the United States (US) through Broader Middle East and North Africa Initiative (BMENA) have promoted women's rights and further the role and the status of women in the MENA by developing projects and programs such as Girl Friendly Schools (Egypt), İzdiyar Project (Jordan), Argan Oil Project (Morocco), the Project for Eradication of Female Genital Mutilation (Egypt), Gender Equality in Employment and Small Enterprises (Egypt, Jordan), Creating New Opportunities and Networking Facilities for Marginalized Home-Based Working Women (Morocco, Turkey), Enhancing Capacities of Women

⁸⁷⁰ Lys Anzia, woman voices on the Arab spring, available at: <http://www.vitalvoices.org/>

⁸⁷¹ Kareem Fahim, "Harassers of Women in Cairo Now Face Wrath of Vigilantes," New York Times, November 5, 2012, - Marwa Shalaby, Journal of Women and Human Rights in the Middle East, fall 2013, PP:13, available at: <http://bakerinstitute.org/>

⁸⁷² Shazia Arshad, memo middle east monitor, The Arab Spring: What did it do for women?, Available at: www.middleeastmonitor.com

Micro-entrepreneurs (Morocco, Egypt, Lebanon, Tunisia), Khamer Women Empowerment and Literacy Program – Khamer District of Amran Governorate (Yemen), Women's Human Rights Education Programs (Lebanon Shiite Community), Achieving Behavioural Change Towards Women's Rights among Youth Enrolled in Community Colleges (Amman, Zerqa, Jerash). Despite efforts made by these projects in order to enhance the status of women, women of the MENA still suffer from discrimination in social and economic life, sexual harassment, honor crimes and illiteracy.

The Arab Spring and victories of Islamists in the MENA brought the women's rights issue back to the agenda although women and men were together in these revolts for bringing democracy to their countries. Political Islam, which emerged with Islamic Republic of Iran (1979), already has some restrictions on women's rights, most likely to show its limits in women's rights in the MENA. Besides this, Islamists relations with the West and their approaches to the projects sponsored by the West likely to be affected in negative way in the post-Arab Spring era. In this paper, the EU's and the US' projects on women's rights focusing on two projects EMP and the BMENA and the Arab Spring's possible effects on these projects and the question of whether Turkey (as an actor of two projects, EMP and BMENA and rising regional power in the MENA) can be a role model in women's right issues in the MENA will be analyzed shedding light on the post-Arab Spring developments in the region⁸⁷³.

Egypt:

Egypt is one of the countries where there has been a backlash against women's rights, in part as a rejection of the previous regime. For example, women lost some of the rights gained during President Mubarak's time, especially those gained as a direct result of the influence of the President's wife. The democratic elections in Egypt were hailed by many Western observers as a great triumph, but female candidates saw very little success at the polls due largely to the Supreme Military Council revoking the quota of 64 women in the parliament that former President Mubarak had established in 2009.

The results of the elections are that only nine out of the 508 members of parliament are female (less than 2 percent, compared to the 12 percent under Mubarak's quota), only three out of thirty cabinet members appointed by the

⁸⁷³ Aylin Unver Noi, WOMEN'S RIGHTS IN THE POST-ARAB SPRING ERA, PP:1-2, available at: <http://domes.uwm.edu/>

transitional government were women, and the committee to amend the constitution excluded women entirely.⁸⁷⁴

It should be pointed out that, although a party to the CEDAW, Egypt has not so far ratified its Optional Protocol, neither the Optional Protocols to the International Covenant on Political and Civil Rights nor to the International Covenant on Economic, Social and Cultural Rights, although the possibility to do so is currently being considered⁸⁷⁵.

The Egyptian revolution revealed how women in Egypt are redefining the most crucial human rights issues which impact their lives. While their stories do not represent the entire Arab, Muslim, or Middle East regions, they provide us with a look into gender and human rights from the ground up and illustrate the urgent need for a broader analysis of gender and human rights in Muslim majority societies. Egyptian women activists' demands also call for more complex human rights frameworks. Some women coupled their demands against the state with gender specific demands for dignity against sexism and patriarchal violence, representation and inclusion in the new government, greater access to education, health care, and food, and increased opportunities for social spending benefits. In fact, many Egyptian women are conceptualizing the problem of sexual harassment beyond inter-personal or individual problems of patriarchal male behaviour towards Egyptian women on the streets. Yet in addition, many contend that the militarized Egyptian state supports and condones sexual harassment⁸⁷⁶.

For many women activists, challenging violence against women entails simultaneously challenging state violence. In this sense, passing sexual harassment laws or criminalizing individual perpetrators cannot provide comprehensive solutions to the problem of violence and harassment against women looking at Egyptian women's demands, from the ground up it becomes clear that changes in the law and individual rights, while necessary, only scratch at the surface.

⁸⁷⁴ Claire Read, "Bothaina Kamel vows to continue her fight against corruption in Egypt," Al Arabiya News, April 10, 2012, <http://www.alarabiya.net/articles/2012/04/10/206768.html>. - Marwa Shalaby, Journal of Women and Human Rights in the Middle East, fall 2013, PP:11, available at: <http://bakerinstitute.org/>

⁸⁷⁵ OHCHR, Report of the OHCHR Mission to Egypt, 27 March – 4 April 2011, cit., § 32.

⁸⁷⁶ BARBARA SUTTON, SANDRA MORGEN, AND JULIE NOVAKOV, Security Disarmed - Critical Perspectives on Gender, Race, and Militarization, RUTGERS UNIVERSITY PRESS, available at <http://www.scribd.com/doc/38611825/Security-Disarmed>

Moreover, orientalist approaches that blame culture or religion only obscure the ways that cultural values are shaped within historical contexts and material realities such as the pressing struggle for jobs, food, health care, dignity, and an end to the interconnected problems of harassment, violence, and state repression⁸⁷⁷.

Kuwait:

Women in Kuwait still face legal discrimination. Kuwaiti nationality law does not cover passing on citizenship to a child of a Kuwaiti woman and a foreign father.

On a positive note, Human Rights Watch reports that in April 2012, the administrative court cancelled a ministerial order that barred women from entry-level jobs at the ministry of justice. Furthermore in 2012, Kuwait University had to abolish a policy that required female applicants to exceed the exam scores of male students to enrol in certain colleges, such as architecture and medicine⁸⁷⁸.

Libya:

The Draft Constitutional Charter for the Transitional Stage released by the NTC consecrates in its article 6 the equality of all Libyans, while stating that “the State shall guarantee for woman all opportunities which shall allow her to participate entirely and actively in political, economic and social spheres”. However, the NTC has failed its promise to have women in a prominent role in government and in representation positions, and currently has one women in post –as usual, the minister for women. Thus, women's demands both for an active participation in the decision-making roles related to peace and conflict resolution and a strong representation in the NTC and any future government persist⁸⁷⁹.

The National Transitional Council (NTC) failed to take measures to ensure equal rights and frustrated equal participation and representation for women in society. The draft constitutional charter adopted in August 2011 contains no provision for prohibiting discrimination against women, there are no measures

⁸⁷⁷ Women and the Arab Spring, cited earlier

⁸⁷⁸ The world bank, Kuwait Country Report, 2014, PP:9, available at: <http://www.bti-project.org/>

⁸⁷⁹ ROSA ANA ALIJA FERNÁNDEZ, OLGA MARTÍN ORTEGA, WOMEN'S RIGHTS IN THE ARAB SPRING: A CHANCE TO FLOURISH, A RISK OF HIBERNATION, PP:10, available at: <http://www.journalofdemocracy.org/>

in the electoral law adopted in January 2012 to ensure the representation of women in the new parliament and the 28-member cabinet appointed by the NTC includes only 2 women. Moreover, there is no basis for the NTC excuse claiming a shortage of suitable women candidates, since the majority (60%) of higher educated and university graduates are women. Women's organizations are calling upon the NTC to protect and implement human and civil rights and focus on redressing the lack of opportunities for women to participate in the public domain, which remains one of the most challenging aspects facing the future of Libya. Libyan women also continue to actively advocate for the equal inclusion of women within the political, social and economical sectors of society⁸⁸⁰.

Libya has seen its share of uncertainty over the future of women's rights. During the General National Congress elections in July 2012, nearly 45 percent of registered voters were women. Of this group, 53 percent cast a vote during the election. Thirty-three women won seats in the 200-member congress, with only one woman elected as an independent and the rest on zippered political entity lists that alternated between men and women. While this was seen as a positive step to equal representation, in the draft of the new electoral law, quotas for women in the Constituent Assembly became a thorny issue and ultimately only six seats – or 10 percent – were allocated for women⁸⁸¹.

The High National Election Commission (HNEC) has announced that of the nominations received for candidacy for the constituent assembly nomination process thus far, there have been 619 nominations for men and 73 nominations for women.

Socially, Libyan women continue to face significant challenges. In February 2013, the Supreme Court lifted restrictions on polygamy and in April the Ministry of Social Affairs stopped issuing marriage licenses for Libyan women marrying foreigners. The future for Libyan women remains unclear⁸⁸².

⁸⁸⁰ Rabia el Morabet Belha, International alliance of women, Wishes, Demands and Priorities of National and Regional Women's Organisations in the MENA Region, PP: 17, available at: <http://www.coe.int/>

⁸⁸¹ The Status of Women's Rights, IFES, cited earlier.

⁸⁸² Ambar Zobairi, International foundation for electoral systems, The Status of Women's Rights – Post-Arab Spring, available at: <http://www.ifes.org/>

Syria:

Women in Syria have a relatively long history of emancipation, and the country has been one of the more advanced in the Arab world when it comes to women's rights. Women obtained the right to vote in 1949, and their involvement in politics dates to the struggle for independence from the Ottoman Empire at the beginning of the last century. However, the effects of their participation have been stifled by the realities of the repressive political climate. Syria stands apart, as it is currently in conflict and both men and women are under regular daily duress. The plight of women, however, cannot be overlooked. Both sides – government authorities and the armed opposition - are utilizing sexual violence as a weapon against men, women and children⁸⁸³.

There is also anecdotal evidence of sexual abuse of refugees. In official refugee camps there are some mechanisms to handle gender based violence, but since the vast majority of Syrian refugees are outside of these camps, these systems are not available for many victims. Forced abductions are also being used as an instrument of terror by both sides. For example, the Syrian army has been accused of paying money to women for every woman brought to them; women pretending to seek medicine for children are used to draw out other women who are then kidnapped and coerced to give names of Free Syrian Army elements in exchange for their release or the release of male family members. In addition, transitional roadmaps that are being created by various civil society groups include very little participation of women, and few women are represented on local councils⁸⁸⁴.

Tunisia:

Tunisia has had a relatively good record on women's rights, even under the previous regime where women accounted for 20% of members in the parliament (The Guardian, 2011b). Some advances have been made since the revolution but other discriminatory practices still exist. In April, Tunisia's electoral commission adopted a gender parity law that requires each party to run an equal number of male and female candidates in the forthcoming elections. Additionally, in August, Tunisia became the first country in the region to

⁸⁸³ http://www.freedomhouse.org/sites/default/files/inline_images/Syria.pdf

⁸⁸⁴ Ambar Zobairi, International foundation for electoral systems, The Status of Women's Rights – Post-Arab Spring, available at: <http://www.ifes.org/>

remove all reservations on the UN Convention on the Elimination of All Forms of Discrimination (CEDAW).

Discrimination still exists in inheritance and Tunisia does not yet have a comprehensive law on family violence. There is also some concern that ground could be lost due to the re-emergence of Islamist parties that were previously banned (HRW 2011k)⁸⁸⁵.

In the summer of 2011, women set about changing the electoral laws for a future Tunisian Parliament which eventually resulted in the adoption of a new law strengthening women's rights. The preparation of electoral lists now requires equal numbers of men and women whose names must be listed alternately, and only by conforming to this rule will future electoral lists be accepted. In practice this creates a women quota which exceeds the scope of similar initiatives in most European countries, an outcome which was made possible only through the constant engagement of women after the fall of Ben Ali. That their protest was able to bear fruit was due in no small part to the fact the Ministry for Women in the transitional government was taken over by Prof. Dr. Lilia Labidi, for decades a committed women's rights activist, who was able to effectively feed these concerns into the political process⁸⁸⁶.

Initiatives to guarantee a transition with justice, a solid rule of law and respect for human rights were on the agenda from the outset. They enjoyed remarkable support from the international community. The Office of the UN High Commissioner of Human Rights (OHCHR) soon started supporting the efforts to build the rule of law and strengthen human rights in the country, through i.e. providing advice and capacity-building concerning areas such as the reform of the national human rights institution (the former High Human Rights and Fundamental Liberties Committee) to adapt it to international standards: strengthening judicial independence; reforming of the security sector, and providing advice and technical support to the Tunisian independent commission investigating human rights violations from the recent past⁸⁸⁷.

⁸⁸⁵ -Shivit Bakrania, Governance and social development resource center, Helpdesk Research Report: The Arab Spring and its impact on human rights in the MENA region. 14 October 2011, PP: 10, available at: <http://www.gsdrc.org/>

⁸⁸⁶ Claudia Derichs, Konrad Adenauer Stiftung, Women's Empowerment in the Arab Spring, PP: 33, available at: <http://www.kas.de/>

⁸⁸⁷ <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11239&LangID=E>; OHCHR,

At first sight, Tunisia appears to present one of the more successful cases for women since the revolutions began. As of the latest discussions, protection of the rights of women and promotion of social and civil equality between the sexes remains enshrined in the draft constitution. In addition, the selection process for the current election commission requires gender parity among the final 36 possible candidates and the final list of candidates for each position on the commission. However, there is no guarantee of equal representation for the final selection and make-up of the commission. If one delves a bit deeper into the numbers, there does not appear to be real improvement in women's political participation when compared to the period before 2011. For example, under the zipper list used for the 2011 National Constituent Assembly elections, 28 percent of seats went to women; this is not very different from the 27 percent elected to parliament in the 2009 elections. Within the 41 current ministries, only three are led by women; under Ben Ali there were 45 ministries with four women ministers. While Tunisia is often touted as an example of improvement of women's rights since the revolution, this is not entirely accurate⁸⁸⁸.

Public opinion surveys demonstrate that conservative attitudes about women's political power hold strong in both Tunisia and Egypt. A Pew Research Centre study in 2012 found that 75 percent of Tunisians and 42 percent of Egyptians said that men make better political leaders. Though there is broad support for gender equality in principle (74 percent of Tunisians and 58 percent of Egyptians believe women should have equal rights as men), there is also recognition that not enough has been done to achieve such equality. Among equal rights supporters, 34 percent in Tunisia and 61 percent in Egypt believe that more changes need to be made to secure equal rights⁸⁸⁹.

Tunisia's new CPS introduced significant changes in family law such as the abolition of polygamy, the end of men's privilege of unilateral repudiation as a way to terminate a marriage at will, the ability of a woman to file for divorce, and the enhancement of women's custodial rights over children. Inheritance laws, for which there are strict and clear provisions in the text of the Qur'an itself and thus constitute an especially sensitive issue, remained the least

⁸⁸⁸ Ambar Zobairi, International foundation for electoral systems, *The Status of Women's Rights – Post-Arab Spring*, available at: <http://www.ifes.org/>

⁸⁸⁹ Pew Research Center, "Most Muslims Want Democracy, Personal Freedoms, and Islam in Political Life: Few Believe U.S. Backs Democracy," *Global Attitudes Project* (July 2012), <http://www.pewglobal.org/files/2012/07/Pew-Global-Attitudes-Project-Arab-Spring-Report-FINAL-Tuesday-July-10-2012.pdf>. Marwa Shalaby, *Journal of Women and Human Rights in the Middle East*, fall 2013, Pp:14, available at: <http://bakerinstitute.org/>

modified legislation. These reforms, mediated by nationwide institutions and a national court system rather than local authority structures, provided state protections for women. Even though educated women were in a better position to take advantage of the law, much knowledge about the CPS percolated through different strata of society, giving Tunisian women at large the possibility of utilizing what the new laws had to offer. Reforms beneficial to women continued during the regime of Zine El Abedine Ben Ali who paraded women's rights as part of a general portrayal of Tunisia as embracing modernity on the international scene⁸⁹⁰.

All political parties who won significant seats responded to Human Rights Watch's pre-election survey indicating their support for the principles of gender equality and non-discrimination.

They all, including the moderate Islamist al-Nahda party, favored maintaining the country's progressive personal status codes which grant Tunisian women the same rights as Tunisian men. During the transition, Tunisia's Ministry for Women's Affairs, though small, was active in promoting voter education for women for the Constituent Assembly elections. This Ministry has also worked to assist businesswomen in rural, oft-neglected parts of Tunisia to start up enterprises through microcredit.

Throughout Tunisia several women's civil society groups have been established since the January 14 revolution, providing a range of social services, including civic and voter education. In this period of democratic transition, which has provided all Tunisians greater freedom of expression, these civil society groups are working tirelessly to maintain the strong role Tunisian women traditionally played in their society⁸⁹¹.

In other words, women participated in the protests with men, calling for general political transformation, rather than with the pursuit of a distinct feminist agenda. Ultimately, the revolution was expected to bring better practices and reforms for women's freedom and liberties in the long run⁸⁹².

⁸⁹⁰ MOUNIRA M. CHARRAD AND AMINA ZARRUGH, SEP 4 2013, The Arab Spring, available at: <http://www.e-ir.info/>

⁸⁹¹ JOHN F. KERRY, U.S. SENATE, COMMITTEE ON FOREIGN RELATIONS, WOMEN AND THE ARAB SPRING, NOVEMBER 2, 2011, PP: 11, available at: <http://www.gpo.gov/>

⁸⁹² Pelin Gönül Şahin, WOMEN'S LIBERTIES AND GENDER EQUALITY IN TUNISIA: THE ASTHMA OF THE ARAB SPRING? PP:4, available at: <http://www.turkishpolicy.com/>

Yemen:

According to the World Economic Forum's *Gender Gap Report 2013*, Yemen ranks 131 of 136 countries in political empowerment. In recognition of women's low level of political participation, the Supreme Commission for Elections and Referendum (SCER), Yemen's election management body, formed its Women's Department in 2005. Although this provides greater gender input into electoral processes, it is yet to be seen if it will have a visible impact on the election of more women candidates in the expected 2014 parliamentary elections or result in higher female voter turnout.

Despite these challenges, the visibility of women in the political sphere has increased since the popular 2011 protests. For example, Tawakkol Karman became a prominent symbol of the increased political participation of women when she received the Nobel Peace Prize in 2011. Additionally, the Gulf Cooperation Council (GCC) Agreement – which outlines the framework for the transition in Yemen – stated there should be adequate representation of women in the National Dialogue Conference (NDC). Several NDC committees actually include at least 25 percent women as their members, and women make up 30 percent of NDC members.

Additionally, one of the NDC committees is tasked with “discussing and proposing ways in which the constitution can guarantee or provide for equality among citizens, respect for diversity, and basic human rights. A special emphasis will be placed on providing for the rights of women, children, minorities, and vulnerable and marginalized groups.” After the National Women's Conference in 2012, women's groups have demanded a 30 percent quota for decision-making positions in the government. The NDC adopted the issue in 2013.

Currently, relevant working groups of the NDC are proposing a 30 percent quota for women in parliament, as well as judicial and executive branches. The UN Advisers to Yemen are also advocating a 30 percent quota for women⁸⁹³.

⁸⁹³ Ambar Zobairi, International foundation for electoral systems, *The Status of Women's Rights – Post-Arab Spring*, available at: <http://www.ifes.org/>

Chapter III: Role of NGOs in upholding International Law of Women's and Children's Rights in the Arab World

This Chapter recognizes the instrumental role that NGOs have played in the Arab world, especially in countries which have had a good level of democracy such as Lebanon where the civil society played a crucial role in the history of Lebanon since the 19th century.

This Chapter starts by exposing the various efforts of NGOs in their struggle to improve the situation of women and children and to uphold their rights in the Arab countries (Section I); then the thesis proceeds in covering pioneer initiatives implemented by selected NGOs in the Arab world aiming at harmonizing women and children national legislation with International Law (Section II); this Section covers NGOs from four Arab countries, namely Lebanon, Morocco, United Arab Emirates and Jordan.

Section I: Role of NGOs in achieving children's and women's rights after the Arab Spring

A number of regional civil society groups have been taking joint action across borders and seek to influence international actors like the Arab League and United Nations. Under the auspices of the Arab League, which has a women's rights department, the Arab Women Organization was established. Karama ('dignity' in Arabic) is headquartered in Cairo and works on violence against women across Arab countries. The Centre of Arab Women for Training and Research (CAWTAR) works in twenty-two countries and is overseen by influential regional actors that include the Arab League, the Arab Gulf Fund for development and three UN bodies.⁸⁹⁴

Musawah is an international network that promotes progressive interpretation of Islam, with regional offices in Egypt, Sudan and Bahrain. To take one example, some perceived Karama primarily as a donor, rather than a partner in activism against domestic violence. And some groups, such as the Arab Women's

⁸⁹⁴ . 2012 programme donors include UNFPA, UNDEF, UNWomen, WB, OECD, GIZ, MEPI, OFID, Ford Foundation, OSI, ACT, Oxfam, and IDRC28. February 2011, The Developmental Leadership Program Research Paper, Mariz Tadros, 'Working politically behind red lines: structure and agency in a comparative study of women's coalitions in Egypt and Jordan. CARE INTERNATIONAL POLICY REPORT, ARAB SPRING OR ARAB AUTUMN, September 2013, PP:14-15, available at: <http://www.care.org/>

Leadership Institute and the Arab International Women's Forum, are based outside the region and exist largely to advance the interests of women in the upper echelons of the corporate world. Some groups are able to make use of the freedoms afforded by relatively liberal states, such as Lebanon, to advocate from a more radical perspective than is possible for their colleagues elsewhere.

As different forces have competed to shape the post uprising period, Islamists and women's rights actors have grown increasingly polarized. In Egypt, during the early period of the Morsi regime, feminists and female FJP members engaged in processes of dialogue, such as on the drafting of the constitution. However, once the constitution was controversially pushed through by the regime, the space for dialogue shrank and the political situation became increasingly adversarial. The state linked National Council for Women clashed with the ruling FJP party at the UN Commission on the Status of Women conference on Violence against Women and Girls in March 2013. While the NCW supported Egypt's signature to the declaration, the FJP issued an alarming statement accusing the UN of seeking to "destroy the family. Some women's groups we interviewed were sceptical of prospects for negotiation with Islamists, whether moderate or conservative. In this view, women's rights are incompatible with Islamist agendas.

In Morocco, women's groups have been reluctant to engage with the 20th February movement due to its links with Islamists, who, according to one interviewee, "believe in a society that is not acceptable to us".⁸⁹⁵ Moroccan civil society once enjoyed a close relationship with the Ministry of Solidarity, Women, Family and Social Development, but a number of NGO workers said they distrust the new Islamist minister and expect to enter an "era where women's NGOs will play an 'opposition' role". Yet CARE staff and other interviewees also pointed to the important role played by cross-party caucuses of female parliamentarians in contexts such as Iraq and Pakistan, as well as the recent experience of joint mobilization by Islamist and secular activists during the popular uprisings. How these dynamics play out will have major ramifications for women's rights activism in the region.⁸⁹⁶

⁸⁹⁵ . CARE Morocco, Arab Spring Country Study, 2012, CARE INTERNATIONAL POLICY REPORT, ARAB SPRING OR ARAB AUTUMN, september 2013, PP:14-15, available at: <http://www.care.org/>

⁸⁹⁶ . 'Muslim Brotherhood Statement Denouncing UN Women Declaration for Violating Sharia Principles', March 14 2013, <http://www.ikhwanweb.com/article.php?id=30731>

International NGO representatives have embraced the flourishing of civil society as a necessary pre-condition for full-fledged democracy. However, the women's associations have limited influence in the sphere of civil society - in comparison, for example, to the power wielded by the trade unions - and exert minimal pressure on current political parties.

A poll conducted in the summer of 2011 and recently released by Human Rights Watch revealed that while the great majority of Tunisian political candidates declare to be in favor of greater gender equality (for example recognizing the right to marry non-Muslim men), very few parties publicly call for granting women the same inheritance rights as men. The Islamist party Ennahda (renaissance in Arabic), the winner of the recent elections with over 40% of the votes, unconditionally rejects this possibility. Women's rights represent a prism through which Tunisian contradictions become manifest: an Islamic but secular country, now openly at ease with a more pronounced Islamist identity. At the same time, it is a country that defines itself as modern and liberal but wishes to move towards a more leftist economic system⁸⁹⁷.

The CSOs raised the scarcity of shelters for women surviving to violence with limited coverage of all regions of the country, the stigma of the community to the shelters mainly managed by NGOs in almost all countries and the non-involvement of the State in the supervision and management of shelters to guarantee adequate protection.

According to the CSOs if the absence of laws allows the police to intervene in some countries there are laws that could aggravate the case such as those that prohibit police interference within the family and "the sanctity of the home". They also deplored, in almost all Arab countries, the lack of laws that prohibit and criminalize violence against women and violence in all its forms and absence of legal protection for women after exposure to violence.

The group of CSOs debated a number of issues related to enjoyment of women of their human rights through access to justice. The right to participate in public affairs, including peace negotiations and other peace processes such as Transitional Justice, negotiation for reconciliation and/or Post-conflict elections is far from being realized for Arab women including because of a number of

⁸⁹⁷ Ruth Hanau Santini, United states and Europe at Brookings, What Women's Rights Tell Us About the Arab Spring, PP:3, available at: <http://www.brookings.edu/>

gaps in transitional justice design and operationalization as well as reconciliation (e.g. Algeria).

For instance, many main principles and issues are missed and/or deliberately ignored even if they represent the foundation of the transitional justice to only quote: commission for the Truth, special courts and judgments, reparation, apologies...Both process and content not take into consideration problems that women faced. Awareness on these issues is very limited and it is obvious that the transitional justice is always blind when it concerns punishment of perpetrators of crimes against women not to say total impunity⁸⁹⁸.

In 2013, a new list of 23 entities with an observer status was made public. These entities are a combination of NGOs and national human rights institutions, namely the National Human Rights Council of Morocco and the National Human Rights Commission of Qatar. Regional and international governmental organizations have been invited by the LAS to issue a Memorandum of Understanding to attend meetings of the permanent Arab Human Rights Committee as observers, on the basis of reciprocity. Until 2013, applications for observer status were primarily processed by the LAS' Human Rights Department, the Cabinet of the Secretary General and then endorsed by the Member States.

In January 2013, after internal discussions about whether the LAS's relationship with civil society should be managed by the social affairs department or whether specific mechanisms should be established, it was finally decided to engage in administrative restructuring. The Secretariat for Civil Society was established, principally to provide technical assistance and liaise with civil society organizations, the UN and the African Union systems, to help convey recommendations from civil society to Arab League Summits.

It remains unclear though how the Secretariat will coordinate and interact with the Human Rights Department regarding such issues⁸⁹⁹.

Among the associations and movements that promote women rights in Arab counties after the Arab spring are as follows⁹⁰⁰:

⁸⁹⁸ UN women, Women Human Rights in Situations of Conflict and Post Conflict contexts, Amman, January 2013, PP: 22, 32, available at: <http://www.ohchr.org/>

⁸⁹⁹ Fidh, the Arab League And human rights: Challenges Ahead, February 2013, PP:15, available at: <http://www.fidh.org/>

Algeria:

RACHDA: It is a national association established during the National Assembly of the RCD party by its women members in January 1996, with the objective to get the subject of women's rights on the political agenda. The RCD is the Rally for Culture and Democracy, a political party promoting secularism. It runs sections in 20 wilayas (provinces) throughout Algeria and has acquired experience and has been successful in mobilizing women to claim their rights. Whereas the association was initially created within one political party (RCD), today its principle is to be independent of the RCD and other political parties and to avoid party politics. Nevertheless RACHDA benefits from the political experience of its women activists, as they originated from women's movements and political parties advocating for democracy and equality. They bring with them experience of strategies how to get the attention of politicians for their subject.

Main Objective: RACHDA aims at defending the rights of women wishing to live in a democratic society with equality, justice and dignity by advocating political measures and strategies.

Demands and priorities of RASHISA:

To defend the rights of women to live in a democratic society with equality, justice and dignity, in order-

- To ensure de facto equality between women and men of their rights and responsibilities
- To withdraw all laws discriminatory towards women
- To withdraw all anti-constitutional laws
- To abolish all discriminatory practices towards women
- To change the present family code, which they consider a contradiction to basic democratic values
- To develop activities to assist women living in poverty
- To promote awareness of and solidarity with women living in poverty

⁹⁰⁰ Rabia el Morabet Belha, International alliance of women, Wishes, Demands and Priorities of National and Regional Women's Organisations in the MENA Region, PP: 9-23, available at: <http://www.coe.int/>

- To develop activities and solidarity to assist victims of fundamentalist terrorism.

Association Culturelle AMUSNAW: The association, founded in 1991, based in Tizi-Ouzou in Kabylia, initially organized and promoted cultural activities. Since then, it has endeavored to fulfil other needs of the population, especially those of women and youth. AMUSNAW is convinced that participation of women in public and political life is a guarantee for the strengthening of democracy and citizenship and that the involvement of civil society will in the end lead to the establishment of the rule of law. The association is strongly committed to advocate improved conditions for women and has developed expertise in this area.

AMUSNAW has developed a training program designed to improve women's leadership in civil society (within associations, organizations, trade unions and political parties). Sensitive to the vulnerable situation of women and children as victims of violence, the association offers psychological and legal assistance. This helps to remove taboos surrounding sensitive subjects such as incest or rape and making authorities and society aware of the vulnerable situation of women and children. In the same way, a support program has been developed for single mothers, widows and divorcees who remain the primary caretaker for the children.

Egypt:

The Egyptian Women's Charter: In June 2011 the Egyptian Women's Charter was adopted by 500 non-governmental Egyptian organizations. It lists the social and political demands of Egyptian women towards building a democratic Egypt. Over half a million Egyptian signatures were reached within 2 months following a campaign by the Alliance of Arab Women and the Egyptian Women's Coalitions.

The Egyptian Women's Charter calls for women's political and social representation, for access to justice, for a strong national machinery, for a review and redress of discriminatory legislation, for the implementation of international human rights conventions as well as for the establishment of social and economic rights. Unfortunately, the governing Supreme Council of Armed

Forces mainly ignored these demands and women were excluded in the transition process.

The number of women in parliament even decreased from 19 to 4 out of 180 seats. According to representatives of the Egyptian women's movement this exclusion is due to the existing patriarchal system and to the well organized Islamic organizations. This led to their realization that women's power lies in their numbers and second, that women need to be better organized to use this power. This realization in its turn led women to set up new (umbrella) organizations, such as the Egyptian Feminist Union with over 100 women NGOs and to the revitalization of existing organizations, such as the Hoda Charawy Association, an Egyptian feminist organization established in 1920.

In June 2012, a series of events threw the country's troubled transition to democracy deeper into confusion as Egypt's two most powerful forces, the military establishment and the Muslim Brotherhood, the Islamist group, moved towards a showdown. With the election of President Mohamed Morsi of the Muslim Brotherhood, and after the parliamentary elections, Egypt moved to the next major step in its fitful political transition: drafting a new constitution for the republic. As the fundamental document establishing a framework for governance, the new Egyptian constitution will have a lasting effect on Egyptian law, politics, and society. In December 2012 the draft constitution and its referendum led to renewed protests. Egyptian feminists movements said that the referendum on the draft constitution is void as it "crashes the aspirations of the people and the principles of the revolution".

New Woman Foundation (NWF): The New Woman Foundation (2011) is an Egyptian feminist non- governmental organization. NWF believes in women's unconditional right to freedom, equality and social justice, and considers women's social, political, economic, citizenship, sexual and reproductive rights as an integral part of human rights. In this context, NWF believes that the struggle by women cannot be separated from the struggle by nations and people for freedom and liberation from oppression. NWF believes that the struggle for women's liberation is part of a wider struggle for democracy and social justice. It is also a struggle against all forms of discrimination based on gender, class, race, ethnicity or religion and against all forms of oppressive power relationships at the national, regional or global levels.

Tunisia:

National and international non-governmental organizations were also extremely active to boost transitional justice after the “Jasmine Revolution”, as shown by the international conference on transitional justice *Addressing the Past, Building the Future* held in the country by mid-April 2011, where gender issues were specifically addressed. Tunisian women's main concern has to do with how to take advantage of the transformative potential of transitional justice in order to raise the veil of silence regarding gender violence and get full respect for their rights and dignity.

In order to achieve a gender just transition, they claim for more representation of women in the post-revolution investigative bodies, an improvement of the capacity of these bodies to adequately address sexual violence, and freedom to speak about the violence women suffered⁹⁰¹. Tunisian Association of Women Democrats (Association Tunisienne des Femmes Démocrates - ATFD). The original initiative takers had to overcome obstacles and resistance from political powers to finally found in 1989 the Association Tunisienne des Femmes Démocrates as a legally recognised organisation. The organisation was already active within the resistance movement during Ben Ali's regime. It played a prominent role in the January 14th 2011 revolution for which it received in 2012 the Simone de Beauvoir award for the freedom of women. It is a member of the Fédération Internationale des Droits de L'homme (FIDH). It cooperates with le Conseil national pour les libertés en Tunisie, with l'Association des femmes tunisiennes pour la recherche et le développement and with le Syndicat national des journalistes Tunisiens.

Demands of ATFD-

- To advocate for gender equality, democracy, secularism and social Justice
- To defend the rights of women
- To acquire full and equal citizenship for women
- To promote gender equality in the civil, political, social, economic and cultural sectors.

⁹⁰¹ - OHCHR, *Statement by UN High Commissioner for Human Rights Navi Pillay to mark the opening of the UN Human Rights Office in Tunisia*, 14 July 2011, available at ROSA ANA ALIJA FERNÁNDEZ1, OLGA MARTÍN ORTEGA, WOMEN'S RIGHTS IN THE ARAB SPRING: A CHANCE TO FLOURISH, A RISK OF HIBERNATION, available at: <http://www.journalofdemocracy.org/>

- To promote women's equal representation and participation in all areas of society
- To fight against all forms of discrimination and violence against women
- To fight all manifestations of patriarchal dominance
- To make as many people as possible aware of the need to improve the present situation of women, and for women to acquire equal participation representation in all areas of society.

Tunisian Women's Association for Research and Development (Association des Femmes Tunisiennes pour la Recherche et le Développement - AFTURD) Officially created in January 1989, following discussions which started in 1986 with the objective to create an autonomous movement of Tunisian women, AFTURD was initially the national section of the Association of African Women for Research and Development (AAWORD) before becoming a national non-governmental organization in its own right. AFTURD is affiliated with the larger women's research network, Association des Femmes Africaines pour la Recherche et le Développement (AFARD), which was also formalized in 1989. AFTURD brings women trained in research and in militant action together. Proactive on national, regional, and international levels, AFTURD participates in networks of exchange among women in the Arab and African region. AFTURD sponsors forums on key women's issues, where ongoing research is presented and vigorously debated with the objective to develop culturally appropriate solutions to discrimination against women.

In addition to networking, AFTURD scholars have produced important qualitative and quantitative research on the status of Tunisian women, including the two volume *Tunisiennes en devenir* (Tunisian Women on the Move). They have developed basic, accessible guides to women's legal rights and obligations (*La marriage and Le divorce*).

Also engaged in activism to achieve effective emancipation for women, AFTURD participates in projects such as the *Espace Tanassof*, a women's shelter offering information, legal and psychological counseling, and training on specific themes concerning gendered approaches to social issues. Demands of AFTURD-

- To promote debates and research on the situation of women

- To identify all obstacles, which limit the effective participation of women in economic and public life, be these legislative, institutional or cultural
- To do research on the integration of women in the development process.
- To encourage conscious and critical participation of women in decision making, particularly at the formulation and realization of development projects and its priorities
- To promote research how to effectively emancipate Tunisian women and how to safeguard their rights.
- To emphasize the positive role of women within the cultural, social and economic development process, and to restore their disregarded role within history.
- To create and develop communication and exchange networks between Tunisian women, between Tunisian and African women, as well as between Tunisian women and every individual, group or institution concerned with development problems in Tunisia, Africa or elsewhere.

Tunisian women are concerned that even though the Tunisian President said repeatedly - in his address to the Parliamentary Assembly of the Council of Europe - that he will respect women's equal rights, he might not be able to stand up against more conservative elements within his own party and within the more extremist Salafist party. Those conservative elements have put women's equal rights into question, and called, amongst others, for the separation of the sexes in public spaces, and for women to be veiled. Literacy rates are high in Tunisia and women form the majority among higher and university educated.

Although women's participation in the labour market is relatively high compared with other Arab countries, women demand more and equal opportunities in the economic area⁹⁰².

Libya:

Libya Women's Platform for Peace (LWPF): The Libya Women's Platform for peace has been set up in 2011 by Salwa Saad Bugaigh is a with the support of Karama. It is a movement of women's organizations and leaders who aim at

⁹⁰² Rabia el Morabet Belha, International alliance of women, Wishes, Demands and Priorities of National and Regional Women's Organisations in the MENA Region, PP: 13, available at: <http://www.coe.int/>

achieving freedom, equality, social justice and promoting women's rights. They believe that the full participation of women at all levels of the decision making process is crucial to ensure that Libya's transition period proceeds smoothly and reflects the desires, ambitions and sacrifices of all elements of Libyan society. LWPF's first demand was a 40% quota in electoral law, in no circumstances less than 30%.

It trained female leaders to design key reforms that protect women in the new constitution.

It trained women and youth activists in advanced techniques for rehabilitating GBV victims. Demands and Priorities of LWPF are as follows; In October 2011 LWPF formulated the following 6 point-recommendations:

- Develop a sustainable and integrated strategy capable of achieving cultural and social advancement on issues affecting women and empowering women to develop their awareness of their rights and capabilities.
- Set a quota system that would ensure women's representation by no less than 40% in the General National Congress.
- Reaffirm the right to equality between women and men by highlighting the actual roles and prepare leaderships, enacting legislation, and taking the necessary measures to guarantee and protect women rights along with guaranteeing its protection through the Constitution.
- Promote women's awareness of their rights through the available media channels and communication networks to spread awareness of women rights and demands and maintain their gains.
- Work to establish a lobbying strength to affect decision makers in supporting women's rights and participation.
- Strengthening the presence and effectiveness of the Libya Women Platform for Peace through networking with local civil society organizations at the local, regional and international levels and establishing strong partnerships with them. The Platform has also discussed the psychological and socio-economic impact of gender based

violence (GBV) and how to support the survivors, particularly those of rape during and after conflict.

Voice of Libyan Women (VLW):

The Voice of Libyan Women (VLW) was founded in August 2011 after the overthrow of the Qaddafi regime renewing not only the hope for equality in Libya, but also renewing the hope for all Libyan citizens to be able to exercise their basic human rights, including women's rights. This hope quickly translated into action, which VLW believes is the best method for any concrete improvement of women's rights. VLW has grown considerably since its founding. Nevertheless it remains a youth-led organization with a strong base in their hometown of Zawia. As a group of young Libyan women from different backgrounds, their ultimate goal is to advocate for an increased investment into one of Libya's greatest resources which it says has yet to receive the attention it deserves: women. VLW focuses its activities on improving the political participation, the economic empowerment of women and the elimination of all forms of violence against women.

Conclusion

The Arab Spring as an impetus for durable democracy or improved human rights conditions in MENA remains elusive. Impunity prevails, and the fates of popular movements for democracy and dignity appear largely contingent upon the favor of an international community that is selective in its engagement.

It is perhaps on the peripheries of the Arab Spring that clear victories for human rights can be observed, in places like Jordan and Morocco, Saudi Arabia and Sudan. Similarly, while the Arab Spring has seen an increase in the intensity and frequency of rights violations, it remains feasible that human rights will figure more prominently into the policy making agenda of governments that are successful in their democratic transitions. This development could be a platform for reconciliation and for developing the role of civil society as a watchdog and arbiter⁹⁰³.

⁹⁰³ Faith Lemon, right news, The Uncertain Future of Human Rights in the Arab Spring, available at: <http://hrcolumbia.org/>

Changes should develop alongside practical strategies to empower women and build their leadership capacity. The participation of women in the transitional processes means more progress in laws that affect gender equality and policies that address key women's human rights concerns. Women's involvement in transitional processes is a window of opportunity for women to challenge the policies and laws that violate their human rights. It also offers the possibility of challenging gender discrimination and gender stereotyping which oppress women and continue to reinforce their subordinate position.

Further, there is the potential to challenge entrenched gendered practices, those deep-rooted structures that are not easily changed. Despite real and significant needs, the realization of women's human rights has not been made a benchmark of success in transition phase, which tend to have poor female representation.

Attainment of the basic rights of women politically, socially and economically is of paramount importance to the future security and development of the Arab world. Thus, women at all levels must collaborate and organize joint actions because this will secure more support from the community; it is the best way to secure the critical mass capable of influencing the decision-making processes of leaders and officials. Currently women make up nearly half of the population in Arab Spring countries but very limited numbers are in positions of power where they can make or influence change.

However, already women's access to some key positions has proven to contribute to women's empowerment and advancement with positive, but limited, results. Some of their achievements include the increased awareness of the importance of gender equality and an increase in girls' enrolment in primary and secondary education to some extent⁹⁰⁴.

In post revolution societies, justice must prevail during transitional phases, especially since many of the crimes committed under the former regimes, and during the revolution, were committed against women, such as sexual harassment, rape and torture in prisons. Such crimes and their perpetrators must be brought to justice. Therefore women of the Arab Spring countries must bring forward, and highlight, all national public concerns and integrate gender issues, based on the principles of dignity, equality, equal citizenship and the right to protection and care, social justice, political participation and decision-making.

⁹⁰⁴ FATMA OSMAN IBNOUF, E-international relations- MAY 21 2013, Women and the Arab Spring, available at: <http://www.e-ir.info/>

They must also unite against abuses committed by some parties in power. Much is at stake for women in Post-Revolution countries where the promise of sweeping political change has run up against the realities of conservative, deeply patriarchal societies.

In some newly elected legislatures, religious pressure led to the axing of minimum quotas for women in parliaments. Fears grow over a roll-back of the moderate gains made by women's rights in the pre-revolution era, which, while repressive, tended to be secular. Parliamentarians in PAM countries must ensure that a specific framework for the protection of women in the political, economic and social spheres is established in order to guarantee the enforcement of specific laws aimed at safeguarding women's rights in society. Proposals for solutions to shared challenges which affect the Mediterranean as a whole should also be made. It is of the utmost importance that the democratic reforms in the South of the Mediterranean are accompanied by women empowerment in all its aspects. PAM encourages the establishment of democracies based on gender equality, and eradication of corruption and abuse of power. It is suggested that in light of the blatant attacks on women's rights, the following steps must be taken in order to protect them:

- i. Developing and promoting a clear dialogue on women's rights, aimed at clarifying some of the concepts that are directly related to the role and rights of women.
- ii. Developing new mechanisms aimed at the young generation, both men and women, to rebuild confidence and establish the relationship with these women who were leaders at the forefront of these revolutions.
- iii. Activating networking and coordination mechanisms at the national and regional levels in order to reinforce women's rights.
- iv. To document and identify the experiences of women in all stages of revolutions and to disseminate them.
- v. To document abuses suffered by women and take appropriate legal action at the national, regional and international level.
- vi. Developing mechanisms of solidarity among women in different Arab countries.
- vii. Ensuring effective participation of women in committees working on the constitutions and their amendments.

Furthermore, decision-makers must recognize the role played by Arab women in the Arab Spring revolutions, as well as their role in the democratic processes. The role of women during the revolutions represents an important opportunity in which to invest, through the political will of peoples and women in the region, to bring about the long awaited democratic change.

The release of political detainees, as well as support and solidarity to women who have been subjected to repression and abuse need urgent attention. Solidarity must be expressed with women who fight these battles and play a prominent role in the restructuring of social, political and economic systems. The effect of the Arab spring on women is a topic discussed to a great extent nowadays.

Despite the fear which rose during the political transition and with the rise of political Islam, an optimistic approach should prevail. Maybe Arab women are among those less represented in the world, but they are deeply involved in all aspects of life in the Arab world and this was clear at the outset of the Arab spring. Women play an important role in keeping the fabric of society closely knit, laying firm grounds for a strong platform, from which society can evolve and develop for a better future for all⁹⁰⁵.

The following conclusions can be drawn from the country case studies:

- Authorities have responded to pro-democracy demands, and reforms with a human rights element have been announced in the majority of cases. However, it is too early to tell whether reforms on paper or in rhetoric will translate into tangible change in practice;
- Demonstrations were almost without exception met by excessive force from security forces resulting in deaths and injuries. Therefore, the human rights situation deteriorated in the immediate aftermath of demonstrations during the early part of 2011;
- Some practices that run contrary to internationally accepted human rights norms continue, such as the use of military trials for civilians arrested during the period of the uprising;

⁹⁰⁵ Najat Abu Baker, PARLIAMENTARY ASSEMBLY OF THE MEDITERRANEAN, 3rd Standing Committee on Dialogue among Civilizations and Human Rights, "The Role of Women in the Arab Spring", PP: 3, available at: <http://cdn02.abakushost.com/>

- Security forces notorious for committing human rights abuses under former regimes in Egypt and Tunisia have been disbanded. However, remaining security forces across the region, including in Tunisia and Egypt, continue to use heavy-handed tactics against protestors;
- In many cases, security forces have not yet been held to account for human rights abuses committed in response to protests, including the excessive use of force, arbitrary arrests and torture of detainees;
- A state of emergency was announced in a number of countries during the early part of 2011, including in Algeria, Syria and Bahrain. Some of the practices conducted during this period by authorities and security forces were contrary to internationally accepted human rights norms. In some cases, such as Syria, the lifting of emergency law has made no discernable difference on the treatment of critical voices by authorities and security forces. In Egypt, emergency law has actually been broadened;
- On the whole, freedom of speech and freedom of association are still restricted across the region. In some cases, authorities have actually sought to restrict critical voices through legislation, fines and arrests. Where freedom of speech reforms have been announced, such as in Algeria, they have been criticized by human rights groups;
- Efforts have been made to identify groups that are particularly vulnerable to human rights abuses for each country covered. Some regional conclusions can also be drawn: Widespread discrimination of women still exists across the region but advances have been made in Tunisia and Saudi Arabia⁹⁰⁶;

There are also cultural barriers to overcome, as noted by the argument that secularized countries will see more lasting and tangible political gains for women than countries that are more religiously conservative. Policies themselves do not result in a change of attitudes, so along with quotas and other measures, the newly democratizing countries must seek to find effective strategies for reconciling gender equality with cultural and religious attitudes, particularly encouraging women's civic engagement.

⁹⁰⁶ Shivit Bakrania, Governance and social development resource center, Helpdesk Research Report: The Arab Spring and its impact on human rights in the MENA region. 14 October 2011, PP:2, available at: <http://www.gsdr.org/>

However, as the Gallup study indicates, broader efforts at economic and social development must be the starting point for women's rights, so emphasis must be placed on promoting women's education and participation in the workforce in order to improve their civic participation. Civic education must be incorporated in the curriculum at all age levels, and governments should consider funding programs to select girls and women with the potential to become civic leaders and activists and provide them with the necessary training and networking opportunities.

Despite the success stories, the growing concern for women's rights post-Arab spring is clearly warranted. In her talk regarding the return to Islamic law and the marginalization of women as political actors. Arab women work towards strengthening civil society and familiarize themselves with religious discourse, "the true 'Arab Spring' will dawn only when democracy takes roots in countries that have ousted their dictatorships, and when women in those countries are allowed to take part in civic life. "The Arab Spring has brought about pivotal political change for many countries, but there are still many obstacles ahead, especially for women"⁹⁰⁷.

Section II: Pioneer NGO initiatives aiming at harmonizing women and children national legislation with International Law

Paragraph I: Lebanon

1. The National Commission for Lebanese Women: (NCLW) is the only official national mechanism responsible for realizing women's advancement and gender equality in Lebanon;

The National Committee for Lebanese Women was first formed to prepare for the Beijing Conference in 1995. The Committee included members from both the public and the private sectors headed by HE Lebanese first lady then, Mrs. Mona Hrawi;

On November 5, 1998, Lebanese President Elias Hrawi issued Law 720 signed by PM Rafic Hariri. Article #1 of the Law stated the formation of the National Commission for Lebanese Women (NCLW) at the Prime

⁹⁰⁷ Shirin Ebadi, "A Warning for Women of the Arab Spring," Wall Street Journal, March 14, 2012, <http://online.wsj.com/article/SB10001424.html>. Marwa Shalaby, Journal of Women and Human Rights in the Middle East, fall 2013, PP: 16-17, available at: <http://bakerinstitute.org/>

Ministry;

According to Article # 4, NCLW is entrusted with three types of missions:

Consultation: a role performed with the Prime Ministry and all other public administrations concerned with women's affairs.

Liaison and coordination: Linking and coordinating with the various public institutions and administrations, and with the various private civil commissions, as well as with Arab and international commissions and organizations.

Execution: drawing the proposal for a national strategy for women's affairs; developing and amending the strategy in effect whenever need be.

Preparing and planning of programs, activities, studies and workshops related to women, as well as the organization of conferences and seminars besides publications and support of studies and research works related to women's issues.

By relying on Article #6 of law #720, the following specialized committees were formed:

- Legislation committee
- Economy and Labor committee
- Education and Youth committee
- Studies and Documentation committee
- Public Relations, Media, and Information committee
- Health & Environment committee
- The Committee on the Elimination of Discrimination against Women (CEDAW)

Official website: <http://www.nclw.org.lb/>

Initiatives: It is based mainly on the adoption of the 1996 National Strategy for Women's Affairs was facilitated to a great extent by the concurring international trend of promoting gender equality and the development and advancement of women in all societies and nations across the world. In other words, there was a global movement for women to strive for a status of full and unconditional equality with their male counterparts in fundamental rights and

freedoms. Subsequently, the National Strategy was followed by the approval of a number of strategic guidelines and directives for the years 2005-2008 concerning programmes and plans to promote and support the status of women, which had been brought forward by the National Commission for Lebanese Women (NCLW). That national mechanism was to become NCLW. With the ratification of Law 720/1998 on 16 November 1998, all national tasks and activities as regards women's issues were officially assigned to NCLW with a mandate to-

- (a) Advise the Government on women's issues; and
- (b) Liaise and coordinate with concerned ministries, public institutions and civil-society organizations.

The linking of programmes and activities with regional and international organizations, and the monitoring of related issues with such organizations also fell under the responsibility of NCLW. Since its founding, NCLW has handled the monitoring of the gender focal points in collaboration with the concerned ministries and public institutions.

Between 1999 and 2008, NCLW published three official reports on the implementation of CEDAW. They were presented and debated before the CEDAW Committee for the monitoring of the implementation of such provisions. In the light of the tasks entrusted by virtue Law 720/1998, NCLW has adopted a mechanism to renew, develop and update the 1996 National Strategy.

It is of utmost importance that the objectives identified in the 2011 National Strategy are presented and described clearly to the Council of ministers during a dedicated Cabinet meeting in order to facilitate a meaningful discussion which will result in an official endorsement by the Government - only then can the National ten-year Strategy for Women's Affairs in Lebanon 2011- 2021 become legitimate and operational. One of the goals of the 2011-2021 National Ten-Year Strategy for Women's Affairs in Lebanon is to serve as a guiding principle to any official or civil-society initiative seeking to enhance the status of women in the country and, thus, enable them to reach full and unconditional equality with their male counterparts in rights and freedoms in all fields.

A cursory look at the international charters, covenant and conventions of which the Republic of Lebanon is a signatory will point to the urgent need for continuous intervention to eliminate all forms of discrimination persisting in national legislation and in laws and legal codes pertaining to women.

The National Ten-Year Strategy for Women's Affairs in Lebanon 2011-2021 is the result of the joint effort and commitment of the National Commission for Lebanese Women (NCLW), Government ministries responsible for women's issues, and feminist organizations and institutions engaged in the empowerment of women and the elimination of all forms of discrimination, with the assistance and support of the United Nations Population Fund (UNFPA).

This collaborative document highlights the level of awareness and commitment of the Lebanese society to achieving full equality between men and women in human dignity, rights and opportunities, and in the equal participation of women in all fields. The challenge was to ensure constructive collaboration among all participating associations, organizations and institutions in order to achieve the objectives set out in the mission statement and mandate of this cooperative endeavour and action⁹⁰⁸.

b) The Institute for Women's Studies in the Arab world, Lebanese American University:

The Institute for Women's Studies in the Arab World (IWSAW) was established in 1973 at the Lebanese American University (formerly Beirut University College). Initial funding for the Institute was provided by the Ford Foundation.

OBJECTIVES: The Institute strives to serve as a databank and resource center to advance a better understanding of issues pertaining to Arab women and children; to promote communication among individuals, groups and institutions throughout the world concerned with Arab women; to improve the quality of life of Arab women and children through educational and development projects; and to enhance the educational and outreach efforts of the Lebanese American University

⁹⁰⁸ National strategy for women in Lebanon 2011-2021, Prepared by the National Commission for Lebanese Women in cooperation with the United Nations Fund for Population, available on: <http://www.nclw.org.lb/>

PROJECTS: IWSAW activities include academic research on women, local, regional and international conferences; seminars, lectures and films; and educational projects which improve the lives of women and children from all sectors of Lebanese society. The Institute houses the Women's Documentation Center in the Stoltzfus Library at LAU. The Center holds books and periodicals. The Institute also publishes a variety of books and pamphlets on the status, development and conditions of Arab women, in addition to *Al-Raida*. Eight children's books with illustrations, and two guides, one of which specifies how to set up children's libraries, and the other which contains information about producing children's books, have also been published by IWSAW. In addition, the Institute has also created income generating projects which provide employment training and assistance to women from war-stricken families in Lebanon. The Institute has also devised a "Basic Living Skills Project" which provides a non-formal, integrated educational program for semi-literate women involved in development projects. Additional IWSAW projects include: The Rehabilitation Program for Children's Mental Health; Teaching for Peace; and the Portable Library Project. The latter project was awarded the Asahi Reading Promotion Award in 1994. For more information about these or any other projects, write to the Institute at the address provided above.

PURPOSE AND CONTENT: *Al-Raida* is published quarterly by the Institute for Women's Studies in the Arab World (IWSAW) of the Lebanese American University (LAU), formerly Beirut University College. *Al-Raida's* mission is to enhance networking between Arab women and women all over the world; to promote objective research of the conditions of women in the Arab world, especially conditions related to social change and development; and to report on the activities of the IWSAW and the Lebanese American University

Official website: <http://iwsaw.lau.edu.lb/>

Studies: This special double issue of *Al-Raida* is devoted to the theme of Incarcerated Women. It represents a contribution to the efforts exerted by many human rights organizations to disclose the conditions under which women prisoners are living, especially in the Arab World, and to learn about the standards and the instruments meant to protect this vulnerable category of persons. The article written by Mona Khalaf, Director of the Institute of Women's Studies in the Arab World, is at once a presentation of the results of a survey undertaken in four women prisons in Lebanon, and an analysis of the

detention conditions from a human rights perspective, by comparing them with the standards set in the related international human rights instruments. A substantial part of this issue is devoted to a review of the organizations that are involved in defending the human rights of prisoners and in promoting their protection against unfair trial and torture.

Study summary: International standards recognize many rights and protections for detained persons. These include that no one shall be arbitrarily detained or arrested. A person shall be informed promptly of the reasons of her arrest and any charges against her, be brought promptly before a judge and be brought to trial within reasonable time, shall have the right to challenge the lawfulness of her detention, and, if she is subjected to unlawful detention, she shall have the right to compensation, promptly before a judge brought her to trial within reasonable time, shall have the right to challenge the lawfulness of her detention, and, if she is subjected to unlawful detention, she shall have the right to compensation.

- Ratification of International Treaties: At the first instance, one should examine the ratification of international human rights treaties by states of the region. A quick examination of the ratification of international treaties shows that the problem is actually not in ratification. For example, all the following states have ratified the International Covenant on Civil and Political Rights, which includes important provisions on non-discrimination and standards related to arrest, detention, and fair trials: Algeria, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Somalia, Sudan, Syria, Tunisia, and Yemen. The following have ratified the International Convention on Elimination of All Forms of Discrimination against Women: Algeria, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Saudi Arabia, Tunisia, and Yemen, the problem for many states is not at the level of ratification of international treaties. However, the problem in relation with international law and standards lies on another level:

- i. The repeated reservations that states have entered to many provisions of these international treaties; The various human rights treaty bodies have often called on states to lift their reservations stating that such

reservations are often inconsistent with the purpose and spirit of the treaty;

- ii. It is often that national legislation is still in violation with obligations under these international treaties as will be shown below;
 - iii. Even in the rare occasions where the law is consistent with international law, or even when it is not, the problems most often remains that the practice by state officials, including the police and judges, are in violation of these standards. It should be stressed that ratification of international standards should not be only a demonstration of will by the state to the international community. It rather carries with it immediate obligations including guaranteeing the rights included in the treaties to all persons without discrimination; harmonizing national law with these international standards, and training of government officials on these standards so that they become a reality in practice.
- **National Legislation:** The problem often lies in national legislation, including cases where there is lack of constitutional guarantees for non-discrimination against women; or cases where there is conflict between the constitution and other national legislation. Concerning conflict between constitutions and national legislation, this is often evident in family status legislation and penal codes. As shown above in the case, of adultery and “honour killings”, women are treated much harsher than men, even when caught under similar circumstances and charged with similar charges. The Committee on Elimination of Discrimination against Women have said in the case of Algeria, that although the Committee is satisfied that “the Constitution guarantees the equality of men and women and provides that the Convention prevails over national legislation, the numerous discriminatory provisions of the Family Code and the persistence of prejudice and patriarchal practices conflict de facto with the principles of the Convention.” The Committee recommended that the Algerian authorities review its legislation in view of harmonizing it with the Convention and the Constitution. On Jordan, the Committee on Elimination of Discrimination against Women was concerned that “although article 6 of the Jordanian Constitution contains the principle of equality of all Jordanians before the law, it does not contain a specific provision stating that there shall be no discrimination either de jure or de facto on the ground of sex.” The Committee called on the Jordanian government “to encourage a constitutional amendment to incorporate

equality on the basis of sex in article 6 of the Constitution and to reflect fully article 1 of the convention in the Constitution.” The Committee further expressed its concern that several provisions of the Penal Code continue to discriminate against women. In particular, the Committee is concerned that article 340 of the Penal Code excuses a man who kills or injures his wife or his female kin caught in the act of adultery.” In the case of Iraq, the Committee drew attention to the importance of not only having provisions of non-discrimination in the Constitution, but also that such guarantees do not have the purpose and effect to discriminate on the basis of sex. In that sense, it is common in legislation or practice that there are no provisions that discriminate on the basis of sex directly, but in practice, the effect of certain legislations, or lack of additional protection provisions is to discriminate against women. This is evident in the case of lack of protection provisions and the lack of special training for law enforcement officers to deal with women during detention. In view of the lack of such additional protection, women suffer from violations, their physical and psychological integrity that could amount to torture.

- The practice finally, even when international human rights treaties have been ratified, and the national law does in fact include the necessary provisions to protect the rights in question, there still remains the problem of implementation in practice. This is most obvious in the lack of adherence to provisions of international treaties or provisions in national legislation by law enforcement officers. In many cases this is due to lack of training provided to these officials on their obligations under international and national law. However, what complicates the problem is that more than often, violations of human rights by law enforcement officials go with total impunity. No investigations are carried out regularly in cases of torture, death in detention, or other forms of abuse of power. In the rare case when such investigations take place, the officials involved are left to go with a punishment that is totally disproportionate to the violation committed. Such impunity for violations is a perfect atmosphere for their repeat and has to be addressed promptly.
- Recommendations: The following are some recommendations that are directed towards state authorities, NGOs and other activists. The recommendations for the state could be used as basis for programs by

human rights and women's rights activists in addressing the plight of women in detention.

- To NGOs and Other Activists Women's rights and human rights non-governmental organizations need to create and strengthen their programs of monitoring the situation of women in detention. More documentation of detention conditions, including during interrogation, needs to be available. To achieve this, NGOs need to train more specialized staff to speak with women who have been raped, and subjected to other severe forms of physical and psychological violations.. NGOs and other activists, including lawyers and academics, need to identify in each country the priorities or legislative reform and start lobbying for that. Campaigns to create allies in the parliament and the community are essential for this.
- At the Preventive Level: Action should not be limited to the curative level. It is important to extend it to the preventive level through: increasing the awareness of people regarding the problems faced by women prisoners; advocating for the issues raised; creating a coalition with NGOs who work at the level.⁹⁰⁹

c) Kafa association, end violence and exploitation:

Background: Established in 2005 by a group of multi-disciplinary professionals and human rights activists, KAFA (enough) Violence & Exploitation is a Lebanese non-profit, non-political, non-confessional civil society organization committed to the achievement of gender-equality and non-discrimination, and the advancement of the human rights of women and children.

KAFA envisions a society where all its citizens live free of violence and exploitation and where they have equal access to opportunities and results and their human rights are respected, protected and enjoyed. KAFA believes that women's and children's rights are integral to this achievement and to building a free and fair society.

KAFA's mission is to work towards eradicating all forms of gender-based violence and exploitation of women and children through advocating for legal

⁹⁰⁹The Institute for Women's Studies in the Arab World, Lebanese American University, Incarcerated Arab women, Volume XIX, Nos. 95-96 Fall/Winter 20, Adele Khudr.

reform and change of policies and practices, influencing public opinion, and empowering women and children. Their focus areas are those of:

- 1) Violence against Women
- 2) Child Sexual Abuse
- 3) Exploitation and Trafficking in Women
- 4) Socio-Legal Counselling.

KAFA combines in its work the various methods of lobbying, action-research, publication, training and awareness raising, and supporting the victims. Their work's guiding principles are those of the universality of human rights and the participation and inclusion of all target groups and marginalized people in our endeavours.

Official website: <http://www.kafa.org.lb/>

Initiatives: The Law to Protect Women from Family Violence

The legal frame for the elimination of all forms of Violence against Women in line with international human rights standards is one of the focal advocacy actions to which KAFA is committed. Family Violence is the most common form of violence experienced by women in Lebanon and globally. Although progress in breaking the silence and spreading awareness against abuses has been achieved, there is a persistent need for a direct and fundamental solution. In the absence of a legal guarantee, women and girls are constantly reluctant to report abuses and to claim their right to a decent human life, which in return favours all forms of violence.

On Monday July 22, 2013, the parliamentary joint committees in Lebanon approved the law to protect women from family violence, but under a new title: "The Bill for the Protection of Women and Family Members against Domestic Violence".

"KAFA (enough) Violence & Exploitation" and the "National Coalition for Legislating the Protection of Women from Family Violence" welcomed this step, but expressed their concerns about the amendments made to the law by a special parliamentary sub-committee, and which was approved by the joint

committees, and asserted their perseverance in lobbying efforts to reach the sought-after results in the general assembly.

According to the version that was approved in the committees, the powers of the religious versus the criminal courts are clearly separated in article 22 (previously article 26 that were added by the Cabinet in 2010). However, and despite the re-introduction of the crime of marital rape in the latest version of the law, it is still not explicitly criminalized as an assault by itself; rather it is the harm that accompanies it that is penalized. Moreover, and as indicated by the new version, minors do not profit from the protection order, unless they are still under the age of custody as set by the different religious laws. This article will make women more reluctant to report abuse because they may not be able to protect their children when they file for a protection order.

The national coalition will continue its efforts to introduce the required revisions to the law and most importantly keep it, and particularly the protection system, specific to women in order to preserve the core essence of the law and maintain its effectiveness.

Paragraph II: Morocco:

The democratic association for Moroccan women: the Association Démocratique de Femmes de Maroc (ADFM) was founded in June 1985, one month before the United Nations Decade for Women reached its conclusion and the Nairobi Conference in July 1985.

On a national level, the conference stimulated a group of women, mainly progresses militants, to benefit from the international attention that was drawn to their struggle for equality which otherwise would not have been high on the political agenda. The international context of the conference also encouraged the government of Morocco to start a process of democratization, to overcome initial obstacles experienced from within the civic society, and to increase a feminist conscience.

In the first years of existence, the same ideals that inspired the founders of ADFM incited a whole generation to take action. With this new found popularity, ADFM was forced to reconsider not only their objectives in operational terms, but also their opinion on issues such as development,

structure and possible types of interventions. The ADFM assigns itself the mission of protection and promotion of women's human rights as universally recognized. Its principal objective is the promotion of women's rights and strategic interests.

Mission

- ▶ The ADFM assigns itself the mission of protection and promotion of women's human rights as universally recognized.
- ▶ The ADFM targets, by the defense and promotion of women's fundamental human rights, De facto and De jure gender equality.
- ▶ Through its mission, the ADFM attempts to establish a more democratic society.

Objectives

The ADFM works for women's strategic interests, at the level of politics, and the recognition of their rights and dignity at the:

Global and sectoral political level-

- ▶ The entirety of politics conceived and applied by executive powers and social actors should take gender into account
- ▶ The adoption and the putting into practice of strategies that promote women's status.
- ▶ The installation of effective national mechanisms of execution and follow up

Legislative level

- ▶ Equality in civil, political, socioeconomic and cultural rights
- ▶ Equality in the work place, in terms of women's access to important positions
- ▶ Protection of women against all forms of violence

Adoption of measures that attempt to decrease the gap between genders

Practical level

- ▶ The application of civil, political, socioeconomic, and cultural rights

Attitude level

- ▶ The establishment of an egalitarian culture that bans sexist attitudes and behaviours.

Official website: <http://www.adfm.ma/>

Initiatives: Prompted by the convergence of the aspirations and claims of the women's movement, and the modern views espoused by the King of Morocco, other measures have been taken to eliminate discrimination against women and young girls since the consideration of Morocco's 2nd periodic report. These measures are:

- a. The amendment of the Nationality Code in April 2007 which now entitles Moroccan women to transfer their nationality to their children (article 6 of the amended Nationality Code);
- b. The partial amendment of the Penal Code and the enactment of a new Labour Law (2003) which abolished a certain number of provisions judged discriminatory towards women and young girls.

However, despite this undeniable progress, Morocco's legal framework does not fully conform to the provisions of CEDAW, especially article 2, and the recommendations made by the CEDAW Committee following consideration of the country's 2nd periodic report (2003).² In fact, the recommendations addressed several critical issues that are still of relevance today. These include:

- Withdrawing reservations and ratifying the Optional Protocol to CEDAW;
- Incorporating the principle of gender equality in the Constitution;
- Including the definition of discrimination against women as set out in article 1 of the Convention in the national legislation;
- Determining the status of international conventions within the national legal framework;
- Incorporating the provisions of the Convention in the national legislation;
- Promoting the political and public representation of women; and
- Changing stereotyped attitudes and discriminatory cultural practices related to the roles of women and men in the family and society

Political Participation: (articles 7-8-9): Contrary to the expectations of the women's movement, the 2007 parliamentary elections did not bring any improvement relative to those of 2002. The national list, which allocates close

to 30 seats to women but appears to have no significant impact *per se*, has not been institutionalized. Failure to institutionalize temporary special measures also accounts for the near-total absence of women in local councils (0.6 %) and senior positions in various sectors even though the government, which has just been formed (October 2007), includes 7 women of 34 ministers.

Despite reforms aimed at bringing national legislation in line with CEDAW provisions, discrepancies and inadequacies persist. The main codes amended thanks to large campaigning by the women's movement have failed to eliminate discrimination against women. These codes are as follows:

- The Labour Code whose provisions do not provide any protection to certain categories of women workers, particularly household servants whose large number is mainly composed of young girls. Moreover, the Code does not cover equality in salaries, the protection of female employees against unfair dismissal, sexual harassment, and guarantees for the exercise of maternity rights.
- The Penal Code which remains dominated by an in egalitarian view that rests on two major concepts: male honour and control over female sexuality. Moreover, penal provisions on rape are profoundly discriminatory and introduce a hierarchy between married and unmarried women, virgin and non-virgin. Finally, the retention of legal proceedings in case of adultery and extramarital sexual relations, and the prohibition of VTP (and its high cost) drive pregnant women to abandon their children, even commit infanticide, or expose themselves to deadly hazards.
- The Family Code which maintains polygamy, discrimination in inheritance and the legal guardianship of children as well as repudiation. As for the implementation of the new legislation, shortcomings are patent. These include the propensity of judges to systematically authorize the marriage of female minors and polygamy (though related legal provisions are subject to very restrictive conditions); difficulties facing women in all divorce proceedings (including new legal procedures that are supposed to facilitate women's access to divorce, particularly on grounds of marital discord and by mutual agreement); difficulty in the application of the right of divorced female custodians to stay in the matrimonial home, and the limited nature of provisions related to paternity acknowledgement.

In fact, campaigning by the women's rights movement, the conjunction of a certain number of favourable factors, and debate on affirmative action (quotas) and parity have prompted political parties, since 2000, to « voluntarily » apply the quota system to secure a larger representation for women within their decision-making bodies (from 10 to 20%). This momentum culminated in a commitment by political parties during the parliamentary elections, under a pact of honour, to allocate 30 seats to a national list of women candidatures, which enabled 35 women to gain entry to the House of Representatives (5 women were elected on local lists).

The amendment of the Electoral Code in 2003, the enactment of the Political Parties Act (2005) and the amendment of the organic law of the House of Representatives (2007) were moments of mobilization by NGOs advocating the promotion of women's and human rights. These NGOs joined forces and set up the "Movement for 1/3 of Seats to Women. Towards Parity" with the purpose of institutionalizing "voluntary" temporary special measures that would guarantee women equitable access to elected bodies.

Accordingly, several actions and initiatives were initiated in this respect. These include sending a memorandum signed by more than 400 NGOs to the government, parliament and political parties, and holding sensitization seminars and training sessions on women's access to representative bodies, the voting system, and affirmative action measures.

Without the national list of women candidates, women's political under-representation would have persisted. Proof is furnished by the results of local elections where the quota principle was completely dismissed by political parties. Of the 295 seats of local constituencies, only five went to women.

In fact, campaigning by the women's rights movement, the conjunction of a certain number of favourable factors, and debate on affirmative action (quotas) and parity have prompted political parties, since 2000, to « voluntarily » apply the quota system to secure a larger representation for women within their decision-making bodies (from 10 to 20%). This momentum culminated in a commitment by political parties during the parliamentary elections, under a pact of honour, to allocate 30 seats to a national list of women candidatures, which enabled 35 women to gain entry to the House of Representatives (5 women were elected on local lists).

Paragraph III: United Arab Emirates

1. Dubai Women Establishment:

Vision

To be recognized as a role model for achieving the active participation of women in value creation for the economy and society in the region.

Mission

To increase participation of women in the economy & society through:

- Leveraging public and private sector networks to create a positive perception about participating women,
- Capitalizing on DWE's knowledge to influence policies that are more conducive to Emirati women in the workplace and work-life balance opportunities, and,
- Providing services which directly address the multiple needs of participating women towards greater personal & professional development.

About Dubai Women Establishment: The Dubai Women Establishment (DWE) was formed in 2006 under law no. (24) by His Highness Sheikh Mohammed Bin Rashid Al Maktoum-As a statutory body of Dubai Government and as per its founding decree, the Establishment aims to encourage and facilitate the participation of Emirati women in the workforce and society. Mandate includes extensive research to identify and quantify status of women in the workforce of Dubai, as well as initiatives towards women's further development opportunities. Awareness and policies that are conducive to women in the workforce will be recommended to Dubai Government as solutions to enable women to play a greater role within the UAE and on global scale.

The term participation includes acknowledgment of women in arts, women in sports, women in leadership professionally in their field as well as of the societal arena such as act of philanthropic, humanitarian and politics.

Official website: <http://www.dwe.gov.ae/>

Initiatives:

Dubai Women Establishment objectives, is "To contribute to the policymaking of economic, human and social development that aims at creating opportunities to engage UAE women in the country's development process."

Amongst several initiatives since its launch, the DWE has notably launched a "UAE Women Leadership Programme" to formulate a custom-made program for training and developing potential Emirati women leaders. In recognition that

accurate data is extremely important for measuring the development and growth of women in society and quantifying the impact of governmental policies, the DWE has also teamed up with the Dubai Statistics Center in a joint agreement to initiate gender-centric data collation and surveys. In another move, the Dubai Women's Establishment announced a five-year strategic plan in February 2008 to enhance women's contribution to the economy. Part of the strategy includes lobbying for new legislations to support UAE women in all fields. The Dubai Women Establishment is run by an all women board with wide-ranging experience in the government and private sector.⁹¹⁰

General Women Union:

Objectives: Advancement of Arab women spiritually, culturally and socially to be able to participate in the national revival and the Arab guided by the values and teachings of Islam.

Achievements: General Women's Union (GWU), was established in 1975 under the leadership of HH Sheikha Fatima bint Mubarak, wife of late President Sheikh Zayed bin Sultan Al-Nahyan, only a few years after the establishment of the UAE federation remains crucial to women's empowerment. GWU continuously perform its efforts to the advancement of women in the United Arab Emirates, and enhance the roles of development in various fields of economic, social, health, legislative and other, in a manner consistent with the national strategy for the advancement of women in the United Arab Emirates launched by Her Highness Sheikha Fatima girl Mubarak, Chairperson of General Women's Union, Supreme Chairperson of the Family Development Foundation, President of the Supreme Council for Motherhood and Childhood, which includes a range of programs for capacity building and empowerment of women in various fields in addition to valuing its bid and its contributions to society

Vision: Promotion of women and the empowerment of the UAE in all fields to be an effective element in the sustainable development of the United Arab Emirates⁹¹¹.

Initiatives: The GWU has been a key player in the government's strategy to create a supportive environment for women. Established with the aim of

⁹¹⁰ Women in the United Arab Emirates- A Portrait of Progress, available at: <http://www.dwe.gov.ae/>

⁹¹¹ Official website: <http://www.gwu.ae/>

bringing together all the women's societies in the country under one umbrella, HH Sheikha Fatima is a pioneer figure for women in the UAE and continues to lead the development process. Since its formation, the government-funded GWU has brought to the fore many inter-related issues of concern for women, children and the family, and has been instrumental in introducing literacy programmes throughout the UAE.

The GWU has a number of committees that provide vocational training, job placement services, and family mediation services and continues to play a major role in facilitating economic independence through the establishment of small businesses. Simultaneously, it has an active community calendar of social, cultural and sporting activities. Amongst its many duties, the GWU is responsible for suggesting new laws and amendments to exist in laws in order to benefit women. The GWU pursues policy research related to women's issues and makes recommendations to the relevant ministries and government departments based on their findings. The GWU was in fact instrumental in the realization of the new civil service law of 2001 extend in maternity leave, as well as the law establishing the Supreme Council for Mother and Child in 2003 which is directly affiliated to the Office of the President. The GWU also played a key part in reviewing the country's draft social status law governing family relations.

In addition, the GWU plays a significant role in women's affairs at regional and international levels.

It maintains particularly strong Arab and international links with women's organizations and is affiliated to the Arab Women's Federation, International Women's Federation and International Family Organization.

The GWU has participated in all the UN-sponsored world conferences on women over the last few decades, culminating in Beijing in 1995, the largest conference in the history of the United Nations. Subsequently, the GWU focused on bringing about the necessary measures to activate CEDAW and to implement the recommendations of the Beijing Declaration.

Ratified the United Arab Emirates on the CEDAW in October 2004, and presented its first report to the Committee on the Elimination of Discrimination against Women in 2008, and works General Women's Union in cooperation

with the relevant institutions to prepare a second report to the state about the Convention⁹¹².

Paragraph IV: Jordan

The Jordanian Women's Union (JWU): The Jordanian Women's Union (JWU) was established in 1945. After the emergency law in 1957 dissolved all civil society organizations and political parties, the JWU was forced to stop its activities for some years. However, despite all pressures exerted on the union and its members, it was able to stand up to the challenges facing it and to pursue its aims with determination. The Union was reestablished under the name of "The Women's Union in Jordan"(WUJ in the year 1974).

It was not until the restoration of the parliamentary life in Jordan in May 1990 that the Union was able to reactivate and to regain momentum. The Union's name was changed to the Jordanian Women's Union in Jordan (JWU) and new democratic bylaws were passed and approved⁹¹³.

In 2000, the CEDAW Committee issued key observations and recommendations for action by the government in response to Jordan's 1st and 2nd combined report on compliance with the Convention. Expressing concern over the Jordanian governments laws and procedures related to women's rights and protection from all forms of discrimination, the CEDAW Committee asked for real efforts by Jordan's government in these areas:

- Amending legal and social practices to control violence

Addressing alarming habits, traditions, cultural practices and stereotypes which affect attitude towards violence against women

- Enacting law criminalizing violence
- Expediting approval of CEDAW to become legally binding as national law
- Expediting political participation of women
- Stipulating equal pay for equal work in the Labour Law
- Amending Nationality Law to provide women equal rights to men's

⁹¹² Women in the United Arab Emirates- A Portrait of Progress, available at: <http://www.gwu.ae/>

⁹¹³ Official website: <http://www.jwu.itgo.com/>

- Amending Penal Law to criminalize violence against women (specifically, domestic violence and honour crimes), make these and the divorce laws permanent, not provisional
- Strengthening Jordanian National Commission for Women (JNCW)
- Issuing the Law amending the Labour Law of 2008, which provides that sexual harassment is punishable under article 29, and increases under article 77 the penalty for violating Articles in the section on women's and children's rights
- Ratifying the Protocol to criminalize all Forms of Trafficking in Women and Children and the Protocol on Labour.
- Issuing the Domestic Violence Law
- Increasing women's quota in the Parliament from 6 to 12 seats,

Jordanian NGOs have noted the government's fulfilment of the following:

- In 2007, 20% of the seats in the Municipal Councils were assigned for women. In the same year, all Municipal Councillors were elected through national suffrage. Previously, half of the members were appointed.
- Women's political representation in Parliament was expedited through affirmative action, including a quota of six seats designated for women among the 110 seats in the Chamber of Deputies. In 2003, a total of seven women were appointed to the upper house of Parliament. Women were also appointed as Ministers, Ambassadors, and Mayors.
- Parliament approved the Convention of the Rights of the Child (CRC) to become legally binding as a national law. Procedures to incorporate articles into national laws are still slow.
- Four other international human rights conventions were published in the Official Gazette, namely: the 2 protocols of the Human Rights Declaration, the Convention against Racial Discrimination and the Convention against Torture.
- In the government's support of micro-finance initiatives, 70 % of the credit clients and entrepreneurs are women.
- Several amendments to Jordanian Labour Law No. 8 (1996) have improved women's rights to childcare in the workplace, maternity leave,

parenting and spousal leaves of absence from employment, and breastfeeding⁹¹⁴.

The Jordanian national commission for women:

The Jordanian National Commission for Women Affairs was established on 1992 in appreciation of women role, expressing the Jordan response to the needs of women and society, and emphasizing the seriousness of the country commitment to execution of its national, Arab and international policies and pledges, including commitment to find national mechanism seeking rise of women, promotion of her economic, social and political participation, maintenance of her gains, defending her rights in order to achieve higher level of protection, social justice, effective participation, and equality.

mission: JNCW's mission is to support mainstreaming of a gender-equality perspective in all policy areas and to narrow the gap between formal acknowledgement of women's rights as detailed by legislation and actual societal attitudes towards women through improving the status of women and enhancing their role in national development;

- increasing and encouraging the participation of women in economy, politics, and decision making; and strengthening women's legal status In determining ways to bolster women's status, JNCW proposes new policies and legislation to further the cause of women as well as studies existing policies and legislation to ensure they are not discriminated against. It also works closely with public institutions and NGO's to formulate strategies that foster development and evaluate their success.

Statement: "A transformed partnership based on equality between women and men is a condition for people-centered sustainable development. A sustained and long-term commitment is essential, so that women and men can work together for themselves, for their children, and for society to meet the challenges of the twenty-first century".

⁹¹⁴ Shadow NGO Report to CEDAW Committee Jordan, Evaluation of national policy, measures and actual facts on violence against women, forwarded to CEDAW Committee by a Group of NGOs, July 2007
- Jordan Shadow NGO Report , CEDAW Alliance Coordinator: Jordanian Women's Union ,Submitted to , CEDAW Committee , Geneva, 2012

Strategy: The National Strategy for Women in Jordan that JNCW drafted in 1993, with the full partnership of all official and civil sectors around the country involved in women's development is the backbone of JNCW's activities. In order to achieve the Strategy's objectives and implement its measures, the various sectors' efforts merged and have managed to bring forth concrete achievements that have enhanced and are still enhancing the status of women.

JNCW began the lengthy process of updating the Strategy in 2000. The method of work continues to be a collaborative effort, and the new Strategy builds on developments achieved under its predecessor, while taking into consideration developments that took place since the first Strategy, such as the ratification of the Convention on the Elimination of All Kinds of Discrimination Against Women and the Platform for Action of the Fourth World Conference on Women⁹¹⁵.

The Arab NGO network for development:

The Arab NGO Network for Development (ANND) is a regional network, working in 12 Arab countries with seven national networks (with an extended membership of 200 CSOs from different backgrounds) and 23 NGO members. ANND was established in 1997 and its headquarters is located in Beirut, Lebanon since 2001.

ANND aims at strengthening the role of civil society, enhancing the values of democracy, respect of human rights and sustainable development in the region. ANND advocates for more sound and effective socio-economic reforms in the region, which integrate the concepts of sustainable development, gender justice, and the rights-based approach.

The network programs cover three main areas:

1. Development Policies in the region;
2. Social and economic reform agendas and the role of international and regional organizations;
3. Economic and trade liberalization policies and its social and economic implications.

⁹¹⁵ Official website: <http://www.women>

On a horizontal level, ANND addresses issues of peace and security in the region.

The objectives of the program interventions are:

1. Enhancing and strengthening civil society advocacy on social and economic policy-making processes;
2. Opening channels of influence for civil society organizations in the Arab region in policy-making processes, on the national, regional and global levels;
3. Enhancing the availability and production of indigenous resource material and research related to the role of CSOs in the Arab region.

ANND's program tools and strategies include: networking, capacity building and information and experience sharing, provision of resources includes research and information materials, advocacy strengthening, coalition building, monitoring, evaluation, and engagement with policy-making processes and related institutions among civil society groups.

Mission: The Arab NGOs Network for Development is an independent, democratic, and civic organization that aims at strengthening civil society and enhancing the values of democracy and respect of Human Rights and sustainable development in the Arab region. It works towards its aim through programs of advocacy and lobbying on regional and national policy-making in three main areas; development, trade, and democracy, while being committed to the international convention on Human Rights, freedom, respect of the individual, respect of diversity, equality of resource division, and the protection of cultural heritage in the Region and the implementing the developmental priorities of the local societies.

Vision: The Arab NGOs Network envisions democratic, active, and effective civil societies in the Arab Region. These societies would be able to affect public policies, and would be open and interactive with other cultures and societies. These societies respects and protects the dignity and freedom of the individual and their political, social, economic, civic, and cultural rights, within a state of law and institutions, where peace, security, and stability are prosperous⁹¹⁶.

⁹¹⁶ Official website: <http://www.annd.org/>

ANND is committed towards implementing the values of good governance and the development of best-practices models for capacity building and institutional structuring.

Initiatives: Significant efforts have taken place during the last three decades to enhance and promote women's legal status and bridge the gender gap in legislation in various Arab countries. However, the situation of women's legal rights in the region is affected by the lack of adequate legal awareness programs, prevalence of discriminatory laws and acts and existence of parallel legal systems. In general, three parallel laws such as customary, Sharia, and secular/civil laws are practiced in some Arab states. The International committee on the CEDAW has considered the co-existence of multiple legal systems to be a source of great concern. It impeded the implementation of international conventions standards that protects the rights of women. Indeed, the existence of parallel legal systems affects women's legal rights negatively, complicating women's legal status in several countries, such as Sudan, Somalia, Djibouti, Mauritania, and Lebanon. Violence against women has been widely addressed by social movements and women's groups in the Arab region, which mobilized around international conventions such as CEDAW (1979), the Vienna Declaration (1993), and The Beijing platform of Action (1995). They all have great influence on the women's freedom of movement. During the last three decades, several campaigns aiming at ending discrimination against women and achieving gender equality have been undertaken by civil society groups across the Arab region. For more than 10 years, women's organizations in different Arab countries have been advocating full and equal citizenship rights for women and calling for amending nationality laws. Women activists succeeded in bringing amendments to nationality laws in Syria, Sudan, Egypt and Morocco.

In Bahrain, the Supreme Council for Women has been established to safeguard Bahraini women's interests based on laws and regulations. The Council implements measures to eliminate discrimination against women, including drafting new laws and proposing amendments to existing ones.

In Sudan the Gender Forum (GF) was established by the Gender Centre for Research and Training (GCRT) to act as a public forum for discussing the issue of gender imbalances within the national policies (education, health, employment etc.) as well as within decision-making and resource-sharing

processes. It seeks alternative solutions through women's empowerment initiatives. Despite such achievements, a lot of obstacles and barriers, both exogenous and endogenous to civil society groups, face their work in this area⁹¹⁷.

⁹¹⁷Assessing the Millennium Development Goals Process in the Arab Region, Prepared by The Arab NGO Network for Development Azzam Mahjoub – Manal Mohamed Abdel Halim– Riad al Khouri, pp: 52,53,56, available at: <http://www.annd.org>

CONCLUSION AND RECOMMENDATIONS

The reality, is that the continuous violation of women's and children's rights and the discriminatory practices against them, on a wide range, despite the ratification of international conventions reveal the presence of a deficiency in understanding the concept of women's and children's rights, which is preventing the full effectiveness and the efficacy of International Law in achieving substantial and actual change in women's and children's conditions, in the process of activating their rights.

This Thesis shed the light on the concept of women's and children's rights in the Arab world, between the texts of international conventions, and the actual reality. If international instruments were a proof of the legal culture of women's and children's rights, the daily practices of people, including judges and law enforcement agents are a real expression of the collective mentality, and the people's behaviour are the biggest witness and the official spokesman of popular culture.

Through closing the gap between International Law standards and norms on one hand and practice at national level on the other hand, the thesis strived is to promote women's and children's rights movement, and identify modern and more realistic directions in understanding and promoting these rights.

There is no doubt of the presence of problems and shortcomings obstructing the process of understanding and applying the concepts of women's and children's rights. Noteworthy is the duality of civil and religious laws, including marriage contracts and their effects and the personal status law, and subsequently the duality of the specialized authorities, which complicates the mission of International Law that exclusively communicate with States and to civil authorities, rather than religious authorities.

On the other hand, a major problem consists in the presence of contradictions between the legal legacy represented by international conventions and the actual reality. This problematic revolves around the following issues:

The improper understanding and the firm belief in the “Inadmissibility of discrimination”

Since the issuance of the Universal Declaration of Human Rights in 1948, which includes the principle of “Inadmissibility of discrimination” in its text (every human has the right to enjoy all rights and freedom; without discrimination, especially discrimination based on race, colour or gender, etc...). This principle is still an incurable cultural and behavioural dilemma, and an unacceptable concept in the Arab world, where each difference and distinction between a human and another, is considered a reason for discrimination against the different human being, which makes the physiological difference between man and woman a natural reason necessary for discrimination. Man has a masculine power and historical authority, which made the women a weak and governed human being. At each weakness and feebleness, the humanitarian and social status is shacked, and the weak loses some of their rights: it is the law of power that legitimizes the process of social categorization, and dedicates the femininity of woman and her values and activities, as relevant to the man and directed towards the masculine service and benefits.

The wide scope of classification in our societies, which is based on the masculine approach, that evaluate woman by looking at her difference and distinction from man, this classification is a rooted consideration in minds, and dedicated in daily practices and behaviours, to a point where people do not realize its existence. This is the first thing that obstructs the concept of women’s rights from being internalized and fully applied in the society. On the other hand, demanding woman’s rights, from the masculine perspective, is a violation to men’s rights.

Strong Interference and interdependence between the culture of the past and the culture of the present

Arab societies are developing societies in a transition period from the traditional structure to the modern societal structure. In this transition, it is hard to easily give up on old concepts. It is also hard to form or adopt new concepts. So, the traditions and norms and customs, remain effective in the people’s practices and in their daily communication, and the old concepts remain reciprocal and in effect in the prevailing living patterns, which reveals the solid mental and behavioural concomitance between the two cultures, and the culture of today

becomes an extension and a continuity of the culture of yesterday, and this consequently obstruct, any positive and substantial change in the realization of women's and children's rights.

Every actual change and sound transition to the modern societal structure require a judgment, comprehensive development, and complementary in its elements and directions, which is achieved through reckoning on modern patterns of mores and practices, based on modern and clear concepts. Everything below this complementary change, enter in the framework of limited and insufficient individual and collective attempts.

The intromission of societal modernity, requires a pattern, knowledgeable and qualitative leap, that review concepts and places and roles of the two genders, inside the family and society, especially in the economic area which is in more contact with women situation , where men remain in most of the times, the financial source, the owner and breadwinner. Subsequently, men remain the holders of authority and the decision makers, and women rights remain ink on the papers of international instruments.

The dominance of literary culture on the legal- social culture

The rhetoric in the Arab countries dominates in most of the times the essence of things, words highly affect emotions, and the eloquence fascinates people, and makes them forget sometimes the importance and significance of the meaning. The practice in the Arab world is mainly directed towards the study of theoretical issues, and the analysis of concepts and values, and deriving solutions, according to the texts and extreme meanings, without taking into consideration, the real legal and social standards.

Remarkable disparities between the legal and theoretical advancement of the concept of Rights in International Law versus the concept of Rights in the popular culture.

The rapid legal development of woman's and children's rights concept in the twentieth century, that was achieved since the beginnings of the human rights movement till today, was not faced by a similar speed on the popular and social level. If the progress that came as a result of legal and rightful research has achieved a huge step, in the area of firming the concept of woman's and children's rights in the legal culture, on the popular level, progress remains slow

and limited in the area of understanding these rights and its activation in the individual and collective practices.

On the legal side, Judiciary systems in the Arab countries are complex and have religious structures. In addition, they face different problems such as corruption, high costs of lawyers and courts, and complicated bureaucratic requirements. To add that Sharia rules and regulations are part of judiciary systems in most Arab countries.

Most Arab countries ratified the CEDAW and the CRC, and most of them put reservation on some articles, based on conflict with Islamic law. Most Arab countries ratified the first two optional protocols of the CRC, namely the Protocol related to the involvement of children in armed conflicts and the Protocol related to Sale of Children and Pornography. The Protocol on a Communications Procedure is the only protocol that was not ratified by Arab countries. Not all Arab countries incorporated CRC articles in their constitutions and laws. Even the countries that incorporated the CRC in their laws, did not apply full enforcements of its articles, especially the ones that were considered in conflict with Islamic principles.

The widely diverging formulations of Islamic law that enjoy authority in today's legal systems are the ones that have been selected by governments from a great variety of possible readings of the Islamic sources. Governments of Muslim countries decide what versions of Islamic law will be binding by incorporating certain interpretations of the sources in their positive laws, laws which can be and often are revised in the light of shifting policies.' That is, the positive laws that give rise to Islamic reservations to CEDAW are laws that correspond to current national policies on women's rights. Some Muslim countries that refused to ratify CEDAW were ready to ratify the CRC. Since many Muslim countries ratified the CRC without reservations or at least without Islamic reservations, there obviously was no consensus that Islamic reservations were required. Since not all Muslim countries that did enter Islamic reservations reserved to the same articles, this showed the disagreement regarding which provisions were problematic in terms of Islamic law⁹¹⁸.

The ratification of LAS member states of all international rights of the child conventions has represented one of the most important priorities of joint Arab

⁹¹⁸ Ann Elizabeth Mayer, ISLAMIC RESERVATIONS TO HUMAN RIGHTS CONVENTIONS, A CRITICAL ASSESSMENT, PP: 29, 36-37, available at: http://www.verenigingrimo.nl/wp/wp-content/uploads/recht15_mayer.pdf

action for the advancement of the rights of the child over the past two decades. All Arab states have ratified the CRC, with the exception of Somalia, which has signed only. This international legal commitment to the rights of the child has also been reflected by most Arab states joining or ratifying the two Optional Protocols. Three countries (The United Arab Emirates, Comoros, and Mauritania) have not yet joined the Optional Protocol on the involvement of children in armed conflict, and two countries (Somalia and Lebanon) have signed but not ratified this protocol.

Only two Arab countries (The United Arab Emirates and Somalia) have yet to join the Optional Protocol on the sale of children, child prostitution, and child pornography. The United Arab Emirates has indicated that it has established a committee of relevant parties to study the possibility of joining the Optional Protocols. As for the third Optional Protocol (OP3) of the CRC on a communications procedure, Morocco confirmed that it signed the protocol without any additional details. Other countries are studying the protocol. In Yemen, the

Council of Ministers has agreed to join and referred the matter to the House of Representatives for discussion and approval. OP3 is also under review in the Sultanate of Oman, where the country's position will be determined

after the enactment of the new Child Act. Bahrain formed a committee, chaired by the Foreign Ministry, to review the protocol and collect the views of relevant bodies on accession. Similarly, the Sudanese National Council for Childhood formed a technical committee to study OP3 and refer it to the concerned authorities. While the completion of Arab commitments to the CRC enshrines and legitimizes its position within human rights mechanisms, it is yet to include the Optional Protocols or the withdrawal of reservations, due to the absence of

official follow-up by Arab states to review reservations, consider their withdrawal and into taking steps towards ratification or accession⁹¹⁹.

There have been efforts to harmonize the national laws with international ratified conventions. There have been some individual efforts also by academic activists mainly to harmonize between Islamic law and International law. As a result, Arab states tended to set reservations and also considered that the CRC

⁹¹⁹ League of Arab States (LAS), THE COMPARATIVE ARAB REPORT ON IMPLEMENTING THE RECOMMENDATIONS OF THE UN SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN, PP: 17, available at: <http://srsg.violenceagainstchildren.org/>

and CEDAW do not apply in the absence of legislation or a regulatory framework incorporating the standards. Gaps occur as a result of the different interpretations and understanding of the religious texts and provisions related to women and children. This includes articles 14, 20 and 21 of the CRC for instance. This has led to the complex and multi-faceted relationship of international law and dominant Western notions of democracy, and Islam both as a religion and a legal order. Islam states created a compromise through setting important rules such as Human brotherhood, honouring the human being and preserving human rights, Justice and equality in rights and duties. Strong efforts are made to consolidate Islamic law with universal human declarations, but clashes still occur with cultural relativism rights. Continuous dialogue and meticulous follow up at the level of national legal structures are needed in order to establish a common understanding that makes women and children's rights a reality in the society.

International conventions dealing with specific rights also contain savings clauses. Article 23 of CEDAW states that, "nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained: (a) in the legislation of a State Party; or (b) in any international convention, treaty or agreement in force for that State." A similar condition appears in the Convention on the Rights of the Child (CRC), giving priority in case of a conflict to provisions that "are more conducive to the realization of the rights of the child." The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families also favors "more favourable rights or freedoms granted to migrant workers and members of their families" in "[t]he law or practice of a State Party" or "any bilateral or multilateral treaty in force for the State Party concerned." The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief provides that nothing in the declaration "shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights."

The jurisprudence around savings clauses in other international human rights instruments provides a strong foundation for such an interpretive framework.

However, such conflicts between national and international law are only one dimension of the possible tensions⁹²⁰.

Many challenges are facing Arab women and children. These challenges lie in cultural factors that violate women rights and limit her rights to domestic work, as mothers and caregivers. Even women who gained the right to work outside home, do not take in many instances equal positions and do not earn same salaries as men at work. Despite the efforts made to enhance women's representation in decision-making positions, women are still receiving lower statuses in politics. Arab women's entry into the political sphere faces many difficulties. Women have the lowest regional average of women Members of Parliament in the world, the Arab world ranks at 3.5% only. Arab women, sometimes assisted by their governments and leaderships, have been trying to pave the way for their political participation. Legal discrimination still remains a significant obstacle to women's advancement. Arab women face restrictions in political parties are also obstacles to greater women's political participation. Religion is another impediment. This is in addition to the work of women's organizations and non-governmental organizations which have moved slowly towards awareness-raising activities and advocacy, training and building human and institutional capacity. Economic obstacles negatively affected women in terms of their standards of living, incomes, and unemployment rates.

Women have been an integral part of Arab spring revolutions. The Arab uprisings enhanced the ability of women to involve themselves and to make better use of their capacity and their full potential to contribute to change, but women found themselves deliberately excluded from reaping the fruits of their strong involvement in many of these post-revolution countries. Arab women suffered systematic violence including rape, torture, starvation, murder, as well as verbal assaults and other such anguishes became an all too common occurrence.

Women's groups face a number of challenges in adapting to the new politics. The old regimes in Arab countries had made some progress on women's rights at the level of policy. Countries in the region had endorsed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), changed some discriminatory laws, and increased women's participation in

⁹²⁰ Mohamed Y. Mattar, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, PP: 123-124, available at: <http://harvardhrj.com/wp-content/uploads/2013/05/V26-Mattar.pdf>

parliament. But these changes turned out to be largely cosmetic, failing to influence the deeply patriarchal nature of Arab politics and society. To influence the old regimes, feminists often needed to operate via elite networking. As a consequence less attention was given to building support at grassroots level or addressing the everyday needs of ordinary women. Established women's rights actors and the new youth activists are beset by age, ideological and class divides which stand in the way of their ability to work together⁹²¹.

In the aftermath of the Arab uprisings, the outlook for women's rights remains mixed and uncertain. In the World Economic Forum's 2012 Global Gender Gap report, Middle East countries ranked poorly, with the best (the United Arab Emirates) at 107 out of 135 countries and the worst (Yemen) in last place. Disappointingly, almost all Middle East countries scored more poorly than in 2011, in large part as a result of low political participation for women. It is true that the Arab Spring saw some gains for women in politics. In Tunisia, women comprise 27% of parliament due to mandated equal representation on electoral lists. And, in Yemen, a 30% quota for women was set at the National Dialogue Conference, the formal post-uprising transition process. But similar gains have not been seen elsewhere, and may turn out to be fragile. Overall, women account for just 14% of members of Arab parliaments⁹²².

Laws related to women are treated differently in Arab countries judiciaries. In Algeria, many reforms were undertaken by the National Commission for Justice Reform to enhance women judicial status. In Egypt, the Supreme Constitutional Court has issued a number of judgments relating to human rights in general and to the principle of equality between men and women in particular. In Iraq, the judiciary system gives fewer rights to women and girls on the basis of their gender. The court applied international law, referring to the CEDAW, especially to Article 16, which provides for the principle of equality in marriage, and Article 5, which calls for the elimination of harmful customary practices that are based on the inferiority of women. Gaps in Jordanian laws also fail to provide protections for women's rights and equality. In the absence of a constitutional court, the available legal means to contest the constitutionality of laws include

⁹²¹ care international policy report, ARAB SPRING OR ARAB AUTUMN ?Women's political participation in the uprisings and beyond: Implications for international donor policy, PP: 4-5, available at: http://www.care.org/sites/default/files/documents/report_women-arab-spring_english-2013.pdf

⁹²² care international policy report, ARAB SPRING OR ARAB AUTUMN ?Women's political participation in the uprisings and beyond: Implications for international donor policy, PP: 7, available at: http://www.care.org/sites/default/files/documents/report_women-arab-spring_english-2013.pdf

bringing a case before the High Court of Justice and submitting an ancillary challenge in a case before the courts. The modern legal system that handles non-family matters in Morocco comprises the common law courts and specialized jurisdictions. Palestinian women suffer from insufficient legal protections and inconsistent enforcement of laws. In Yemen, courts and lawyers developed comprehensive online modules of women's rights under international and national law to be taught to judges and clerks.

The CRC emphasizes that children are holders of rights. It covers all aspects of children's lives. The CRC incorporates the whole spectrum of human rights – civil, political, economic, social and cultural – and sets out the specific ways which these should be made available to boys and girls. It applies to all children and young people below the age of 18. States that have ratified the CRC are committed to taking the necessary legal, administrative and other measures in order to implement the CRC. Although all Muslim States have ratified the CRC many of them have entered reservations in respect of a few matters, the primary issue being adoption, since Islamic Law provides for its own guardianship system of 'kafalah' to provide care for children deprived of natural parental care. Even though it is readily acknowledged that children's rights, particularly as encapsulated in the CRC, have gained almost universal acceptance by states, it is incontrovertible that there exists marked disparity in the attitudes of states towards their effective domestic implementation. One formidable obstacle to the realization of children's rights in numerous States has been the question of cultural relativism. It appears that there are provision for adopting the child under the Islamic Law, however, majority of them have made reservation to article 21 (adoption) of the CRC. The need for identifying legal frameworks to promote and protect the rights and welfare of the child is not only born out of the conviction that the child, like anyone else, is a human being, but also the recognition, as the core international instruments assert, that the child "by reason of his physical and mental immaturity, needs special safeguard and care. CRC sets universal norms on child rights, seeking enforcement and remedies must address the reality of diverse legal traditions embedded in national systems. Muslim States generally opine that: 'Provisions set forth in the (Children's) Convention are in conformity with the teachings of Islamic Law concerning the need to fully respect the human rights of a child.' Some of the rights of the children are: Right to Noble and Charactered Parents, Rights of the Unborn Child, Right to Nurture, Right to Life, The Child's Right to General Care, Right to Lineage, Child's Right to Socialization, Child's Right to Just and

Equal Treatment, Right to Basic Education, The Protection and Promotion of Religion, and Rights of Orphans.

By signing the CRC, the Arab nations espoused this far-reaching and innovative approach to children's rights. The Arab High Level Conference on the Rights of the Child took place from July 1 to 4, 2001 in Cairo and concluded with the adoption of a draft declaration and framework for action on the rights of children for the period 2001-2010. This was called "An Arab World Fit for Children: A Mechanisms for Joint Arab Action and an Arab Common Position". The build-up to the United Nations Special Session on Children, which convened in 2002, offered an opportunity to build on these initial discussions. The Beirut Summit (March, 2003) and the Arab Summit in Tunis adopted the "Arab World Fit for Children". In its 2012 summit, the League adopted the Marrakech Declaration, which affirmed commitment to the CRC and its protocols and adopted tools for advancing children's rights accordingly.

As for the Optional Protocols, most Arab countries acceded the Optional Protocol to the Convention on the Involvement of Children in Armed Conflicts including Algeria, Egypt, Iraq, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Tunisia and Yemen. In Bahrain, provisions protecting juveniles under labour laws sometimes do not apply to specific areas, such as domestic work, and the Bahraini Penal Code criminalizes prostitution, even if done by victims of trafficking, and minors aged under 18 years can be imprisoned up to 5 years. In Jordan, on the Optional Protocol on the sale of children, child prostitution and child pornography, Committee Experts commended Jordan for acceding without any reservations, and raised questions about legislation, measures to combat trafficking in persons, including of Syrian refugee girls, and support for child victims. . In Mauritania, the State party made efforts to stop cases of trafficking of children towards Arab countries. In Syria, In January 2010 the government issued a comprehensive anti-trafficking law, Legislative Decree No. 3, which provides new grounds for prosecuting trafficking and protecting victims, and outlines a minimum punishment of seven years. The Yemeni Law does not specifically address the issues of the sale of children, child prostitution and child trafficking. On the other hand, two instruments which have not entered into force yet, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Convention of communication procedure. A workshop on the adoption of the third Optional Protocol to the CRC on a communications procedure was held in Doha, Qatar, on 3-4 June,

2012, with the participation of delegations from eighteen Arab countries. These countries came up with a set of recommendations including welcoming the adoption of the third Optional Protocol to the CRC on a communications procedure, and taking the necessary steps to ratify it. This is in addition to strengthening the role of National Institutions for Human Rights and launching comprehensive dialogue among them.

Arab constitutions reflect the CRC differently. The Constitution of Algeria provides that “all children are equal before the law. Some steps have been taken to address gender inequality. Some children suffer discrimination based on religion. Bahrain incorporates principles of child rights in its constitution. One of the basic rights that the Constitution of the State of Bahrain guarantees is education, but Bahraini education takes Islamic orientation. The Constitution of Comoros provides that regularly ratified or approved treaties, including the CRC as part of national law. The government did not take specific action to protect or promote children’s from abuse. The Egyptian Constitution prohibits discrimination in relation to children. Nevertheless, challenges remain in terms of implementation. Gender discrimination remains in terms of education where gender gap in school enrolment and girls living in rural regions are particularly vulnerable. Iraq ratified a new constitution, drafted by the Transitional National Assembly, which contains some general language regarding children and families that may serve as the basis for future legislation in compliance with the CRC. The constitutions of Jordan, Kuwait, Qatar, Somalia, and Tunisia recognize birth registration right, right to education, protection of children from abuse and, child labour, and child marriage. In Lebanese constitution, Discrimination continues against children with disabilities, foreign children, refugees, access to education and health and social services is not facilitated for non-Lebanese children. The Moroccan Constitution protects the rights of children of a minority or indigenous group but some groups of children face discrimination. In Oman, there is a concern that the draft of the Child Law has some elements that do not uphold the best interest of the Child. Palestine has acknowledged the right of children to protection from violence, abuse, neglect and exploitation within the family and community, but Palestinian governmental authorities are not required to develop policies or bylaws that translate into practice the protection of the rights and duties provided by the Child Law. The Saudi Constitution is comprised of the Quran, Sharia, and the Basic Law. The constitutional law in Syria emphasizes the need to protect

children. The constitution in Yemen states in that it is the country's duty to protect and foster mothers, children and youth.

Concerning child custody, the CRC states in Article 3.1: 'In all actions concerning children, the best interests of the child shall be a primary consideration, whether undertaken by public or private social welfare institutions, courts of law administrative authorities or legislative bodies.' A best interest focuses on the needs of the child rather than the rights of the parents. The Convention does not say explicitly what the 'best interests' entail, but some aspects may be deduced from other articles. These include the right to life (Article 6) the right to know and be cared for by his or her parents (Article 7), the right to identity and to family relations (Article 8). The way a court determines the detriments or best interests of a specific child is highly individualized. Proponents of judicial discretion believe that this individualized standard allows judges to express changing values within the society. Courts are steadily becoming more sensitive to the child's emotional needs as well as to the traditionally recognized physical needs. On the other hand, contents of the Child Rights articles regarding child custody are incompatible with Sharia and Islamic principles. The primary issue in Islam is adoption, since Islamic Law provides for its own guardianship system of 'kafalah' to provide care for children deprived of natural parental care. Islam lays down general principles as a directive for deciding child custody cases. These principles are still upheld by the contemporary courts and legislative authorities of the modern Muslim world. Child custody laws are applied differently among Arab countries.

Another issue of concern is early marriage. According to Islam and traditional norms, girls and boys may be married as soon as they reach puberty. Today, child marriage is rare in some Arab countries, and still prevalent in other Arab countries. According to the Supreme Council of the population there are a million child under the age of 15 years are ready to enter the age of marriage, bringing the number of females at the stage of marriage, pregnancy and child bearing, where the world is expecting to witness an increase in the population as a jump number of women / female than a million and one-third to two million by 2020, an increase of 50%.

The consequences of child marriage compromises girls' development and often results in early forced sexual relations, early childbearing, social isolation, low education, high fertility, and poverty. Girls who marry at a younger age are

generally more vulnerable to spousal violence. The international community has taken a number of steps to protect the rights of children, but few human rights instruments offer explicit protection from early marriage. One of the important steps is making legal changes in the minimum age at marriage. Article 16(2) of the Universal Declaration of Human Rights provides that “marriages shall be entered into only with the free and full consent of the intending spouses,” but fails to expressly state that children are incapable of giving the requisite consent. The United Nations’ Convention on Consent to Marriage is drastically hindered by limited ratification, especially within the MENA region.

Article 2 of the Convention prohibits the marriage of children under the minimum age for marriage, “except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.” The Convention has not been widely adopted. The Arab Charter on Human Rights 2004, the League of Arab States established regional legislation that also does not explicitly protect children from entering into marriage; it does establish that men and women should be of a marriageable age in order to grant their consent to enter into marriage. The League of Arab States aligns regional legislation in the Middle East and North Africa with international legislation on spousal consent.

Understanding the Sharia is crucial to determine the extent to which they relate to international human rights. According to some scholars, the mandates of Sharia are extremely harsh compared to modern Western standards. They infringe on many modern principles of human rights, religious freedom, and equality of all before the law. With the growing secularism in the West, the political and legal position of Islam in the Muslim world has come under attack in the Western media. On the other hand, Muslims regard the Sharia as an expression of God’s will. This notion is very different from the idea of the origins of modern Western law, which is regarded as a purely human phenomenon, created by the state that is the legislature or the judiciary. The Islamic tradition does not consist of, or derive from, a single source. Most Muslims if questioned about its sources are likely to refer to more than one of the following: the Holy Qur'an; Sunnah or the practical traditions of the Prophet Muhammad; Hadith or the oral sayings attributed to the Prophet Muhammad; *Fiqh* (Jurisprudence) or *Madahib* (Schools of Law).

It should be noted nevertheless that interpretation of the Sharia, and of any religious law, is key to either granting more or less rights and freedoms. For instance, Muslim women in Spain enjoyed an unusual level of freedom, generally explained as resulting from the influence of the more liberal Christian environment. The support for this theory comes from some anecdotal data found in anthologies and historical works, which would presumably reflect liberal uses in al-Andalus. The other argument is the laxity of custom reflected in the verses of some famous women-poets, who show in their compositions a quite emancipated way of life. Those verses can be as daring as those of famous princess Wallada. The situation of Muslim women in the Iberian Peninsula was similar to that which was obtained in the rest of the Islamic world. In addition to that, the number of poetesses cannot be considered so high if we compare al-Andalus with the East and, more specifically, the `Abbasid courts (Schippers, 1993:139-152). Therefore, these exceptional cases do not represent any specificity or mark of the “Occidentalization” of Andalusian society⁹²³.

From the eighth century caliphs began to seclude their wives and create large harems of wives and slaves, practices increasingly followed by others among the rich and powerful. The later Umayyads emulated Sasanian court practices, including seclusion, veiling, and large harems. These practices were carried further by the Abbasids. The schools of Islamic law developed in the ninth century and reflected the restrictive view of women of the time. Quranic verses were interpreted as meaning strict veiling, and women’s subordinate position in marriage and other matters became part of law.⁹²⁴

The International Human Rights Law is considered one of the important legal branches of International Law; it includes a set of instruments comprising the universally recognized human rights, namely: civil rights, political rights, economic rights, social rights, cultural rights, in addition to the recently raised solidarity rights and development rights. Human rights encompass values which can be found in all cultures and all religious and ethical traditions. It is claimed by some in the West that Islam is essentially incompatible with human rights. This is revealed in the perception amongst many scholars and writers of Western orientation that Islamic law is antithetical to the protection of

⁹²³ MARÍA ÁNGELES GALLEGO, APPROACHES TO THE STUDY OF MUSLIM AND JEWISH WOMEN IN MEDIEVAL IBERIAN PENINSULA: THE POETESS QASMUNA BAT ISMA`IL*, PP: 64-65, available at: <http://digital.csic.es/bitstream/10261/12039/1/Qasmuna.Gallego99.pdf>

⁹²⁴ Truthdig, Women in the Middle East: A History, PP: 31-32, available at: http://www.truthdig.com/images/eartothegrounduploads/KEDDIE_Book-1.pdf

international human rights. According to this view Islamic law is a formidable impediment to the universal realization of the norms of international human rights law. On other hand, the scheme of life which Islam envisages consists of a set of rights and obligations, and every human being, everyone who accepts this religion, is enjoined to live up to them. Many Muslims writers assert that Islam respects human rights and quote in support Islamic source texts such as the Koran and the Hadith, without, however, expounding how these principles are to be transformed to enforceable law.

The relationship between human rights and Islam/Islamic law has become an important subject of international discourse. To establish the landmarks for external or international relations, the Islamic system provides for manifold rules. The most important of them are: Human brotherhood, Honouring the human being and preserving human rights, Justice and equality in rights and duties. The Constitution of Human rights gave the Constitutional Council the prerogative of control over three types of legal rules, namely: treaties, laws and regulations. It is the sole Arab Constitution that provided for the control of the constitutionality of treaties. It also adopted the system of constitutionality control, previous and subsequent, which is a system that hadn't been adopted by any other Arab Constitutions. While Islamic states are pressured into accepting international human rights norms, without domestic dialogue or internal changes, a situation arises whereby the supposed beneficiary of rights – humans – may fall into an area where they are not protected by Islamic law or human rights law.

The process of reforming the LAS human rights system, including the establishment of an Arab Court, has been conducted behind closed doors and through opaque procedures, thus contravening basic principles of inclusive participation and transparency. Some courts have utilized the principles of international law to support the application of domestic laws. In Algeria, wording of article 3 is self-executing which is not the case for other clauses of the CRC although some jurists rely on article 9 which stipulates that: "States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. Bahraini law, the provisions of the Convention can be invoked before the national courts. Courts in Egypt have relied on regional human rights convention. Despite a country's having not yet ratified it in a Egypt's Administrative Court has referred to the Arab Charter, despite a country's

having not yet ratified it in a case. In Iraq, the law sets no limit on how long a child can be held pending trial, age determination, or the court ordered psychological examination. In instances where identity documents are not forthcoming or appear to contradict physical appearance, or where detainees do not know their precise birthdates, detainees may be held with adults before a judicial hearing that is likely the first opportunity to identify them as children. In Jordan, the amendments introduced to the Juveniles Act No.24 of 1968 were specifically made to guarantee protection and care for children who are exposed to abuse by one or both parents. In Kuwait, The Committee of the right of the child expressed its concern that the legal age of criminal responsibility at seven is very low, and that the legal minimum age for marriage for girls is set at 15 while that for boys is set at 17. In Lebanon, Standards of international law have been utilized to interpret domestic law. This can be seen, for example, in courts' application of the concept of the best interests of the child, drawing from the CRC, in a number of children's rights cases. In Lebanon, the Juvenile Court Judge held that two minors, who were physically and emotionally abused by their father, were in a dangerous situation according to the provisions of national and international law. Libya has been criticized for its practice of judicial corporal punishment by a number of international human rights bodies. The Moroccan Judiciary kept trying to consider the best interest of the child as the basis for any judgment related to children issues and confirmed this on many circumstances such as the judgment issued by the Court of First Instance of Tangier.. In Palestine, the Ministry of Justice formed a human rights unit at the end of 2012 and entrusted it with the task of monitoring the implementation of the rights of the child within the justice system. Tunisia has acknowledged that it does not have an independent institution for child rights, and mentioned the role and jurisdiction of Child Protection Delegates as the legally commissioned body to protect children from all threats according to its Code of Child Protection (1995, amended 2006). In Qatar, Certain provisions of the Criminal Code allow punishments such as flogging and stoning to be imposed as criminal sanctions by judicial and administrative authorities. These practices constitute a breach of the obligations imposed by international Conventions⁹²⁵.

Arab women and children continue to be victims of revolutionary change and instability in the region. Arab countries are eager to have their societies free of gender-based discrimination, where women and men have equal opportunities.

⁹²⁵ FIDH – International Federation for Human Rights, ICJ- International Commission of Jurists, available at: www.fidh.org

Despite that women's advancement increased at both governmental and civil society levels and many legal, judiciary and policy reforms, a lot still to be done. Efforts should be made in order to reach a complete achievement of women and children's rights.

The Arab Spring demonstrations in 2011 provided strong evidence of the change that protest can make for peoples' rights and interests. Protest is potentially as useful a tool for advancing the rights of children as it is for promoting those of other groups. In 2005, the then Human Rights Commission recognized that freedom of assembly and association provide people with vital opportunities to express political opinions, amongst other things. Protest has been described as being as important to a democratic society as voting, since "both are routes by which ideas can be promoted and debated." It can then be argued that protest is particularly important for children, who generally lack the right to vote, and therefore have fewer avenues than adults through which to assert their interests. The Human Rights Council has emphasized that not only do individuals have a right to protest, but they also have a duty to strive for human rights. Children and young people are well placed to do this because they can be acutely aware of human rights issues and intensely interested in social justice. Even young children may be capable of thinking logically and seeing things from the perspective of others, and the increased awareness of social issues of children, at least from the age of eleven, is well documented. Recent research points to the abilities of children from fourteen to seventeen years of age to reason in a sophisticated manner on complex questions relating to moral issues. Children consistently express that they wish to have greater participation in political matters. The growing recognition that children may have views on various matters affecting them is recognized by Article 12 of the CRC, and reflected in the increasing numbers of national Youth Parliaments and other initiatives engaging children to contribute their views in political matters⁹²⁶.

Most of these laws came in conflict with religious laws. To ensure the effective implementation and enforcement of the rights guaranteed by the Arab Charter, domestic courts in Arab states must be willing to refer to and rely on the Charter, as well as to other international legal instruments referred to by Article

⁹²⁶ Aoife Daly, Demonstrating Positive Obligations: Children's Rights and Peaceful Protest in International Law, PP: 769- 770, 778-779, available at: <http://docs.law.gwu.edu/stdg/gwlr/PDFs/45-4-4-%20Daly.pdf>

43 as rules of interpretation. Family law reform has been very active in recent years, however, and some advocates have developed creative and innovative ways to continue to push legal change that is presented as coming from within the Islamic legal tradition⁹²⁷.

The commitment of Arab countries to secure children's rights and provide a safe environment for their growth and development led them to join the rest of the world in the course of ratification and accession of the CRC and its optional protocols on the involvement of children in armed conflicts, and the sale of children, child prostitution, and child pornography. They are invited today to join the third protocol on a communication procedure complaint-filing, as a clear sign of their commitment towards children in the Arab region as rights holders who are capable of demanding their rights, and of holding accountable those responsible for violating them through the use of an international mechanism that provides them with an opportunity for equity that their countries are not able to provide. Joining the protocol also confirms that Arab countries ensure children's freedom to express their opinions and ensures their protection against all forms of abuse, violence, and violations, and also work on ensuring that violations against children do not go unpunished, and on the provision of appropriate compensation for child victims. In other Arab countries which are concerned with conducting reviews of their legislations to make them compatible with the provisions of the convention, the participation of clerics in lobbying has a great importance in societies where the values of male domination prevail, and in countries where uniform laws of personal status are absent, and where civil rights fall under the jurisdiction of religious courts whose laws and regulations are not compatible with the principles and provisions of CEDAW.

CEDAW grants women status equal to men, removes discrimination, promotes equal opportunities with men as full partners, ensures women's protection from violence and thus raises their ability to care for and protect their children⁹²⁸.

Some Arab countries put reservations against crucial rights and standards, which has made the application of the CEDAW and the CRC a very difficult task.

⁹²⁷ Mohamed Y. Mattar, Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards, PP: 98-99, available at: <http://harvardhrj.com/>

⁹²⁸ THE COMPARATIVE ARAB REPORT ON IMPLEMENTING THERECOMMENDATIONS OF THE UN SECRETARY-GENERAL'S STUDY ON, PP:20-25, available at: http://srsg.violenceagainstchildren.org/sites/default/files/publications_final/league_of_arab_states_report_2013.pdf
VIOLENCE AGAINST CHILDREN

The understanding of Muslim religious leaders of international women's and children's rights is of utmost importance.

In the most recent reservations made by Muslim countries to human rights treaties, we do not see confident, consistent assertions of Islamic cultural particularism as grounds for non-acceptance of human rights principles. Although this could mean that Islamic reservations are destined to become rarer, the underlying reluctance to upgrade domestic laws to conform to human rights standards will most likely mean that conflicts between domestic rights policies and international law will continue to present problems”⁹²⁹.

The thesis has come therefore to being fully convinced of the problematique presented in the Introduction, which is the outcome of the following issues:

- The non-review and harmonisation of national laws before ratification, as proved by the thesis;
- The non-translation of constitutional principles, which are in line with international standards, into law, rules and regulations able to bring a real change in the lives of people;
- The non-conformity with Sharia, which is the Supreme law and which clearly overrides all other laws, as proved by the thesis;
- The complexity of having many Islamic schools and doctrines, which complicates any hope in reaching a common position through advocacy bringing interpretations more in line with international conventions;
- The reservations put by Arab States against certain articles, which defeat in many cases the purpose of the ratification itself, with many examples provided by the thesis;
- The non-application of the international ratified conventions by the national judiciary, or the very little application by individual judges thanks to the influence of the civil society, as proved by the thesis;
- The weak culture of international human rights law amongst jurists and judges, which makes the implementation of international conventions unfeasible;

⁹²⁹ Ann Elizabeth Mayer, *Islamic Reservations to Human Rights Conventions, A Critical Assessment*, pp: 43, 44

- The mentality of most of Arab officials/judges, which is not in line with the principles of the ratified conventions and who are expected to implement the international human rights law;
- The fact that the Arab Spring, instead of bringing an improvement in human rights, and especially in women's rights, has so far produced negative effects on women's rights and human rights in general, except in the right to elections maybe.

This thesis has come therefore as a result of a firm conviction that there must be a specific intervention, in order to achieve a substantial change in the patterns of studies and researches on woman's and children's rights, in an attempt to fill the deep gap between the legal legacy and actual situation of the implementation of these rights.

This Thesis reaches the conclusion that the following recommendations have to be implemented in order to have a better effect of International Law on women's and children's rights in the Arab World, as follows-

General Recommendations-

- To conduct comprehensive legal reviews of national legislations to scrutinize the compliance with ratified international conventions, based on which legal reform plans of actions should be prepared, along with monitoring and evaluation plans.
- To incorporate international women and children's right into the curricula of Law schools, judicial institutes and related legal institutes;
- To work with Islamic academic institutions to incorporate international ratified conventions into the teachings of those institutes and to ensure that international law is valued by Sharia students;
- To mainstream international law standards and norms, including women and children's rights into political movements, chiefly the Arab Spring, so international law standards are respected and they guide to some extent the political movements, which are able in fact to achieve better living conditions for the people, if managed properly and based on the Rights Approach.
- To conduct professional training course for judges on the CEDAW and the CRC in specific, and the International Human Rights Law in general and their application at the national level.

Specific recommendations-

- Ensuring the equal and parallel application of all provisions supporting Human rights by Arab states.
- State party should take all appropriate measures to engage a process of legal reform to harmonize national laws with international Conventions
- Making efforts by NGOs to promote the application of provisions related to rights of women in Arab countries that do not adopt these provisions, and strengthening the application of provisions in countries which adopt women rights provisions.
- Setting laws that promote the principle of non-discrimination in governmental and non-governmental institutions.
- Making Arab states assume accountability in the full implementation of international provisions.
- Organizing coalitions to support the provision of equality in the Gulf countries.
- Making efforts to set laws that provide women with equal job opportunities and salaries.
- Integrating the provision of citizenship/ Nationality as a priority in the constitution of Arab states.
- State party should take all appropriate measures to engage a process of legal reform, for example, by enacting a children's code to ensure full compliance with the Convention
- prioritizing budgetary allocation to ensure the protection of the economic, social, and cultural rights of children, especially taking into account articles 2, 3, and 4 of the Convention
- seeking to eliminate the disparities between urban and rural areas and between provinces
- further efforts should be undertaken to ensure that the general principles of the Convention guide policy discussions, decision-making, are appropriately reflected in any legal revision or judicial and administrative decisions, as well as in the development and implementation of all projects and programmes impacting children
- Arranging legal and institutional reforms for the protection of children.

- Setting a Child Law that clearly defines mechanisms to ensure establishment of a protective environment for children, particularly children who are victims of violence.
- Countries should take appropriate measures to engage a process of judiciary reform. This is by enacting legal protective measures in judiciary legislations that protects women from violation of rights and ensuring full compliance with the respective international Conventions.
- Strengthening the role of NGOs and other elements of civil society in the pressure practiced by them on governmental authorities in the follow up and implementation of judiciary decisions related to women and children's rights.
- Developing educational curricula in Judicial institutes that incorporate child rights and women's rights in the study of judges.
- Incorporating the principles of best interests, non-discrimination and respect for the views of the child into judiciary systems.
- Building the capacities within the criminal justice systems in the Arab countries for enforcing the application of the CEDAW, CRC and the Optional Protocols, including the Palermo Protocol to Prevent, Suppress, and Punish Trafficking in women and Children.
- Providing education on the commonalities of human rights and Islamic law in the context of child custody in Islamic communities. Education can be given for the judiciary, court staff, lawyers, police, and the broader community including religious leaders.
- Enforcing foreign judicial decisions related to women and children's rights, such as custody judgments of foreign courts. For instance, integrating European and U.S. court judgments into Arab courts to pay child allowances.
- Providing rights for child to travel or move him from the conjugal house during the existence of a conjugal relation or during the revocable divorce waiting period and after the irrevocable divorce period.
- Extending the custody period for the mother until the age of puberty in most Arab countries where the mother has the right to custody until the age of 15 utmost.

- Providing equal custody rights to non Muslim women in Arab countries where priority is generally given to the Muslim father, irrespective of his nationality.
- Providing custody rights for women even if she remarries. Since Islam recognizes the best interest of the child, then it must realize this interest in all cases, even in the case of remarriage.
- Arab States should take all appropriate measures to engage a process of legal reform, for example, by enacting a children's code to ensure full compliance with the Convention.
- Increasing the proportion of the budget allocated for the realization of children's rights. State party to prioritize budgetary allocation to ensure the protection of the economic, social, and cultural rights of children.
- Taking the necessary measures to change the existing provisions regarding imprisonment of children and reduce the current maximum periods of imprisonment in some Arab countries. Ensuring that persons under 18 years of age have access to legal aid and independent and effective complaints mechanisms.
- Strengthening the quality and availability of specialized juvenile courts and judges, police officers and prosecutors, through setting up programmes to rehabilitate juvenile offenders and reforming juvenile justice law.
- Urging states to reduce the persistent de facto discrimination faced by children born out of wedlock in some Arab countries. Harmonization of national legal texts with the provisions of the CEDAW and CRC and ensuring their enforcement.
- Enforcing accountability of the States in the full implementation of CEDAW and CRC articles.
- Encouraging the creation of a National and regional observatories to ensure the implementation of the CEDAW and CRC.
- Arranging dialogues among Islamic religious scholars by highlighting congruencies between Islam and international standards.
- Building efforts to reduce the strong psychological barrier among Arab populations as a result of patriarchy, conservative religious interpretations and cultural stereotyping. Awareness raising campaigns on the

importance of women and children's role in sustainable development: social, economic and political, through educational institutions, media and non-governmental organizations may reduce the negative impacts caused by culture and increase on women's participation in politics.

- Integrating legal literacy programs in academic curriculums that promote the view that the right representative in a democratic process could well be a woman.

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