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„The role of civil society organisations as advocates  
for religious minorities: An analysis of the  
discrepancies between the Islamic doctrine and  
International Human Rights System“

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### **List of Acronyms and abbreviations**

CEDAW- Convention on the Elimination of Discrimination against Women

CRC- Convention on the Rights of the child

CSO- Civil Society Organisation

EU- European Union

FoRB- Freedom of Religion and Belief

ICCPR- International covenant on civil and political rights.

ILO- International Labour Organisation

IPHRC- Independent Permanent Human Rights Commission

LAS- League of Arab States

NGOs- non-governmental organizations

OHCHR- United Nations High Commissioner for Human Rights

OIC- Organisation of Islamic cooperation

OSCE- Organisation for Cooperation and Security in Europe

SRFoRB- Special rapporteur on freedom of religion and belief

UDHR- Universal Declaration of Human Rights

UIDHR- Universal Islamic Declaration of Human Rights

UN- United Nations

UNGA- United Nations General Assembly

UN HRC- United Nations Human Rights Committee

UPR-Universal Periodic Review

## **Introduction**

The Muslim-majority world, those countries who host a majority of Muslim population, primarily in the Middle East, but also grand part of the Africa and South East Asia, is home to many national, ethnic, religious and linguistic minorities. After the events of the Arab spring in 2011, the raise of violence and authoritarianism regimes exposes the failure of some states to protect its citizens, with an emphasized hostility towards minorities. Religious minorities; non-Muslim minorities, atheists or followers of a different sect from Islam experience abuse and discrimination, it can often spark conflict and violence. In several Muslim-majority countries, religious minorities are discriminated against by state and non-state actors in the name of religion.

The importance of the protection and the respect of religious minority rights has been described in the preamble of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities as contributing to the political and social stability of a country assisting to maintain peace and coexistence. At the same time the Marrakesh declaration, a joint initiative of over 250 religious leaders, states representatives, civil society actors and other relevant stakeholders, that discuss the rights of religious minorities in Muslim-majority communities, notices the gravity of the situation affecting religious minorities and people from different faiths around the world and vows for the need to cooperate on the basis of tolerance, respect internationally while respecting the diversity of peoples. In light of the above, what is the state of the debate concerning religious minorities that can the Muslim scholars, intellectuals, and activists provide advance in today's world as tolerant pluralistic society.

The thesis intends to explore the problematic in the protection of religious minorities under the influence of the Islamic tradition, and its evolution until modern times. The paper aims to critically analyse the failings within the Islamic doctrine, composed by Islamic theory and practice, along with with the Islamic legal system, regarding religious minorities, having the international Human Rights system as a reference. Finally, the thesis looks into where different Muslim voices stand in regard to Human Rights and Islam and their proposed ways forwards. Civil society plays a crucial role in the defence

of the democracy, rule of law and pluralistic societies. The paper wants to highlight the importance of civil society organisations (CSO)' as a relevant ally in the improvement of religious minority rights in the Muslim-majority region.

In essence, the research question of this master thesis is: *How do Islamic civil society organisations contribute to religious minorities' rights in view of the discrepancies between the Islamic doctrine rights and the International Human Rights law?*

## **Methodology**

In order to answer the research question, the thesis looks at the role of different actors on religious minority protection. On the one side one actor will be the United Nation's minority rights documents, as well as the efforts of the Muslim world to contribute to the Human Rights debate with the Cairo Declaration of Human Rights and the Arab Charter of Human Rights.

Firstly, the paper offers a brief overview of the historical developments regarding religious minorities' throughout the Islamic tradition, as well as in the international Human Rights system. The historical outline considering religious minorities in the Islamic world is provided following the texts of key authors Ann Elisabeth Mayer, Uriah Furman, Abdullah Saeed and William E. Shepard. The later are known historians and professors with different geographical and religious backgrounds, offering in this way, a broader and pluralistic approach to Islam's history. I will then turn to the historical development of the international Human Rights system regarding religious minorities focusing on the contribution of additional relevant authors like Nazila Ghanea, Professor in International Human Rights Law at the University of Oxford, Expert on Freedom of religion and Believe and has served as advisory member in many international institutions bodies (UN, UNESCO, OSCE, CoE, and EU) as in think thanks. I will also rely on Heiner Bielefeldt, former UN Rapporteur on Freedom of Religion and Believe (2010-2016).<sup>1</sup>

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1 The UN special rapporteur on freedom of religion or belief is mandated or identify factors which may hinder the practice of freedom of religion or belief. The rapporteur provides recommendations which can support the States in their promotion and protection of freedom of religion or belief.

In the research I will make use of primary sources, as the main documents related to minority rights and freedom of religion and belief. The relevant documents within the UN framework are: the UN the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights, the Convention on the Rights of the child (CRC), and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1994 hereinafter referred as Declaration on the Rights of Minorities, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion and Belief, 1981.<sup>2</sup> Regarding the Islamic framework, I will use primary sources such as the Organisation for Islamic Cooperation's Cairo declaration on Human Rights, along with the Arab Charter of Human Rights enacted by the League of Arab states<sup>3</sup>. As for the Islamic text the thesis will compare the Cairo declaration of Human Rights and the Arab Charter of Human Rights together with the UN international standards in order to identify, which areas are in contradiction and which ones are in compliance with each other.

Later, literature review of some prominent authors, scholars on the field of religious minorities, Islam, international law and freedom of religion will be provided. The topic of religion being strongly dependent on interpretation, authors like An Naim, Al Fadl, Nazila Ghanea, Heiner Bielefeldt will be consulted, as they provide internal and external expertise on the Islamic doctrine. On the first place, Professor Nazila Ghanea's research interests and publications range from freedom of religion or belief, freedom of expression, women's rights, minority rights and human rights in the Middle East. Secondly, Khaled Abou Al Fadl is a professor in Islamic Law at the UCLA School of Law and one of the leading authorities on Islamic law and Islam. He has worked and

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2 For the purpose of the task at hand and due to the Muslim majority countries' focus of this paper the diverse documents and guidelines on FoRB and minorities from the European actors will not be used (OSCE, CoE, EU)

3 In face of the lack of binding legal documents and Human Rights structures in the Islamic "system", I will focus on the Cairo declaration as a representativeness of a political intention, on the Arab Charter despite its low reach of countries, its relevance lies in the binding nature of the text. I will leave out of scrutiny the Universal Islamic Declaration of Human Rights by the Islamic council as it has no political nor legally binding relevance.

assisted several Human Right relevant organisations, as Human Rights Watch and Amnesty international.

Importantly, the views of Professor Abdullahi Ahmed An Na'im who is recognised internationally as prominent scholar of Islam and Human Rights, and hold a strong position on universality of Human Rights versus cultural relativism. Professor An-Na'im teaches international law, comparative law, Human Rights, and Islamic law at the Emory University. His research interests include among others; Islam and politics and the relation between religion and secularism. Lastly, the former Special rapporteur Heinrich Bielefeldt will also be consulted. Professor Bielefeldt is a professor of Human Rights and Human Rights policy at the University of Erlangen-Nürnberg. Bielefeldt's research interests include various interdisciplinary topic of Human Rights theory and practice, with a focus on freedom of religion or belief.

The authors will provide their Muslim and non-Muslim background views on the pounding issues between Islam and Human Right; universalism and cultural relativism, legitimacy, common grounds. With this, the aim is to discuss the different approaches to Human Rights taken by Muslim activists, experts and religious actors and how does this influence religious minorities' discourse.

The last chapter will offer a literature review on relevant authors on the relevance of civil society in the advancement of the protection of religious minority rights. As above, the authors are a representative sample of Muslim and non-Muslim background who provide the Islamic doctrine's view on the concept of Islamic civil society and how it is conceived. The authors consulted will be Hasan Hanfi professor of Philosophy at Cairo University his research interest are on religion and modernity. In addition, Farhad Kazemi is professor Emeritus of Politics and Middle Eastern Studies at New York University. His interests are comparative and international politics in the Middle East politics. As well as, John Kelsay who is a professor at the University of Virginia, that focuses on religious ethics, particularly in relation to the Islamic and Christian traditions. His current work deals with religion and politics. The aim is to draw similarities between the potential

ways forwards suggested by the authors in Chapter III and accommodate them with the potential of growing civil society organisation's work in the Muslim-majority world. Despite the severe human rights violations suffered by religious minorities in Muslim-majority countries, the growing relevance of civil society can help advance religious tolerance and peaceful coexistence in the context.

## **1. Chapter I: Historical overview of religious minorities**

Chapter I will offer a historical overview of religious minorities rights throughout Muslim history, as well as a brief walk through religious minorities rights under the UN system. The term 'religious minority' has no international law clear definition, however the United Nations General Assembly (UNGA) has stated that the term covers all groups of people belonging to traditional and non-traditional communities, large or small, atheistic and non-theistic believers as well as minority groups within minorities<sup>4</sup>. Hence, it is going to be the working definition throughout the paper, while referring to religious minorities. In the Islamic tradition there is a differentiation between non-muslim minorities, other abrahamic religions, other monotheist religions pagans, polytheist, as well as atheist and agnostics. Muslim sects contrary to the orthodoxy of the majority (as Shiis in a Sunni Majority and viceversa, Kurds, Druzes, Alawis, Baluchs, etc.) will also be included in the definition of religious minorities.

### **1.1. Religious minorities in the early Muslim days**

Under the Islamic doctrine, the Quran and the Hadith are the primary sources of knowledge for the Muslim population. Hadith were written after the life and the teachings of the Prophet Muhammad. The Prophet lived in the Arabian Peninsula populated by the Arab ethnicity, ruled by tribal systems. Most of the Arab tribes were idol-worshippers and polytheist. They worshipped numerous idols and each tribe had its own idol or idols and religious traditions. After the Roman apparition in the region, the main Abrahamic religions, Judaism and Catholicism were on the rise on the western parts of the Middle East. At the East, the tribes belonging to Persian ethnic origin followed Zoroastrianism, which believed in a dual deity representing the good and the evil. Additionally, the

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<sup>4</sup> A/HRC/37/49 Report of the Special Rapporteur on freedom of religion and belief. Human Rights Council, 2018. Para 12.

proximity of the Asian civilizations provided influence from polytheistic Hindus, Sikhs and Buddhists, as well as Confucianism from the Chinese front.<sup>5</sup>

The years previous to the Prophet's revelations, gave light to the first notions of majority-minority relations are argued to have appeared in a 590 AD in the Pact of 'Hilf al Fudul' made by non-Muslim Medina rulers where Muhammad participated. As expressed by Raissouni the pact holds significant primitive notions of Human Rights and social justice. Once the Prophet became the ruler of the Islamic state, he recognised the pact's validity.<sup>6</sup>

After the revelation, and due to unsettle with the ruling tribes in Mecca, the Prophet migrated from Mecca to Medina. The *Hijra* marks the beginning of the Islamic year and it is a turning point in Islamic religion. Upon arrival, he conquered the local peoples, who held a variety of religions, in order to maintain peaceful coexistence, he enacted the 628 Constitution of Medina. Furman argues that the document can be considered the first piece of legislation protecting minorities in an Islamic context. The Constitution of Medina introduces for the first time the relationship between the ruling Muslim-majority and the peoples belonging to religious minorities. Subsequently, the foundations laid in the constitution rapidly spread and became the roots of majority-minority relations in the Muslim territories. The majority population was called the *Umma*, and 'the terms commonly to refer to minorities were *ghayr al-muslimin* ('non-Muslims'), *al-mukhalifin fi al-din* ('the others in religion'), and *ahl al-dhimma* ('protected people')<sup>7</sup>. The text provided protection to the non-Muslim population called *dhimmi*, the members of the group were granted freedom of religion based on the Quranic Surah according to which there is no compulsion in religion (Quran 1:256)<sup>8</sup>

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5 W. E. Shepard: *Introducing Islam. Second edition*. London: Routledge Taylor and Francis group, 2014, p. 60.

6 M. Raissouni, Rights of Minorities in Islam. Report of the 9th Regular Session of the OIC Independent Permanent Human Rights Commission, 2016, p.47.

7 U. Furman, *Minorities in contemporary Islamist discourse*. Middle Eastern Studies 36 (4), 2000, p.2.

8 A. Saeed, *Islam and Belief: At Home with Religious Freedom*: Zephyr Institute; 1st edition, 2014, p.2.

The *Dhimmi* contract was primarily addressed to *Ahl al-Kittab* (the people of the book) namely the other Abrahamic religions, Christianity and Judaism. The status of other religious minorities appeared to be much more problematic. Nonetheless, Shepard provides historical evidence that Muslim rulers during their conquest through the East during 1000-1500 CE applied the same *dhimmi* treatment to Hindus and Sikhs in their invasion of India, as well as in the later incursion into Central Asia, China and South-east Asia.<sup>9</sup>

Religious minorities due to their *Dhimmi* status were given 'citizenship', which granted them security of life and property and defence against military attack. Freedom of religion was ensured through allowance to retain their own religious organizations and personal status codes, which covered marriage, divorce, inheritance, and guardianship, this level of autonomy was culminated with their own communal authority as well as their own religious courts. *Dhimmis* had as well freedom of worship and to maintain religious buildings protected from attacks. In return they were obliged to pay special taxes, the *jizya*, a similar contribution to the *zakat*, one of the five pillars of Islam that every Muslim man has to pay to the state, imitating a social system. *Dhimmis* 'had to accept Islamic civil law, and respect the sensibilities and beliefs of their Muslim protectors'.<sup>10</sup> Furthermore, Muslim scholar Abdullah Saeed defends that during this period 'even those who do not believe in the One God and are in fact pagans, if not engaged in hostilities with the Muslim community, were not only to be tolerated but also sought as partners in peace'.<sup>11</sup> The above rights were granted and respected as far as religious minorities were to subject themselves to Islamic rule and authority. If a *dhimmi* rebelled against Islamic rule or became a political enemy of the Islamic state, those people would lose automatically their 'protected people's' status and become 'people of war'. Therefore, Muslims would feel compelled to start the *jihad* against Islam's enemies.'<sup>12</sup>

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9 Shepard, p.59.

10 Furman, p.5.

11 Saeed, p.4.

12 Furman, p.13.

Later on, the *dhimmi* policies were maintained and expanded with bilateral agreements between Muslim-majority rule and conquered communities. As an example, the *Narjan Pact* was a treaty made by the Prophet in 631 AC with a small community of Christians in the nearby Medina town of Narjan. The Prophet mentions the *Narjan pact* as an example in posterior occasions while referring to the treatment of religions minorities by the Islamic state.<sup>13</sup>

In 632 CE the Prophet dies and Abu Bakr, the Prophet's right hand senior companion becomes the first caliph. It is in this historical moment that the Shia divide occurred. Followers recognised Ali bin Abu Talib, the Prophet's son in law, married with his daughter Fatima as the legitimate successor of the Prophet. Later on, during the second Caliphate, the expansion of the Islamic state takes off. During that period time 632–661 CE the religious freedom to non-Muslims, especially the “People of the Book,” were maintained.<sup>14</sup> According to Abu Zahrah, a scholar from al-Azhar University of Egypt, ‘the early Muslims have shown great care and sensitivity not to compel anyone in the matter of religion’. Umar bin al-Khattab, during his rule from 634 to 644 CE, and after the invasion of the city of Jerusalem guaranteed safety of the Christian's lives and churches by assuring them that no one would be harmed on account of his or her religion with the *Pact of Umar- Jerusalem* 638 AD <sup>15</sup>. The successive Caliphates maintained the aforementioned *dhimmanhood* contract which allowed the local communities that were conquered to preserve their rights and freedoms upon acceptance of Muslim rule.

Reading Shepard, the case of the Iberian peninsula is particularly exemplifying; where Jews, Christians and Muslims coexisted for many centuries under Muslim rule. During their rule, Muslims influenced the region with its culture, tradition and technological advances and civilisations flourished. Following Shepard's book, the Jewish community established in the peninsula claimed that their population was better treated during Muslim rule, in contrast with the period of the Catholic Kings' reconquest. Helped by the

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13 Ibid

14 A.E. Mayer, *Islam and Human Rights: traditions and politics*, Boulder, USA: Westview press, 1999, p. 15.

15 Ibid

Inquisition as a watchdog, Ferdinand and Isabella concluded the expulsion of Muslim and Jewish communities from the territory.<sup>16</sup>

## 1.2. The Millet system during the Ottoman Empire

Ann Mayer defines the early Muslim days as the pre-Islamic period until 636 AC or 1 AH the year of the Hijra. The period of Islamic expansion occurred from 640 to 900 C.E as explained by Mayer, followed by pre-modern era 900-1517 C.E coinciding with the period of dominance of the Ottoman. The later empire ended with the post classical period 1517 –1924 C.E, marked by the intrusion of the Western powers in the region and the beginning of imperialism. After the interests of the colonial powers shook the area, political, and social transformation was seen as imposed by European interests.

The Ottoman Empire, took over the old Arab dynasties and tribal systems, imposing a strong empire pursuing their own crusades invading the west in the name of the Islam. The Ottomans had a strong Sunni influence and therefore, maintained the early Muslim day's contracts and treaties, as part of their legislative tradition and in compliance to Sharia law precepts. During the Ottoman period, the region experienced increased Western influence that brought new philosophies and political ideas. The European powers introduced the principles of democracy, constitutionalism including new legal and moral system. The Muslim rulers showed certain interest in the new ways of governance and started to forge a peak of modernisation.<sup>17</sup>

The Ottomans largely shaped policies to deal with religious minorities system. Those policies were institutionalized into the *millet* system. The *millets* are defined by Saeed as 'a series of *ad hoc* arrangements' that gave each of the major religious communities certain 'degree of legal autonomy and authority.'<sup>18</sup> Under the *millets* system religious minorities could have certain level of autonomy that translated into the right to be internally ruled by their own legal system mainly in religious, but also in not religious

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16 Shepard, p.55.

17 Sheppard,p.57.

18 Saeed, p.4.

affairs. They could have their own religious courts on the matters of marriage, elect their own religious leaders and collect and distribute their own taxes. Many Scholars have argued that *dhimmis* were treated fairly, as it was the state's responsibility to maintain peace in the territories. However, those rights were conserved whilst being under the protection of the Muslim majority state but placed the *dhimmis* in a subordinate position. The rights of the *dhimmis* were not unlimited, they had restricted access to public office, and top army jobs<sup>19</sup>, and they were obliged to wear different clothing as prohibited to carry guns or ride horses. Non-Muslims must also respect the sensibilities of Muslims.<sup>20</sup> The *Millets* could prosper economically and were often included in political decisions, many Christians and Jews held positions in the government and military.<sup>21</sup>

The scene of minority rights and religious minority rights changes drastically, as the colonial powers had a greater interest on the richness and the control of the area. The European powers as well as the Ottomans and other Islamic rulers played minority rights politically, and started adding international pressure on the treatment of their own national, ethnic and religious minorities as a part of their diplomatic relations strategies . Those political movements sparked strong oppositions and contrast towards Western political ideologies along with a rise on nationalist feelings, and prompt the Pan-Arabism, and religious radicalisation. In contraposition of this stream of modernity and internationalisation, many countries started islamization periods, in a call to preserve their distinctiveness over the imperialist powers.<sup>22</sup>

After the collapse of the Ottoman Empire in World War I, the states formed hereinafter namely Turkey, Egypt, and Jordan generally maintained the inherited religious minority protection system and preserved the degree of cultural autonomy that non-Muslims had had under the *millet* system, following the Islamic tradition. Concretely, the areas of family law, and education remained protected. On the contrary, those religious minorities who were Muslim but not recognised by the state (ex. Shia, Durzes, and other) faced

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19      Furman, p.5.  
20      Ibid. p.6.  
21      Shepard, p.58.  
22      Saeed, p.4.

greater harassment and did not enjoy the same level of autonomy, often remained marginalized.<sup>23</sup>

Influenced by Britain and France, minority rights standards were included in the legal frameworks of the new countries acquiring independence within the colonies or mandates previously controlled. Non-Muslim minorities, and other ethnic and national minorities were in the centre of interest of the colonial powers<sup>24</sup>. The aforementioned rights were mirrored on those appearing in the early documents of the League of Nations on Minority Treaties after World War I: ‘they included broad guarantees of non-discrimination and freedom of conscience, as well as collective rights, such as language rights and autonomy in education, religion, and family law.’<sup>25</sup>

After 1946, the *millet* system had been retained by many countries forming an arrangement where religious minorities had their own religious courts, autonomy in education, and reserved seats in parliaments in many countries in the Middle East. The rise of the international tensions and the relevance of diplomatic work in the new post World War II era, made regional powers to form alliances and convene to defend their interests and contend against their political or geographical opponents. The Middle Eastern regional powers gathered to defend the Arab region’s interest forming the League of Arab states. Followed by the Organisation for Islamic cooperation, which emerged as the actor on defending Muslim interests in all those countries hosting a Muslim majority population.

### **1.3. The League of Arab States and the Arab charter of Human Rights**

Preceding the creation of the United Nations and after the defeat of the Ottoman Empire, in 1946 the League of Arab States (LAS) was created. The Arab league was the pioneer on uniting seven states – Egypt, Iraq, Lebanon, Saudi Arabia, Syria, Transjordan, and

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23 C. Belge and E. Karakoç: *Minorities in the Middle East: Ethnicity, Religion, and Support for Authoritarianism* Political Research Quarterly 68 (2), 2015, p.4.

24 Saeed p 4

25 Belge and Karakoç, p. 4.

North Yemen – that gained independence and agreed to defend Arabs' interest in the global board. Currently, the League comprises up to twenty-two Arab member states: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestinian Authority, Qatar, Saudi Arabia, Somalia, Sudan, Syria<sup>26</sup>, Tunisia, United Arab Emirates and Yemen, and four observer states: Eritrea, Brazil, Venezuela and India. The League of Arab States adopted the Arab Charter on Human Rights in Cairo on 15 September 1994. The original first draft was not ratified by any State, which prompted the League council later to assign seven Arab states' experts to join the Arab Human Right Commission together with Human Rights NGOs in 2003, to revise the charter. The revised documents was, then allegedly in concordance with international human rights law. The resulting document entered into force in 2008 after seen member states ratifications. In 1968 the LAS established the Arab Permanent Committee on Human Rights as one of the Arab League's permanent specialized committees<sup>27</sup>. The Arab Permanent Committee is not a committee of experts it is a body formed of political representative, not as an independent expert in human rights. Expertise on Human Rights is not mandatory. The Permanent Committee does not have a mechanism to consider the human rights situation in member states (like the Universal Periodic Review Mechanism of the UN Human Rights Council, for example). It also does not have any special procedures, such as country or thematic special rapporteurs, experts or working groups. Hence, the permanent committee has turned out to be not an effective mechanism.<sup>28</sup>

This is different from the Arab Human Rights Committee, Art 45 of the Charter establishes the creation of the monitoring body with seven independent experts that sit there on their personal capacity. The Committee was created in 2009 after the entry into force of the Charter. The Charter does not provide for a complaints mechanism, but Art. 48 of the Charter entitles States to submit reports to the Committee every three years and

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<sup>26</sup> Syria's membership is currently suspended since 2011.

<sup>27</sup> Many human rights organizations, academics and others believe that the composition of the Permanent Committee as a political body and its narrow mandate prevent it from actively and effectively engaging in human rights concerns in the region.

<sup>28</sup> M. Rishmawi: The League of Arab States Human Rights Standards and Mechanisms: towards a further Civil society engagement: A manual for practitioners. Open Society foundation, 2005.p. 28.

the committee has the power to make recommendations as deemed appropriate. After its introduction in 2011, the committee has received a few reports. Additionally, the committee considers as well shadow reports from CSO while emitting its recommendations. In 2013, the Arab League decided to establish an Arab Court of Human Rights, the seat of which is planned to be in Bahrain.<sup>29</sup>

#### **1.4. The Organisation of the Islamic Cooperation and the Cairo Declaration of Human Rights.**

In parallel, in 1979 the Organisation for Islamic Cooperation (OIC) was formed in order to provide a collective force and to safeguard Muslim interest and work towards ensuring well-being and progress for the Muslim population. The OIC is composed by fifty seven self-declared Muslim states; Afghanistan, Albania, Algeria, Azerbaijan, Bahrain, Bangladesh, Benin, Brunei Darussalam, Burkina Faso, Cameroon, Chad, Comoros, Cote d'Ivoire, Djibouti, Egypt, Gabon, Gambia, Guinea, Guinea-Bissau, Guyana, Indonesia, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Libya, Malaysia, Maldives, Mali, Mauritania, Morocco, Mozambique, Niger, Nigeria, Oman, Pakistan, Palestine State, Qatar, Saudi Arabia, Senegal, Sierra Leone, Somalia, Sudan, Surinam, Syria, Tajikistan, Togo, Tunisia, Turkey, Turkmenistan, Uganda, United Arab Emirates, Uzbekistan and Yemen, forty nine of them are countries of Muslim majority rule, having the other eight a significant Muslim population. Bosnia Herzegovina, the Central African Republic, the Russian federation, Thailand and the Turkish Cypriot state are observer states. The OIC's founding Charter preamble recognises its conformity with the International Human Rights standards within the Islamic principles. Subsequently, the OIC drafted the Cairo Declaration of Human Rights, which has a not legally binding status. Its creators defend it shows a certain interest to share a common ground with Human Rights while upholding the principles established under the traditional Islamic legal system. The Declaration adopted in 1990 was presented to the preparatory

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29 M. Mayrhofer, C. Chavez, V. Hegde, M. Killander, J. Larik, B. Nkrumah, E. Salmón, K. Yigen; *International Human Rights Protection: Institutions and Instruments*. Package No. 2 - Deliverable No. 2.1. 2014. p. 67.

committee of the UN World Conference on Human Rights in 1993 as a contribution to the Vienna World Conference.<sup>30</sup>

In 2011, the OIC established the Independent Permanent Human Rights Commission (IPHRC) which 'shall promote the civil, political, social and economic rights enshrined in the organisation's covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values'<sup>31</sup> The IPHRC is an expert body with an advisory capacity to the OIC, to work independently in the area of Human Rights. The Commission focuses on a variety of areas, rights of Women and Children", "right to Education" with focus on "Human Rights Education", "Right to Development", "Islamophobia and Muslim minorities" as well as "Palestine". The Commission offers advice to member states on drafting legislation and obligations under international human rights instrument.

The IPHRC 'welcomes views and suggestions in the interest of advancing the noble Islamic principles of justice and equality and for realizing the laudable ideals recognized by Universal Declaration of Human Rights in its first preamble: "the inherent dignity and equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".<sup>32</sup>

## **1.5. Religious Minorities in the International Human Rights system**

In the reading of Jackson Preece, the right to freedom of religion is among the oldest human rights recognised internationally. Historically, minorities rights started in Europe

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30 N.Ghanea-Hercock, *Human Rights of Religious Minorities and of Women in the Middle East*. Human Rights Quarterly 26 (3), 2004, p. 718. And H. Bielefeldt, *Muslim Voices in the Human Rights Debate*, Human Rights Quarterly vol. 17 (4), 1995 p. 605.

31 M. Mayrhofer, C. Chavez, V. Hegde, M. Killander, J. Larik, B. Nkrumah, E. Salmón, K. Yigen. p. 66.

32 The Organisation of Islamic Cooperation (OIC), Independent Permanent Human Rights Commission (IPHRC) Protecting and Promoting Human rights in the Muslim World and beyond. Available: <https://www.oic-iphrc.org/en/about> Accessed on 21.05.2018

after the Peace of Augsburg put an end to several religious wars in Europe and the conflict between Lutheranism and Roman Catholicism. The treaty introduced the concept *Cuius regio, eius religio* ("whose realm, his religion") which protected citizens living under a ruler, or a region that had adopted a different orthodoxy, it also protected the property and goods of those who decided to move to a region where their religion was practised.<sup>33</sup> International protection was given to religious groups in the Peace of Westphalia in 1648.<sup>34</sup> The goal was to protect the freedoms of worship of the nonconformist religious communities in territories newly acquired from the invading powers and prevent a revolt. Treaties were developed in order to protect each state's minority populations in the recently invaded area. Following Jackson Preece, nationalism slowly replaced religion in determining the population's identities, hence the terms and definition of further protection. 'Already, in the 1815 Final Act of the Congress of Vienna, minorities were being defined as national groups and the rights granted to them included civil and political liberties as well as religious freedoms'.<sup>35</sup>

Minority protection systems previous to the creation of the UN were developed in the framework of bilateral or multilateral peace agreements typically resulted in political or legal safeguards of specifically listed minority groups and their members. The treaties were mainly addressed to safeguard peace and non-aggression among the European powers, and to ensure mutual good treatment of national or religious minorities in the states in war. Those measures were not always human rights-based, as they were not based on the principles of universality, freedom or equality: 'moreover, the political context of bilateral or multilateral agreements harboured the risk that the specific minorities were seen as receiving protection by certain foreign powers. As a result, some of these minority protection mechanisms were eventually turned against the very groups they were supposed to protect.'<sup>36</sup>

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33 J. Jackson Preece, *National Minorities and the European Nation-States System*, Oxford Scholarship, 1998, p.54,

34 A. Saeed *Pre-modern Islamic Legal Restrictions on Freedom of Religion, with Particular Reference to Apostasy and its Punishment*, 2012, p. 226.

35 Jackson Preece, p. 62.

36 UN General Assembly, A/HRC/22/51, 2012 p. 6.

After World War II, minority rights were relegated into a secondary position from the side of the states. With the exception of the apparition of UN's work on the United Nations Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention) and the work done on ICCPR Article 27, which protects minority rights. After the UN Charter approval, many were the efforts put trying to protect religious freedoms and beliefs, particularly the work done by the International Labour Organisation (ILO), the Organisation for Cooperation and Security in Europe (OSCE) or the European Union (EU), along with the work of national legislators. Authors like Emon, Ellis and Glahn regret that 'unlike other specific grounds of discrimination, for example race and gender# the UN effort have not been enough as to create a specific treaty on religious freedoms and beliefs. The initial proposal of such a declaration in 1962 to the UNGA ended in both conventions on religious intolerance and racial discrimination.<sup>37</sup>

Following Ghanea, the efforts of the UN disregarded the topic of minority rights despite having been created in the aftermath of the holocaust, a targeted attack to the belonging to a religious minority. On top of that, the upgraded version of the League of Nations was furthering its work alongside blatant racial, ethnic and religious discrimination all over the world, from the Apartheid in South Africa to turning a blind eye to the existing colonialism. Ghanea writes:

'The UN era started out with 30 years of downplaying, if not outright rejection, of minority rights. The UN had been built on the ashes of the Second World War, and Hitler achieved interim victories at least in part through his exploitation of the minorities' clauses of the Treaty of Versailles; it was also formed just three years before the coming to power of South Africa's apartheid government. There was no appetite in the UN for provisions for minorities.'<sup>38</sup>

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37 A. M. Emon, M. Ellis, and B. Glahn, *Islamic Law and International Human Rights Law*: Oxford University Press, 2012, p.186.

38 N. Ghanea, *Religious or Minority? Examining the Realisation of International Standards in Relation to Religious Minorities in the Middle East*. Religion, State and Society, 36:3, 2008, p. 7.

Later on, in 1978, the issues regarding minorities started to gain force proposed by many international organisations. It was the time when the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, started to be drafted. The Declaration was presented to the UNGA and adopted in 1992.

Following the collapse of the URSS, the independence of the former communist regimes and the rise of ethnic tensions and nationalist clashes in the region, together with the eruption of the war on the basis of ethnicity and religion in former Yugoslavia, progressively changed the situation. The decade after the 1990, saw the apparition of several international and regional Human Rights instruments, which started including minority rights provisions, as well as protection to religious groups.

Posteriorly, the works of the UN sub-commission working group on minorities continued its efforts on annual bases from 1995 to 2006. The change from the UN Commission on Human Rights to the UN Human Rights Council turned the sub commission working group into the new Forum on Minority Issues, meeting twice a year.<sup>39</sup>

According to Ghanea, 'while the 1981 Declaration does not refer explicitly to the collective right to freedom of religion or belief, or indeed to religious minorities, it is significant that virtually all the concrete examples of the protected freedom in Article 6 involve the collective right.'<sup>40</sup> The only reference to religion established in the declaration is that this right includes the freedom of 'everyone' to manifest religion or belief in community with others.<sup>41</sup>

The main document dealt with in this thesis is the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, Proclaimed by General Assembly resolution November 1981. In 1986, the former UN Commission on Human Rights appointed, what was primarily called the Special Rapporteur on Religious Intolerance a mandate holder with specific responsibility inter alia to promote

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39 Ghanea, 2008, p. 8.

40 Ghanea, 2004, p. 627.

41 Ghanea, 2008, p. 7.

the standards of the Declaration. The mandate was renewed in 2007 by the UN Human Rights Council and renamed to the Special rapporteur on freedom of religion and belief (SRFoRB).<sup>42</sup> The mandate of the SRFoRB is to identify factors that might hinder the enjoyment of the right of freedom of religion and belief, to do so the special rapporteur provides recommendations to the states, conducts country visits and emits communications. The UN Human Rights Committee has issued a General Comment on Freedom of religion (no22).<sup>43</sup> In March 2017 the OHCHR united a group of experts in Beirut that aimed to provide a space for a cross-disciplinary reflection on the common grounds between religions and human rights. The outcome of the workshop was the 18 commitments enshrined in the Beirut declaration “Faith for Rights”.<sup>44</sup>

The chapter has shown the views of the authors on how the Islamic tradition provided instruments that aimed at ensuring some emergent forms of protection of religious minorities during the expansion of Islam. Later, the chapter gave a historical overview on how minority rights were developed until reaching the international legal system. Lastly, the text dealt with the need and the construction of freedom of religion and belief (FoRB) provisions that seek relevance in the Human Rights protection system and are a central part of the thesis debate.

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42 Ghanea, 2008, p. 8.

43 E.M,Lassen, M. Mayrhofer; *Report on factors which enable or hinder the protection of human rights*. Package No. 2 - Deliverable No. 2.1. 2014, p. 117.

44 See more: <https://www.ohchr.org/EN/Issues/FreedomReligion/Pages/FaithForRights.aspx>

## **2. Chapter II: Legal analysis**

The starting point of this analysis are the Human Rights standards as agreed and enshrined in international Human Rights texts on minorities and freedom of religion and believe. Many of these documents have been widely ratified by Muslim-majority countries, hence those who ratified them and adapted them in their national legislation are bond by their legal obligations. Freedom of religion and belief protects the right to practice and manifest the religion or beliefs of one's choice and binds states to uphold the freedom of every individual. These standards have human rights implications for both religious minorities as communities and for religious minorities as the individual membership composing them.<sup>45</sup>

Alternatively, through years of Islamic influence in the region other texts have been developed with attention and respect to different moral and legal system. Those texts are primarily inspired by Islamic law and confront in many aspects with the above UN documents. This chapter seeks to expose those documents, compare the areas protected and identify the conflictive rights.

### **2.1. Minority Rights in the UN documents**

According to Ghanea, 'Minority rights provisions build on the position that equal treatment can prove discriminatory in effect for vulnerable minorities'.<sup>46</sup> Ghanea maintains that belonging or identifying as a minority puts the individual in a disadvantaged position, therefore equal treatment would still perpetuate this underprivileged position and further discrimination. Minority rights must be enjoyed in addition to all the others.

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<sup>45</sup> Ghanea, 2004, p. 708.

<sup>46</sup> N. Ghanea: *Minorities and Hatred. Protections and Implications*. International Journal on Minority and Group Rights 17 (3), 2010, p. 423

It remains a challenge in international law to define minorities due to the lack of a consensual definition of people belonging to a minority. Francesco Capotorti contributed with his definition to the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1977:

‘Group, numerically inferior to the rest of the population of a State, in a non - dominant position, whose members- being nationals of the State- possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and share, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.’<sup>47</sup>

What it is consistent in both the above definition and in the following human rights documents is the overarching concept of minority - majority relation being the minoritarian group in a non-dominant position, the territory, and the feeling or identification with the group. Commonly people belonging to minority groups belong to a different ethnicity, are from a different nationality in another majoritarian territory, speak a different language or profess another religion. International law documents recognize ethnic, national religious and linguistic minorities in their legal texts.

The core binding document on the rights of minorities is ICCPR Art 27. It posits that ‘in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.’<sup>48</sup> The article stresses out the communitarian aspect of belonging to a group. The language used in the article, and furthermore in the following minority rights documents is always in plural, which highlights the perception of identification to a group or a community and it entails the need to be part of a group to enjoy protection. The formulation of the article subordinates individual rights to minority group’s rights and links it to the premise of manifesting or disclosing personal information; the

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47 UN Office of the High Commissioner for Human Rights (OHCHR), *Minority Rights: International Standards and Guidance for Implementation*, 2010, p. 2.

48 UN General Assembly, International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Art 18.

adherence to a group. Identification to a group can bring on the one side the duty of states for positive action and may grant those who identify themselves with the protected group certain benefits. On the other hand, this aspect interferes with the right to privacy, and it is in contradiction with the right not to disclose one's religion, as stated in the General Comment 22 on Art 18: 'no one can be compelled to reveal his or her thoughts or adherence to a religion or a belief.'<sup>49</sup> In many cases people belonging to an endangered religious minority, would refer from disclosing their religion under the threat of being identified as such and experience discrimination, harassment or violence, often this interferences are made by state actors.

The convention on the rights of the child (CRC) Art 30 protects the rights of children from minority or indigenous groups to enjoy their culture, practice their religion and use their language together with other members of their group. The CRC treats the belonging to a group in an equal manner to Art 27 ICCPR.<sup>50</sup>

The preamble of the declaration considers 'that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live<sup>51</sup>, and that the adequate promotion and protection of the rights of minorities contribute to the development of the society. It adds on the democratic framework consisting of the rule of law. Respect for minority rights contribute to the strengthening of friendship and cooperation among states.'<sup>52</sup>

The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 1992<sup>53</sup>, establishes several relevant rights that affect particularly those people who identify themselves as members of a minority. Primarily, it talks about the right against segregation or social violence as well as the right to equal protection or

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49 Human Rights Committee, CCPR General Comment No. 22: 1993, para 4.

50 UN General Assembly, Convention on the rights of the child (adopted on 1989 by UN General Assembly) Art 30

51 UN General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Adopted on 1992 by UN General Assembly) Preamble.

52 Ibid,

53 The status of declaration, concedes the document a non-legally binding force.

non-discrimination. Art 2 of the declaration grants minorities the right to preserve their culture, religion and language along with the right to participate effectively in cultural, religious, social, economic and public life in national, and regional matters that involve them. Together with the right to establish their own associations and ‘maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.’<sup>54</sup>

Art 4 develops on the right to benefit of positive action from the State. States should elaborate policies to ensure that minorities have access to education in their language, education on their values and culture, grant full participation without any discrimination and in full equality before the law<sup>55</sup>. Members of minorities shall enjoy the right to seek asylum and the right to a fair trial. The overarching goal is to encourage integration and the promotion of their rights.

The Special Rapporteur on Freedom of Religion and belief highlighted that ‘the rights of persons belonging to religious or belief minorities should be consistently understood from a human rights perspective and must be protected in conjunction with all other human rights’.<sup>56</sup> International human rights treaties are reserved about the relationship between State and religion. Nevertheless, UN Human Rights mechanisms impose states an obligation to grantee of the enjoyment of freedom of religion or belief, along with the right to freedom from religion without discrimination of any kind, for all individuals and groups within their territory and subject to their jurisdiction.<sup>57</sup>

The aforementioned duty requires two kinds of obligations; negative obligations and positive obligations. A state must refrain from perpetuating discriminatory policies and to be in the obligation to protect against state and non-state actor’s offences, including

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54 UN General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Adopted on 1992 by UN General Assembly) Art.2.5

55 Ibid, Art 4.

56 UN General Assembly. A/HRC/22/51, 2012, p.18.

57 Ibid.

incitement to religious hatred. As explained above, under the declaration of minorities States should protect the freedom of religion and belief of minorities and to ensure that are able to practise their religions or beliefs or receive public support <sup>58</sup>

The Universal Declaration of Human Rights, Article 18 recognises that ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.’<sup>59</sup> Identically, Art 18 of the ICCPR on a more binding manner treats freedom of religion and belief as to ‘everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching’<sup>60</sup> Art. 18 expands on the prohibition of coercion and specifies the limitations allowed prescribed by law just in cases of ‘public safety, order, health, or morals or the fundamental rights and freedoms of others.’<sup>61</sup> In inconsistently with the UDHR art 18, ICCPR’s Art 18 fails to mention the right to change one’s religion. The term had to be eliminated in order to get the Arab countries support to pass the convention. <sup>62</sup>

Both, the UDHR and the ICCPR expand the concept of freedom of religion to conscience, thought and belief. In both is recognised the ability of the individual to have or to adopt, as well as the individual and the communitarian aspect of the religious freedoms. Later on the general comment 22 adopted by the Human Rights Committee on Article 18 adds on the freedom of religion and identifies the right to have or leave a religion as well as to not process any religion or belief.

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58 A/HRC/37/49, 2018. para B.10.

59 UNGA, Universal Declaration of Human Rights, 1948 Art 18.

60 UNGA, International Covenant on Civil and Political Rights, 1966, Art 18

61 Ibid

62 U. Khaliq *Islamic Law and International Human Rights Law: Freedom of Religion and Belief in International Law* Oxford University Press, 2012, p. 195,

As with the rights of minorities, the Covenant on the Rights of the Child, Art 14 1 as well as ICCPR Art 18.4 say that state parties must respect the right of the child to freedom of thought, conscience and religion. Along with respecting the rights of the parents or legal guardians to provide the child with their own religious teachings and belief.

In 1981, the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, sets out the most extensive document on freedom of religion or belief yet, its status of declaration turns it is not legally binding. The declaration is not strictly speaking a source of legal obligation to member states, although Evans and Khaliq argue that it is considered to contribute to the formation of customary international law.<sup>63</sup>

The Declaration remarks in Art 1 as in Art 18 of UDHR and ICCPR the right to have, manifest individually or in a community one's religion and stresses the prohibition of coercion. Art 2 reads that no one shall be discriminated by state or non-state actors on religious grounds, thus a discriminatory practice shall constitute under Art. 3 a Human Rights violation and 'an affront to human dignity and a disavowal of the principles of the Charter of the United Nations '<sup>64</sup>. Moreover, Art 4 mentions the positive and negative obligations of the states while Art 5 refers to the right of the child, it signals the parents and legal guardian's decision on the child's enjoyment of religious freedoms as they concur.

Art 6 elaborates in detail on the freedoms recommended in the declaration; right to worship and assemble, right to establish and maintain institutions and to receive and solicit monetary contributions from individuals. In this regard articles 21 and 22 of the ICCPR protect the right to freedom of assembly and to form association and offers adequate and binding protection to religious minorities' rights. Similarly, Art 2.4 of the Declaration of Minority refers to 'persons belonging to minorities have the right to establish and maintain their own associations 'yet including persons belonging to religious minorities.

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63 Khaliq,p. 195.

64 UN General Assembly, 2007, Art 3.

Art 6 (c) speaks about the freedom 'to make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief; and paragraph (h) notes the right to observe their days of rest and religious holidays and dietary rules in accordance with their religious precepts.'<sup>65</sup> This formulation can be understood as the right to preserve own culture and therefore could be supported by Art 27 ICCPR on the right of minorities to maintain their culture, and can have also some similarity with the declaration of Minorities Art 4.2. 'States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards'. It has a hint of the Declaration on the Rights of Indigenous peoples where it is mentioned in Article 12 1 that 'Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.'<sup>66</sup> General comment 22 on Art 18 expands determining the width of the freedom to manifest religion or belief in worship, observance, practice and teaching. Extending the notion of the aforementioned freedoms to the freedom to perform ritual and ceremonial acts, including the building of places of worship, 'the use of ritual formulae and objects, the display of symbols, and the observance of holidays and days of rest' as well as 'the observance of dietary regulations, the wearing of distinctive clothing or head coverings, participation in rituals associated with certain stages of life, and the use of a particular language customarily spoken by a group'<sup>67</sup>

Art 6 (c) refers to the right of religious minorities to produce materials in writing format and to disseminate such information and ideas without any state or non-state actor interference. The later, intimately relates to freedom of opinion, and expression defined in

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65 UNGA,1981, Art 6 (c).

66 A/RES/61/295, 2007, Art 12.

67 UN Human Rights Committee CCPR General Comment No. 22: Article 18, 1993, para 4.

Art 19 of the ICCPR. It sustains that 'everyone shall have the right to hold opinions without interference'<sup>68</sup> and that everyone is free to express them, including seeking for information, receiving them and transmit them in any form.<sup>69</sup> In this regard, religious opinions and publications shall not be restricted. This provision is controversial in the Muslim world as proselytism is widely persecuted in many Islamic states. This article has limitations as provided by law and carries special duties linked to Art 20 of the ICCPR and the prohibition of propaganda, 'advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence'<sup>70</sup>

Following the stated in the Declaration of minorities, religious minorities shall be empowered to teach religion in their own religious schools in addition to train, appoint and elect their own religious leaders as requested by their religion or set of beliefs. Art 18.4 of ICCPR recognises the liberty of the parents to educate their children in conformity with their own moral and religious convictions.<sup>71</sup> General comment 22 includes freedoms 'such as the freedom to choose their religious leaders, priests and teachers, the freedom to establish seminaries or religious schools and the freedom to prepare and distribute religious texts or publications.'<sup>72</sup>

Lastly, in communion with the Article 2.4 in the Declaration on the Rights of Minorities, Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief cites the right to establish and maintain communications with individuals and communities at national and international level.<sup>73</sup>

## **2.2. Minority rights in the Cairo Declaration and the Arab Charter of Human Rights**

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68 General assembly, 1966, Art 19.

69 Ibid.

70 Ibid, Art 20.

71 Ibid, Art 18.4.

72 UN Human Rights Committee, 1993, para 4.

73 UN General Assembly 1981 Art 2.4.

As elaborated above, due to societal distribution in the geopolitical situation of the apparition of Islam, often, ethnic or national minorities tend to differ from religious beliefs. In many Islamic documents religious minorities refer to minorities in general. Consequently, little is written on minorities as being different from religious minorities. In this regards the Charter of Medina made by the Prophet Muhammad in 622 DC (1AH) was the first document that aimed to regulate the situation of peace and war among the believers and the tribes inhabiting the region. Art 16 of the Charter of Medina granted protection to the 'Jews', referred as well as the non-believers. In addition, social, legal and economic equality was promised to all loyal citizens of the State, hence those non-believers who submitted themselves to Muslim rule.<sup>74</sup> An incipient notion of the principle of equality can be noted in Art 29: 'the Jews of Bani Awf will be treated as one community with the Believers'.<sup>75</sup>

Later on, as mentioned in the previous chapter, the policies evolved into the *Dhimma* system. *Dhimmis* were granted freedom of movement, freedom of property, protection against foreign attack, freedom of conscience and worship and equality in front of the law, through their own religious courts in other matters.

The Cairo declaration defines the principle of equality in Article 1 'all men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity'.<sup>76</sup> The Cairo declaration recognises protected grounds on race, colour, language and belief, which intrinsically includes certain individual characteristics held by minorities. However, it fails to mention peoples from different ethnicities or nationalities.

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<sup>74</sup> *Those Jews who follow the Believers will be helped and will be treated with equality.* 622 DC Charter of Medina Art 16.

<sup>75</sup> Charter of Medina 622DC Art 16

<sup>76</sup> (a) All human beings form one family whose members are united by their subordination to Allah and descent from Adam. Cairo Declaration on Human Rights in Islam, (Adopted by the Organization of the Islamic Conference in 5 August 1990).

Similarly, the Arab Charter, Art 2 refers to non-discrimination, it declares that state parties must 'ensure to all individuals within its territory and subject to its Jurisdiction the right to enjoy all the rights and freedoms recognized herein, without any distinction on grounds of race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status and without any discrimination between men and women.'<sup>77</sup> In this case, the Arab Charter extends the prohibition of discrimination to the ground of national origin and attempts to protect the rest under the "other status".

Positively, the Arab Charter of Human Rights contains a specific article protecting the rights of minorities. Art 37 refers to the rights of minorities and states that 'minorities shall not be deprived of their right to enjoy their culture or to follow the teachings of their religions.'<sup>78</sup> Art 37 is the only mention on minority protection, under the Islamic scheme, until this date no additional declarations exist. The wording of the article uses suggestive language and denotes a weak intention by the legislator to bind member states to the compliance of minority rights protection. The article merely defends the right to enjoy the culture and the teaching on one's religion, omitting many other aspects enshrined in the UN declaration of minorities.

The Arab charter fails to mention the component of identification to a group, as in the aforementioned previous UN documents. In this context it turns debatable to discern who are the members belonging to a minority, and who determines such affiliation. Whether it is the individual itself, the community or the state. In either of the situations the members of minorities are placed in an unfavourable position as the Charter also does not mention the obligation of states to positive measures towards these groups. In contraposition to the declaration of minorities, the Arab document lacks the acknowledgement of the rights of a minority group to have contact with other members of the community, at a national, regional and at international level.

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77 League of Arab States, Arab Charter on Human Rights (Adopted 15 September 1994) Art. 2.

78 Ibid., Art 37.

The Declaration of Minorities protects the specific right to form and maintain their own associations. On the other hand, article 28 of the Arab charter 'All citizens have the right to freedom of peaceful assembly and association'<sup>79</sup> the article refers to citizens as the benefactor of such a right. Often, and in particular in the countries of the LAS, minorities do not enjoy recognition as citizens of the state or are placed in a subordination position. Recalling the inspiration provided by the early days of Islamic expansion documents, the *Dhimmanhood* contract offered some sort of “citizenship” status that in any case placed the *dhimmis* in an inferior status. Art 28’s wording perpetuates the distinction between citizens and *dhimmis*.

As mentioned above Art 2.2 of the Declaration on Minorities reminds that 'persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.'<sup>80</sup> In this regard the Arab charter protects the right of 'all citizens of full legal age' in Art 19 to political participation. Additionally, articles 31 and 32 referring to the right to work, distinguish favour as well citizens. Equally, Art 23 of the Arab charter recognises the right to asylum solely to citizens.

Despite the above, in Art 1 (a) changes its protected status to mention that 'all peoples' have right to have control over their wealth and resources 'freely determine the form of their political structure and to freely pursue their economic, social and cultural development'.<sup>81</sup> Seeing the Islamic influence and taking in consideration the translation of the original language. The reference to 'the peoples' following Mayer’s might refer to the followers of Islam.<sup>82</sup> Therefore, it establishes a precondition of belonging to a certain religion, furthering discrimination against those not practising the Islamic faith.

Finally, the Cairo declaration is merely a non-binding document despite showing certain level of political intention representing the main Muslim majority countries. The Arab

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79 Ibid, Art 28.

80 UNGA, Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, Art 2.2.

81 LAS, Art 1.

82 Mayer, p. 53.

charter binds a limited amount of 22 states most of them home of many ethnic, national, linguistic and predominantly religious minorities.

The Charter of Medina of 622 DC protected freedom of religion and worship of the different tribes coexisting in Medina in the pre-Islamic times. Along with Articles 16 and 29 of the Charter, which primitively mention the principle of equality, stablish protection and solidarity among religious minorities, Art 17 and 30 protected religious freedoms. Art 17 maintained that 'no Jew will be wronged for being a Jew'<sup>83</sup> and Art 30 upheld the rights of 'the Jews have their religion. This will also apply to their freedmen. The exception will be those who act unjustly and sinfully, whom by so doing the wrong themselves and their families'.<sup>84</sup> 'The Constitution of Medina laid a foundation for future relationships between the Muslim ruling authority and the *dhimma*, so called the protected religious minorities that took root in subsequent Muslim states.'<sup>85</sup> The *dhimmis* system is the described as the Islamic scheme under Sharia law influence as the way to deal with religious minorities in the Islamic states.

The 1993 Cairo declaration by OIC recognises Sharia law as its only source, thus it is undoubtedly, in conflict with religious freedom as protected in international legal standards within the UN framework. 'The Cairo declaration actually weakens or denies some basic international human rights by claiming a general priority for the traditional Sharia.'<sup>868788</sup> There is no mention of the rights of non-Muslims in the Cairo Declaration Human Rights in Islam. <sup>89</sup> On this note, Saeed defends that:

' The Quran considers belief in God, the Creator and Sustainer, to be a human good in itself and the basis for sound religion, morality, and ethics; therefore, the right to such belief should be protected by all means. This is what is meant by

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83 Charter of Medina, 622 DC, Art 17.

84 Charter of Medina, 622 DC, Art 30.

85 Saeed, 2014, p.2.

86 Ibid.

87 Ghanea, 2004, p.718.

88 Bielefeldt, 1995, p. 605.

89 Ghanea, 2004, p.717.

“religious freedom”: the right to believe, the right to adopt a religion, the right to practice one’s faith, and the right to engage in interpretive disagreements while seeking to understand and practice that faith.’<sup>90</sup>

In this context the Cairo declaration recognises human dignity, equality and non-discrimination in its Art 1 considering all human beings in subordination to god. ‘All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations.’<sup>91</sup> Interestingly, non-discrimination on the ground of religion is mentioned, however the source of the dignity of the person is in connection to the 'true religion'. Art 1 concludes that ‘the true religion is the guarantee for enhancing such dignity along the path to human integrity’<sup>92</sup> The Cairo declaration has a strong religious component; thus many articles touch upon religious practices and consequently hinder religious minorities protection.

Similarly, to the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, the Cairo declarations remarks in Art 9, the right to receive both religious and worldly education in various institutions of teaching, referring to school, family life and media. The later claims for the states to provide education and to be ‘acquainted with the religion of Islam’<sup>93</sup> However, the individual's right to education is subordinated in a ‘manner that would develop human personality, strengthen man's faith in Allah’. Art 9 refers exclusively to the Islamic faith education and fails to mention non-Muslim’s right to religious education.

General Comment 22 on Art 18 extends the notion of religious freedoms to the freedom from coercion. Conveniently, the Cairo declaration provides a mention against coercion, in Art 10: ‘Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to

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90 Saeed 2014 p 1

91 Organization of the Islamic Conference (OIC), Cairo Declaration on Human Rights in Islam, 1990, Art 1.

92 Ibid

93 OIC, 1990, Art.9.

change his religion to another religion or to atheism.’<sup>94</sup> Indeed, in accordance with Islamic scheme influence the article refers to the coercion to leave Islam. Still, it does not specify other aspects mentioned in the General Comment 22, nor mentions the prohibition of coercion to leave other religions and clashes with the right to leave one’s religion fuelling controversy about apostasy in Islam.

The difficulty with the Cairo declaration is that it does not provide space to religious plurality, and hinders the universal principle of solidarity, tolerance, respect and living in community among different peoples. The declaration fails to include the above mentioned respectful environment exemplified by the Prophet’s life in the early days between religious minorities. Historical experience shows that religious exclusivity tends to undermine solidarity and peaceful coexistence among differing communities of belief.<sup>95</sup>

The Arab Charter of Human Rights, is the only binding document, entered into force in 1994. It attempts to come closer in the line of the universal Human Rights standards, even though still influenced by Islamic tradition and values. In this context, Art 2 of the Charter equals Art 2 of the ICCPR and recognises the state’s responsibility to ensure that individuals enjoy all the rights and freedoms recognized in the Charter, ‘without any distinction on grounds of race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status and without any discrimination between men and women.’<sup>96</sup> The article is in harmony with the international standards and includes religion as a protected ground. That adds on the explicit freedom of religion and belief under the Charter’s Art 26 ‘everyone has guaranteed right to freedom of belief, thought and opinion.’<sup>97</sup> Additionally, Art 27 of the Arab Charter defends ‘Adherents of every religion have the right to practise their religious observances and to manifest their views through expression, practice or teaching, without prejudice to the right of others.’<sup>98</sup>

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94 OIC, 1990. Art 10.

95 A. An Naim, *The Interdependence of Religion, Secularism, and Human Rights: Prospects for Islamic Societies*. Common Knowledge, Vol.11 (1), 2005, p. 58.

96 LAS,1994, Art 2.

97 Ibid, Art 26.

98 Ibid,1994, Art 27.

Ghanea argues that article 27's mandate of religious freedom is a flexible standard left to the caprice of the Member states as; 'no restrictions shall be imposed on the exercise of freedom of belief, thought and opinion except as provided by law'.<sup>99</sup> Under the Arab charter, freedom of belief, thought and opinion, is not an absolute right.

Differently to the Cairo declaration, the Charter does not mention Islam as the only religion to which adhere. Even though, in the preamble it recognises 'Arab nation's belief in human dignity since God honoured it' and it is shaped based on the principles 'firmly established by the Islamic Shari'a.' Article 27 identifies 'adherents of every religion' as the those following 'eternal principles of brotherhood and equality among all human beings' from 'other divinely-revealed religions' in general, the provisions on freedom of religion and belief and the rights of religious minorities are very weak in the Arab charter. Similarly, to Art 18 in the ICCPR and due to the same Arab state's influence, there lacks mention to the right to change religion cleared by the HRC. Strangely enough, there is no mention of the prohibition of coercion, nonetheless positively it protects along with the international standards the right to manifest, observance, practice and teaching.

The international treaties expressly mention the right to enjoy the freedoms individually or in community, stressing out both aspects of freedom of religion. Equally, the Charter's does not mention the freedom to manifest their religion and their views through expression, practice or teaching in public or private. That brings controversy on those countries where religious freedoms, freedom of expression and assembly are limited by law on the basis of prejudice against the morals, the rights of others or offending Muslim sensibilities. Consistent with the ICCPR, Art 28 protects freedom of peaceful assembly and association while observing restrictions.

While many States express commitments to guaranteeing freedom of religion or belief, some of the protections are narrower than those specified in article 18 of the International Covenant on Civil and Political Rights or include limitations that are inconsistent with

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99 Ibid

international law<sup>100</sup> The relevance of positive measures regarding religion is not found in any of the freedom of religion or belief instruments under Islamic influence. In this context, therefore, minority rights documents complement the protection of religious minorities both individually and collectively.<sup>101</sup> Ghanea is concerned about the 'deterioration of international human rights standards regarding freedom of religion or belief. It is her particular concern that this weakening is increasingly and consistently established in legal and political "Islamic" documents that either do not mention or do not adequately cater to the human rights of non-Muslims.<sup>102</sup>

Alternatively, other views claim that under Islamic law non-Muslims are entitled to preserve their own culture and tradition. In the words of Professor A. Rahman Doi: 'Non-Muslims have every right under the Sharia Law to keep their own languages and customs, to open their own schools and colleges and to be visited by missionaries of their own faith.'<sup>103</sup> According to this author, in addition to the seven essential rights mentioned above concerning non-Muslims in an Islamic state, non-Muslims are considered full citizens and have full protection under Islamic law.

### 2.3. Limitations

There international Human Rights protection system consider Human Rights inviolable, and inherent to the Human dignity. However, there are few rights which are considered absolute rights and may never be derogated under any circumstance enshrined in the UDHR as well as in the ICCPR. This section will go over the legal permissible limitations on Human Rights, touching upon the provisions regarding minorities and religious freedoms explained above.

Under international Human Rights law there are absolute rights, which are freedom from torture and other cruel, inhuman or degrading treatment or punishment (Art 7 ICCPR),

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100 HRC, A/HRC/37/49, 2018, para 82.

101 Ghanea, 2008, p. 11.

102 Ghanea, 2004, p. 720.

103 Emon, A. M.; Ellis, M. and Glahn, B, p. 324

freedom from slavery and servitude (Art 8 ICPR) Freedom from imprisonment for inability to fulfil a contractual obligation (Art 11) Prohibition against the retrospective operation of criminal laws (Art 15) and Right to recognition before the law (Art16 ICCPR). Other rights can be restricted on special cases as prescribed by law; in case of war, public order, national security, public safety, public morals, interference with rights and freedoms of others, interest of justice, public interest and democracy. The relationship between absolute and limited right is described by Ghanea and others as *forum internum*, the enjoyment of the rights of which are absolute, and the *forum externum*, enjoyment of which may be subject to limitation.<sup>104</sup>

However, as reported by the Special Rapporteur on Freedom of religion and belief ‘international human rights law imposes a duty on States to be impartial guarantors of the enjoyment to freedom of religion or belief of all individuals and groups within their territory and those subject to their jurisdiction’.<sup>105</sup> ‘States have a very diverse approaches to religion and ‘all States support, regulate or limit religion and belief to some extent.’ There are diverse state’s conducts towards religion: religious states, countries with an official religion, and religions with a preferred treatment in a particular state and governments who control really strictly religion in the state’s affairs.<sup>106</sup>

### ***2.3.1. Limitations under the International Human Rights system***

Article 29 of the UDHR recognises that ‘everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society’ <sup>107</sup>. These rights may never be contrary to the principles of the charter of the United Nations.

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104 Ghanea, 2008, p. 4.

105 HRC, A/HRC/37/49, 2018, para.81.

106 Ibid

107 UN General Assembly, 1948, Art 29.

Considering Art 18 paragraph 3 of the ICCPR, all limitations on freedom of religion or belief must be prescribed by law and they must be necessary and directly related to pursue a legitimate aim as; the protection of “public safety, order, health, or morals or the fundamental rights and freedoms of others”.<sup>108</sup> While in minority rights documents in line with the ICCPR, rights are susceptible of limitations ‘at times of emergency which threaten the nation’. In freedom of religion or belief documents the freedom to have, adopt and change religion or belief is considered an absolute right. These freedoms are protected unconditionally, as it is the right of everyone to hold opinions without interference, as stated in Art 19. 'The right to hold opinions without interference is an absolute right, as observed by the Human Rights Committee. Article 19(1) “permits no exception or restriction”; 15 it is only in its *expression* that “special duties and responsibilities”, and hence possible restrictions, may apply.’<sup>109</sup>

As supported by in the general comment of the Art 18, only manifestation of religion or belief can be limited and only then, in accordance with the exact limitation grounds given, strictly interpreted.<sup>110</sup> In interpreting the scope of permissible limitation clauses, States parties should proceed from the need to protect the rights guaranteed under the Covenant, including the right to equality and non-discrimination on all grounds specified in articles 2, 3 and 26.<sup>111</sup>

The limitations allowed, to the referred *forum externum* the freedom off religious manifestations by international human rights law must be the exception never the rule. ‘These limitations must be narrowly constructed and must not be discriminatory towards persons belonging to a religion or belief. Moreover, the burden of justification for such restrictions falls on those who wish to impose them.’<sup>112</sup>

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108 HRC, A/HRC/37/49, 2018, para 8.

109 Ghanea, 2010, p. 42.

110 Ghanea, 2008, p. 12.

111 HRC, CCPR General Comment No. 22: Article 18, 1993, Art 8.

112 HRC, A/HRC/37/49, 2018, para 4.

### ***2.3.2. Limitations under the Cairo Declaration and the Arab Charter of Human Rights***

The Islamic Human Rights Scheme has been described by Mayer as to resemble the African Charter's limitations system.<sup>113</sup> The use of the so called "claw back clauses" which are the use domestic legal clauses to restrict internationally guaranteed Human rights. Limitations under religious justifications are not accepted by International Law, however Islamic law allows limitations on the rights of women, minorities, non-Muslims along with the right to leave the Islam is in clear discordance with the International standards. The justification for those limitations lie in the strict interpretation of the sharia law which, is under the Cairo Declaration 'the only source of reference for the explanation or clarification of any of the articles of this Declaration',<sup>114</sup> The aim of the restrictions is to prevail the influence of the Sharia law in human right for the preservation of the culture.

On this context, the Cairo declaration limits the rights and freedoms as they are subjected to Sharia Law (Art 24). Exemplifications are found in Art 16 which refers to right of copy right, which can be restricted if opposing Sharia law. Likewise happens with Art 27, which declares that freedom of opinion and expression shall not be not contrary to Sharia law.

Additionally, the Arab Charter of Human Rights refers to the restrictions under Article 4 'Restrictions shall be placed on the rights and freedoms only where provided by law and estimated necessary for the protection of national security and economy, public order, health or morals or the rights and freedoms of others.' On the subject of the morals, The Human Rights Committee observes in the General Comment 22 on Art 18, the significance of morals is diverse in different societies, cultures and traditions, it bring many meanings derived from sociological concepts, philosophical traditions. Thus,

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<sup>113</sup> Mayer, p .67.  
<sup>114</sup> OIC, 1991, Art 25.

‘limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition.’<sup>115</sup>

The Arab charter considers some absolute rights as well under Art 4 paragraph c, no circumstances should limit the ‘prohibition of torture and degrading treatment, return to one's country, political asylum, trial, the inadmissibility of retrial for the same act, and the legal status of crime and punishment.’<sup>116</sup>

#### **2.4. Major discrepancies between the Islamic doctrine and the International Human Rights system.**

When dealing with religious minorities rights in the Muslim world the main areas of conflict are: equality and non-discrimination, equality in front of the law and religious freedoms, particularly right to change one's religion. The later, the right to leave one's religion is in manifested contrast with the Islamic tradition. The opposition was shown in the voting and the reservations made by the Muslim Majority countries to Art 18 in the UDHR and ICCPR<sup>117</sup>. Along with, freedom of worship, freedom of opinion and expression, freedom of assembly and association and the right to participation. Despite being enshrined in the Arab Charter those areas face serious interferences in many Muslim-majority countries as the Charter allows limitations to the rights provide by law.

In contrast to the 'tolerance' displayed toward minorities in the discourse and doctrine, in reality religious minorities are in many Islamic countries suffering from human rights violations.<sup>118</sup> Ghana as well as the Special rapporteur on freedom of religion and belief reports account the numerous Human Rights violations against persons belonging to religious minorities in Muslim majority countries. Those include the right of freedom of assembly and association 'disproportionate bureaucratic restrictions; denial of appropriate legal status positions needed to build up or uphold a religious infrastructure, interference

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115 HRC, A/HRC/37/49, 2018, para 4.

116 LAS, Art 4,

117 Emon, A. M.; Ellis, M. and Glahn, B, p. 184.

118 Fuman, 2000, p.12.

in the community's internal affairs; confiscation of community property'. On the area of equality and non-discrimination religious minorities suffer 'systematic discrimination and partial exclusion from important sectors of society; discriminatory rules within family laws; indoctrination of children from minorities in public schools; publicly stoked prejudices and vilification sometimes connected with historic traumas and national mythologies' In some cases these prejudices escalate into 'acts of vandalism and desecration; prohibition or disruption of religious ceremonies; threats and acts of violence; criminal sanctions; denial of asylum, possibly resulting in extraditions and exposure to serious risks of persecution.'<sup>119</sup>

In order for the state to provide positive measures, those persons belonging to religious minorities shall be given a recognised status. This is rarely conceived in a comprehensive and organised manner. In this regard, many Muslim-majority countries give separate treatment to the different types of religious minorities inhabiting their territory. Being a legitimate Islamic sect not belonging to the majority ruling group (as Shi'a minority under Sunni rule, or vice-versa). On the other hand, those religious factions 'whose legitimacy is a matter of debate'<sup>120</sup>, as for examples the Alawis in Syria, Druzes in Lebanon, Ahmadis in Pakistan, and adherents of non-monotheistic and pagan faiths.<sup>121</sup> Often those groups who are not conferred equal treatment by the authorities, face severe inequalities in other fields as access to employment, housing or equal treatment equality in front of the law.

On the right of political participation, the Declaration on the Rights of Minorities and the Declaration on Religious Intolerance mentions the importance for religious minorities to participate actively on all social, political and economic matters. On that note Ghanea says that 'religious minorities have largely been either nearly excluded or only allowed to participate in closely scrutinized and managed processes of limited co-option'. The space held by religious minorities in Muslim countries for participation in the political life has

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119 HRC, A/HRC/22/51, 2012, para 56.

120 Furman, 2000, p.2.

121 HRC, A/HRC/22/51, 2012, para 9.

been rigorously limited in most Middle Eastern countries.<sup>122</sup> Religious minorities rights shall hold the right to be consulted on matters that concern them, as the right to appoint and elect their own religious leaders.

Equally, both the Declaration on the Rights of Minorities and the Declaration on Religious Intolerance highlight the right to freedom of assembly and association. This right it is common as well in the ICCPR and acquires an utmost importance for religious minorities in the area of registration as religious organisations, influences on the right to worship, the space to worship, as well as the right to acquire religious elements, for worship or teaching, and to solicit and receive funding. In both declarations it is mentioned the right to maintain effective communication between the minoritarian groups, inside the territory as well as internationally.

Lastly, both minority rights and religious intolerance documents mention the right to express their opinions and thoughts. The freedom of expression is intimately related to freedom of religion, as it connects with spreading religious word, write, produce and disseminate religious teachings. This clashes frontally with the prohibition in Islamic law to promote views contrary to the Islam. In many Muslim majority countries individuals charged for proselytism face death penalty. In Egypt, members of the Ahmadiyah community were charged for holding and promoting ‘extremist ideas’<sup>123</sup>. Moreover, religious freedoms involve freedom of expression on religious clothing and symbols, or public ceremonies.

Art 18 of ICCP and others mention the right to enjoy religion individually or in community in private or public. That entails that religious minorities face human rights violations as individuals and as communities. The challenges on the communitarian level include: 'denial of recognition as a religious community and a resulting denial of any kind of political representation; difficulties faced in attempt restrictions attempting to run separate educational facilities (minority religious schools) or in having their religion

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122 Ghanea, 2004, p.723.

123 HRC, A/HRC/22/51, 2012 para. 4.

taught in public schools;<sup>124</sup> worship or other religious activities; confiscation or threats on religious property, land, and places of worship; interference with the election of leaders and representatives; and denial of freedom of expression.'

On the other side, the challenges affecting individuals belonging to religious minorities include: 'violations of physical integrity and the right to life; denial of citizenship registration of marriages or births and denial of certain civil rights, such as discrimination in the judiciary; exclusion from employment in certain government sectors, particularly from the army, judiciary and senior educational posts; prohibition of the marriage of a non-Muslim man with a Muslim woman; freedom of movement, particularly regarding leaving the country; severe restrictions on missionary activities. denial of education'.<sup>125</sup>

Chapter II has provided a legal review of the different documents related to minority rights protection, both binding documents and mere declarations. In the same way, the chapter went over both Islamic documents that refer to minorities and FoRB. The comparison found clear contradictions and failures in the areas of equality and non-discrimination, equality in front of the law and religious freedoms, particularly right to change one's religion.

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124 Ghanea, 2004, p. 709.

125 Ibid.

### **3. Chapter III: Analysis of the discrepancies**

Religions are open to various interpretations and developments; frequently religious beliefs are perceived antagonist to universal Human Rights and 'cultural identity' of those holds religious precepts views appears questionable'.<sup>126</sup> The following chapter will look into the opinions of different authors versed in the topic. Al Fadl, Ghanea, An Naim and Bielefeldt will be representing different views on the conflict between Islam and Human Rights with a focus on religious minorities.

In their writings on the relationship between Islamic and international law, various authors have a wide range of opinions. Starting with the affirmation that international Human Rights are fully compatible with Islam to the prerogative that international Human Rights are product of alien source. Often Human Rights are perceived as developed by the western culture and are seen to represent values that are contradictory to Islam. Mayer defends a middle ground that stands in between of both extreme positions and recognises that 'Islam accepts many but not all aspects of international human rights or that it endorses human rights with certain reservations and qualifications'.<sup>127</sup>

#### **3.1. Authors' views on the discrepancies on Islamic literature.**

Different authors have invested thoughts and efforts to investigate the origin of the clashes and contradictions. Primarily, authors raise concerns about the root of the sources, and therefore the legitimacy of Human Rights system in an Islamic context. Firstly, the international community is conceived their source as inherent human dignity, on the other hand, faith-based communities consider their legitimate source of morals and values comes from God.

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126 Bielefeldt, 1995, p. 588.

127 Mayer, p. 2.

The consulted authors have discrepancies between the individual aspect of adherence to the Human Rights concept versus the communitarian aspect of religion, and vice-versa. This relationship is, as explored above, determining often the access to rights by religious minorities in Muslim-majority countries. This discussion is relevant on the basis of religious minorities who do not fit in the mainstream uniqueness of one religion and can apply for the universality of the rights.

Shortly, the common grounds shared between religion and Human Rights will lead the discussion into the importance of human agency and will seek to identify who are the suitable actors to lead to a change. The discussion will ultimately touch upon the relevance of civil society organisations in the overall picture, to be developed further in Chapter IV.

### **3.1.1. Sources and legitimacy**

Bielefeldt, as Al Fadl agree in identify Human Right sources as constituting political and legal standards aimed to ensuring *political justice* while religion's sources drive from the highest manifestation of an *ethical spirit*.<sup>128</sup> Al Fadl says, 'international law relies on the consent or will of those governed', but Muslim believer rely on God as the source, and find on it the real sovereign and source of legitimacy.<sup>129</sup>

An Naim concedes that considering that Human Rights are shaped to protect individuals and groups against the contingencies of national politics, they ought to be a product of international agreement.<sup>130</sup> The *universality* of Human Rights standards is constantly contested as many authors view them as a product of the West. The concept was built on the European model of the nation-state that developed during colonialism. The author defends that at the time when the UDHR was drafted the vast majority of African and Asian peoples still suffered under European colonialism. In the process when the

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128 Bielefeldt, 1995, p. 588.

129 Al Fadl, *The Unique and international and the Imperative of Discourse*, 8th Chicago Journal of International Law, 2008, p. 47.

130 A, An-Na'im, *The interdependence of religion, secularism, and human rights: prospects for Islamic societies*. Common Knowledge, Vol.11 (1) 2008, p. 59.

declaration was drafted and adopted was not global nor inclusive. Thus the legitimacy of the UDHR as universal values of political justice was contingent on subsequent developments.<sup>131</sup> If the idea was the international Human Rights system to be forged under international cooperation and consensus, it resulted difficult while missing representatives from those unrepresented peoples. The lack of consideration, following An Naim to the global south and those communities under colonialism at the time of the creation of the international Human Rights system dilutes its notion of legitimacy, and fails to bind those who were not represented.

Bielefeldt agrees that 'the universality of Human Rights does not mean the global imposition of a particular set of Western values, but instead, aims at the universal recognition of pluralism and difference- different religions, cultures, political convictions, ways of life- insofar as such difference expresses the unfathomable potential of human existence and the dignity of the person'.<sup>132</sup> Al Fadl emphasizes that human beings are the actual source of legitimacy for the regime of duties and rights under international law.<sup>133</sup>

On the other hand, Bielefeldt declares that the Quran, Muslim's a primary source and it contains general ethical principles, are merely normative guidance rather than detailed instructions or a comprehensive legal code.<sup>134</sup> Next to the Quran the most important source is the practice of the Prophet, representing for Muslims a binding model. Bielefeldt writes that for Muslim scholars the religious texts would amount to customary law and become part of the Islamic law jurisprudence.<sup>135</sup> The legitimacy of religion comes from, rather than from an unequal international consensus from the individual belief of every follower who concedes this legitimacy to a set of moral values by adhering to the group.<sup>136</sup>

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131 Ibid.,

132 Bielefeldt, 1995, p. 594.

133 Al Fadl, 2008, p. 51.

134 Bielefeldt, 1995, p. 614.

135 Ibid, p. 595.

136 Al Fadl, p. 48.

Human Rights cannot offer many answers to the existential questions of human life and death, they are not intended to frame all the aspects of human life. Thus, Human Rights do not compete with cultural and religious traditions but concentrate on political and legal aspects of human coexistence. Equally, they rely on the idea of human dignity, which can be also found in as well as the basis of various cultural and religious traditions.<sup>137</sup> Bielefeldt defends that Human rights do not derive immediately from religious traditions, but they are not alien to them.

According to Al Fadl, international law often fails to represent the interest of the individuals in the same way democracies do not equally represent the interests of their citizens: 'The state is often an imperfect, and indeed inadequate, conduit for legitimacy and consent.'<sup>138</sup> In other words, Al Fadl's idea is that the state does not represent equally the collective claims of the population, but a particular set of vested interests; those interests are often the interests of an elite, and not of the society, as a whole.<sup>139</sup> This is particularly acute when talking about the interests of minority groups who 'continue to be in a disadvantageous position as far as the processes of international law are concerned'.<sup>140</sup> An Naim wants to emphasize the 'social and political implications of religious doctrine for the everyday lives of individuals and communities'.<sup>141</sup> State's structures are developed and operated by people with religious or philosophical beliefs, when forming majority population, will necessarily be imprinted in their thinking and behaviour.<sup>142</sup>

An Naim states that 'Human Rights need religion to provide a widely accepted source of moral guidance for the political community, as well as to help satisfy and discipline the non-political needs of believers within that community'.<sup>143</sup>

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137 Bielefeldt, 1995, p. 601.

138 Al Fadl, p. 45.

139 Ibid.,

140 An Naim, 2008, p. 63.

141 Ibid, p. 69.

142 Ibid.,

143 An Naim, 2008, p. 66.

### **3.1.2. Individualism vs communitarianism**

The interest of the paper is in minority rights together with religious freedoms. Minority rights is a concept that requires protection for those individuals whose characteristic is belonging to a community, therefore it addresses communitarian rights. The right to hold an opinion, a thought or a belief is intrinsically an individual right that requires individual protection. However, Bielefeldt notes that 'a purely individualistic concept of religious liberty, for instance, would almost amount to a contradiction in terms, because religious life is hardly conceivable outside of religious communities'.<sup>144</sup> At the same time, he finds no consensual answer is possible when it comes to the overwhelming power of communities over the individual, given that the individual certainly needs some protection from the communitarianism.<sup>145</sup>

The protection of individual rights and community rights is envisioned differently in the international Human Right standards. Ghanea looks into the scope of right's protection and examines closely the relationship between the individual aspect of religion and the communitarian aspect of it. These aspects, she argues, include:

‘collective rights, such as the right to wear head scarves even in self-consciously laicized public schools, the right to take time off from work to engage in prayer and the celebration of holy days, and the right to polygamous marriage; and corporate rights, such as the right to institute public prayer calls, the right to receive public funding for religious instruction on par with other established religious groups, and the right to carry out the ritual slaughter of animals for religious purposes.'

The legitimacy of the Human Right protection system is rooted in the international communitarian consent, which assumes some degree of collectivity, not necessarily the

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144 Bielefeldt, 1995, p. 591.

145 Ibid, p. 592.

consent of each individual person. In this regard, Al Fadl observes that people concede to the community certain amount of autonomy in exchange for a the of rights and duties.<sup>146</sup>

In a sense, the collectivity exchanges particularity and specificity in return for an international protection system, what remains unclear is whether the protection system os there to benefit of the community as a whole or the individuals belonging to the community.<sup>147</sup> Religious minorities remain particularly vulnerable, as minorities their individual adherence to the community, that gives away some degree of protection which is much dependant on the wishes of the ruling majority.

### ***3.1.3. Universality vs uniqueness***

Ann Elizabeth Mayer, relies on An Naim's writings in order to emphasize that 'cultural relativism edorse the idea that all values and principles are culturally bound, therefore there are no universal standards by which cultures might be judge.'<sup>148</sup> There are generally two visions about the unique being the religious or cultural particularity, the Islamic tradition in this case, and the universal being a the Human Rights International system. Al Fadl claims that religion can also be seen as a universal; the claim can be made on behalf of an international system or by a particular religion or culture.<sup>149</sup> International law cannot be made to defer to specific or particular conditions and at the same time retain its integrity as an international, or multi-national legal system.<sup>150</sup>

The unique, on the other hand, is often as simply a process of contributing one's own identity or tradition<sup>151</sup> If one universal system claims dissent from another universal paradigm then, in effect, it is clashing or at least competing with the alternative<sup>152</sup> In

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146 Al Fadl, p. 45.

147 Ibid.,

148 Mayer, p. 24.

149 Al Fadl, p. 51.

150 Ibid p. 44.

151 Ibid, p. 46.

152 Al Fadl, p. 52.

contrast, the universal represents, a meeting of different identities, cultures or traditions which bind to universal values.<sup>153</sup>

When we consider the dynamics of international law and the paradigms of cultural and moral uniqueness or particularity, we ought to think about two distinct aspects of this relationship or dynamic.<sup>154</sup> On the one hand, uniqueness owns the right to contribute to the formulation of international obligations, as part of the universality.<sup>155</sup> As well as, the uniqueness of religious viewss, would benefit to be included and contribute to the paradigm of universality. For that, both perspectives need to be accountable and accessible to the "other". AL Fadl contributes with his idea that 'there is no reason that the religious should abandon international law, and there is no reason that international law should become the exclusive realm of the secular'.<sup>156</sup>

#### ***3.1.4. Common grounds***

At this point it is important to highlight the importance of the common grounds shared by the international Human Rights law and the Islamic tradition. Al Fadl notes that international law 'makes intrusive demands upon the moral space in which human beings function', being this moral space contested by religions.<sup>157</sup> The question is whether those grounds ought to be contested or shared. An Naim vigorously defend that religion and Human Rights need each other. 'Religion needs human rights to protect the dignity and rights of religious adherents within any political system, but human rights also ensure freedom of belief and practice within each religion itself and thus ensure the evolution and continuing relevance of each religion to its own membership'.<sup>158</sup>

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153 An Naim, 2008, p. 62.

154 Al Fad p. 43.

155 Ibid, p. 46.

156 Ibid, p. 48.

157 Ibid, p. 43.

158 An Naim, 2008, p. 65.

Bielefeldt adds on the idea of shared spaces with the premise that human rights are the product of the modern era and its precursors can be found in premodern times as well. The idea of human dignity has prominent roots in early religious books, as soon as a primitive notion of the rule of law became appearing in various medieval binding documents: 'Comparable ideas have been found in non western cultures, as well as in various religious and cultures accross the continents'.<sup>159</sup>

### ***3.1.5. Human Agency and Civil Society Organizations***

An Naim and Al Fadl agree in highlighting the relevance of human agency as the motor in many cases to religious formulation as well as undoubtedly human rights defence and development.<sup>160</sup> On the topic, Al Fadl recognizes that despite widely recognised divine core of Islam, much of what defines it is the result of 'cumulative efforts of various interpretive communities' that together generated Islamicity in the first place: 'Human agency, in other words, was integral to the revelation, interpretation, and practice of Islam from its beginning in the seventh century'.<sup>161</sup> Religious traditions, are the product of cumulative interpretive communities and the pivotal role of the human agent in the formulation of Islamic law.<sup>162</sup>

On the secular sphere, human agency is equally important in the impact of cultural, structural, and environmental factors in the processes of social change. Similarly, An Naim, does not overlook diverse motivations, being religious, ideological, and other, that people have in creating change, acting or in refraining from action.<sup>163</sup> An Naim highlights in his texts which kind of space is necessary for this change to happen and under which conditions. Some actors and potential drivers of change will tend to diminish the social and political “space” for the agency of some and disregard the outcome of others. Many actors will seriously consider the conditions to take steps towards change, only conditions

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159 Bielefeldt, 1995, p. 590.

160 An Naim, 2008, p. 71.

161 Ibid, p. 73.

162 Al Fadl , p. 49.

163 An Naim, 2008, p. 64.

will allow them to believe in the possibility of providing change.<sup>164</sup> He suggests in his texts, that the space must be consensual, and legitimate for religious peoples, and the conditions must be universally agreed among the actors. The safe and secure space is important whilst dealing with religious minorities in Muslim-majority countries, whose spaces are often reduced or under strict control. In this regard, Ghanea has hopes on religious minorities as Muslim capital of mobilisation being the drivers of change to create an impact in their rights. Despite so far this “capital” has been manipulated to the detriment of religious minorities, she vows for replicate the efforts made by women movements in the Middle East in order to encourage respect for their rights.<sup>165</sup>

On this note, it is important to highlight the force of civil society organisations to convey human agency towards a protective space for religious minorities and the achievement of the common goals between religious and human right communities.

### **3. 2. Islamic approaches to Human Rights by Bieldefeldt.**

Among Muslim theologians and scholars there are multiple approaches and ideas on how to engage in dialogue between the Human Rights and the Islamic tradition. Former Rapporteur on freedom of religion and belief Bieldefeldt, has studied the different approaches that Islamic actors, leaders and scholars adopt when faced to the discrepancies formulated above. On the one hand one can find those Muslim scholars who are apologists for the Islamic tradition, and will only use in their arguments, traditional, conservative opinions. Moreover, some other authors despite conceding some reflection to human rights in Islam, argue that is not worth it to engage into such a discourse. Often they use examples of extreme conservative Islamic states, referring to legal documents of countries such as Saudi Arabia, and Sudan. Those countries in Ghanea's opinion are not representative of the true spirit of Islam, while being unrepresentative authoritarian regimes. Lastly, there is a group of scholars who have a true comparative spirit and believe in exploring the diversity of Islamic jurisprudence while attempting to

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164 An Naim, 2008, p. 65.

165 Ghanea, 2004, p. 722.

comprehend the concept of human rights. The latter are, in the Islamic tradition a very small minority compared to the total number of Islamic jurists.<sup>166</sup>

### ***3.2.1. Conservative approach***

Conservative authors promote a rejectionist approach towards Human Rights. On the first place they do not recognise its legitimacy, as the main source of their normative legal system is Sharia law. Secondly, the authority and legitimacy of the creation of the international Human Rights system is contested in the name of cultural relativism, and the fact that it does not represent, the overall universality of population. Often, alleged ‘Western arrogance’ is presented as an obstacle to cross-cultural discourse. Saudi Arabia opposition to the UDHR denotes the concept of Human Rights being perceived as alien and detrimental to Islamic tradition. In addition, when the General Assembly of the United Nations had to decide on the UDHR in 1948, Saudi Arabia strongly objected to religious liberty, concretely Art 18, and the right to change one’s religion. Lastly, 7 more states joined them and abstained from the vote, however nobody voted against. It shows the reluctance from several conservative Islamic governments to endorse the emancipatory concept of freedom of religion, in detriment of religious minorities.

An Naim holds that Islam is a faith that embraces all political, social, economic as well as religious aspects and believers, however many Islamists defend that Muslim believers ‘have a religious “duty” to establish an Islamic state’ as a state that enforces Sharia law, and therefore Muslim approach to Human Rights shall be submitted to Sharia interpretation.<sup>167</sup> Perfect examples of the conservative approach on Human Rights and Islamic tradition are the Universal Islamic Declaration of Human Rights, by the IHRC and the Cairo Declaration, by the OIC. Both stand in direct contradiction with international Human Rights standards when it comes to controversial topics, as gender equality, corporal punishment or freedom of religion.

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166 Ghanea, 2004, p.716.

167 An Naim, 2008, p. 249.

Regarding religious minorities, conservative authors would make reference to the Quranic verse of prohibition of coercion, to defend religious freedoms. Thus, those authors fail to address crucial issues; the prohibition of conversion from Islam, apostasy, proselytism or non-Muslim minorities. This view still presents a big obstacle to the full recognition of religious liberties in most of contemporary Muslim majority countries.

### ***3.2.2. Pragmatic - reconciliation approach***

The idea of Bielefeldt of the pragmatic reconciliation approach is that 'some reconciliation between the traditional Sharia and the modern idea of Human Rights conceivably could be accomplished in accordance with this well established Islamic pragmatism.' It identifies that there is some common ground between Human Rights and Islam. Thus recognising the Islamic sources as legitimate, authors under this approach see Human Rights in accordance with the principles and values of Islam, and therefore there is some room for assimilation, which means redefining Human Rights in an exclusively Islamic framework.

Authors under this approach harmonize human rights with the traditional sharia, without addressing the possible tensions and conflicts between the two. They seek to run away of the ideology of Islam as barbaric. Authors like Ghanea and Bielefeldt argue that a majority of Muslims disagree with this conception of barbarism. A legal document example will be the Arab Charter of Human Rights limiting the absolute conservative traditions in absolute disagreement with Human Right and Islam. Positively many countries and theologians have reconciliated the absolute conservative traditions of Islam and have increasingly started constitutionalism processes and separating their legal systems from the strict Islamic interpretation regulating topics as polygamy, child marriage, death penalty, women rights.

### ***3.2.3. Reformist approach***

An Naim is a stark defender of the reformist approach. He strongly promotes the idea that traditional understanding of Sharia is open to “transformative re-interpretation”. Believers must look at the Sharia more as an ethical guide, nor a detailed legal code, he defends. Authors of this approach propose a critical evaluation of the traditional Islamic law. Bielefeldt insists that 'Sharia law does not conform a comprehensive legal system, but consists mainly in general religious principles, such as the pillars, legal reasoning, and appears to be a historic process that needs to be submitted to critical evaluation.’<sup>168</sup>

Reformist authors defend 'that medievals had mixed religion with daily life. Incidental worldly matters were put on the same level with the original essential and immortal provisions of religion.’<sup>169</sup> On the same note, An Naim distinguishes between the Suras revealed in the Mecca, as the eternal theological message and the Suras revealed in the Medinan period, those who described particular needs of the first Muslim communities and argues that the later cannot immediately be applied to modern times.

### **3.3. Proposed solutions by the authors**

As illustrated above many authors agree on the need to leave behind the contradictions between universal Human Rights on the one side and the cultural sensitivity on the other and walk towards the shared common spaces. Advancements in the approach to the universality of Human Rights and the uniqueness of religion, would favour relations between the universalists and Muslim particularists. Action addressed to tackle those areas which are conflictive will ultimately benefit the achievement of a society in concordance with the principles of human dignity, peaceful coexistence and solidarity among peoples. In modern circumstances a normative consensus across cultural and religious boundaries is imperative to promote international peace and cooperation<sup>170</sup> The

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168 Bielefeldt, 1995, p. 609.

169 Ibid, p. 610.

170 Ibid, p 606

systematic and gross Human Rights violations that religious minorities face cannot be eliminated without addressing the religious rationale behind them.<sup>171</sup>

Al Fadl together with the other authors argue that in fact both paradigms have no choice 'but to be concerned with what the other has to offer'.<sup>172</sup> An Naim proposes to build bridges to move the internal transformation of both discourses and it is necessary to promote good relationships and also assists in transformation in favor of the other two.<sup>173</sup> An Naim and Al Fadl propose as a solution to involve Islamic communities and the Human Rights community into a dialogue, debate and research. Nevertheless there is the concern that the assumed universality of Human rights in Islamic societies 'will not succeed if based on preconceived Western notions of the concept or understood locally as an impositions'. The dialogue needs to fight hypocrisy and double standards; as an example it cannot omit, the Human Rights violations of women or minorities' rights.<sup>174</sup>

The moral space where both Human Rights and religious actors operate needs to be respected, they must develop the dialogue with restraint and with sensitivity, respect and attention to the other's moral space<sup>175</sup> Al Fadl adds that 'the discourse between the two must be open, accessible, and responsive'.<sup>176</sup> Critics in the conversation needs to be open to both sides intervention and need to be made in good faith.<sup>177</sup> 'The lack of integrity in discourse strongly contributes to de-legitimizing and the breaking down of the authoritativeness of the participants, and ultimately, ending the vitality of the discourse'.<sup>178</sup> Any sort of imposition as the prerequisite to any progress would lead the dialogue between religious actors and human rights to a premature end.<sup>179</sup> Al Fadl suggests that during the dialogue, international law could incorporate determinations that

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171 An Naim, 2008, p. 64.

172 Ibid, p. 43.

173 An Naim, 2005, p. 56.

174 Al Fadl, p. 54.

175 Ibid, p. 43.

176 Ibid, p. 53.

177 Ibid, p. 51.

178 Ibid, p. 53.

179 Ghanea, 2004, p. 722.

are based on God's sovereignty or religious views concerning that it is to be binding on all human beings, including in this way the communities that perceived themselves as not included on the formulation of Human Rights<sup>180</sup> Such an approach would increase the trust and the feeling of proximity and raise the empowerment feeling towards those unheard communities.

An Naim is strong in his position that 'the internal transformation of religions is critical not just for the flourishing of human rights and secular government but also for the survival of religious traditions and the legitimacy of religious experience.'<sup>181</sup>

Bielefeldt mentions Talbi's opinion that commitment to human rights requires political responsibility, in solidarity with people of different religious beliefs and philosophical convictions. Authors claim for an international commitment to bring forwards this dialogue.<sup>182</sup> The international effort and consensus shall bring an international and cross-cultural 'overlapping consensus'.<sup>183</sup>

The proposed international debate should touch upon implementing the existing standards and engaging in an open discourse about their interpretation and improvement, in the context of different cultural perspectives and changing political needs.<sup>184</sup> On the topic, and reacting to the seriousness of the situation, and historical discrimination against religious minorities, one would argue that religious minorities in Muslim-majority countries 'deserve more support from international human rights movements.'<sup>185</sup> Al Fadl considers international law 'vulnerable to power dynamics, class interests, patriarchy, and tooother limitations' that influence, and weaken the process. He adds that in order to create

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180 Al Fadl, p. 48.

181 An Naim, 2005, p. 68.

182 Bielefeldt 1995 p. 616.

183 Ibid.,

184 Ibid.,

185 Ghanea, 2004, p. 714.

a meaningful impact at the international level, the universal must incorporate the unique and think very closely how to include those who are typically not represented.<sup>186</sup>

The dilemma is how to encourage credible agents of internal religious change when they could face the critique of pursuing alien's interests, and serve other cultures and powers.<sup>187</sup> On the other hand, Talbi highlights the importance that Muslim theologians must denounce all forms of discrimination as crimes strictly condemned in the Quran, as well as to speak up against the human rights violations in the name of religion. An Naim highlights the importance of religious perspectives being on the table. Due to the importance that believers otorge to religious sources and cultural relativism, if legitimate actors are excluded from the conversation, religious adherents are less prone to accept the universality of Human rights. Still, religions are unlikely to play a positive role until each undergoes an internal transformation.<sup>188</sup> Religious transformation in Islam requires a theological argument for change and a political and social context within which that change may be realized in practice.<sup>189</sup> Bielefeldt sustains that 'traditions evolve, in the light of new experiences and needs, and obstacles might be overturned both by deliberate efforts on the part of intellectual reformers as well as through the pragmatic wisdom and humanitarianism of the people'.<sup>190</sup>

An Naim is positive on the greater opportunities for disagreement, as well as consensus that exist now. Positively, there are more 'Muslims, women included, are educated enough to assess the Qur'an, Sunna, and Islamic history for themselves and to communicate with others around the world about theological and political issues of common concern'.<sup>191</sup>

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186 Al Fadl, p. 47.

187 An Naim, 2008, p. 66.

188 Ibid, p. 61.

189 Ibid p. 71.

190 Bielefeldt, 1995, p. 615.

191 An Naim, 2005, p. 72.

Human Rights constitute political and legal standard internationally established, but after ratification those standards require states participation, implementation, through national regional policies and pieces of legislation, including the setting up of monitoring mechanisms in order to make effective the outcome of such discussions.<sup>192</sup> Human Rights monitoring in this regard, shall not be confused with the intentions to introduce westernized system. Bielefeldt defends the above as a precondition to any serious cross-cultural dialogue on Human Rights. The task of monitoring is ideally taken by critical actors on the ground, here is where the role of the civil society becomes essential. All the authors agree on the fact that religious minorities have so much to learn from the mobilization of women rights in Muslim-majority countries. They operate within Muslim terminology and framework towards their emancipation. Emancipatory writings from Muslim scholars can amount to a relevant level of interest and spark legitimacy, when attempting to articulate specific demands by women in Muslim societies.

Religious minority rights, needs to follow the path established by the women movements, and emphasising the positive duty of states to protect, promote and fulfil the international obligations to which the State has adhered. Raise awareness on the fact that repressing religious minorities in order to protect them from the majority, is indeed, not acceptable under international Human Rights standards. The state's responsibility extends to the need to provide remedies and to outlaw policies and practices that unlawfully violate religious minorities' rights. If the state fails to fulfil its responsibilities it concurs in continuous violations.<sup>193</sup> There are some differences highlighted by Ghanea on the comparison between the women's movements and the religious minorities' movement. The first one is on the number of women affected by discrimination being roughly half of the population, while religious minorities often do not pass the 10% of the majority population. Building upon the aforementioned topic of legitimacy, women are often followers of the mainstream religion; they are therefore perceived as insiders to the religion in contraposition with religious minorities who are seen as outsiders, even if they have historically inhabited the region and are versed on Muslim tradition. Despite that,

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192 Bielefeldt, 1995, p. 616.

193 Ghanea, 2004, p.728.

she remains positive and calls for a more 'emancipatory interpretation of Islamic traditions and laws with regard to religious minorities' that would habilitate the same pathways towards religious minority protection.<sup>194</sup> Consequently, the second lesson to learn from the women's movement would be international cooperation and solidarity. By establishing connections with religious minorities located in other Muslim –majority countries and compare their status with the aim to speak out those differences and raise awareness. In the case of religious minorities the goal would not only be to demonstrate this diversity internally to the discriminated group, but also to demonstrate the diversity to the community at large.<sup>195</sup>

'The success or failure of any initiative will depend on the development and wide comprehension of clear principles, on consistent practice in accordance with them, and on a well-informed and active civil society intent on holding government officials accountable for their acts.'<sup>196</sup> In addition, strong solidarity among the groups at the local, national or international level will increase the impact of the change across borders. Al Fadl stresses the need of a well-informed and active civil society intent on holding its government officials accountable for their acts.<sup>197</sup> This requires promotional activities that go beyond policies of non-discrimination, such as positive outreach and promotional measures on behalf of minorities. In line with the SRFoRB recommendations, states need to 'critically address the root causes of societal discrimination'. State policies should aim to tackle the structurally rooted prejudices and stereotypes against members of religious minorities. States efforts should be addressed to promote a general environment of tolerance and acceptance.'<sup>198</sup> An example could be informational activities about different religious or beliefs, even including them in the school curriculum, and facilitating interreligious dialogue.

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194 Ibid.,

195 Ghanea, 2005, p. 725.

196 An Naim, 2005, p. 79.

197 Ibid.

198 HRC, A/HRC/22/51, 2012, para 8.

In the light of the current events and gross human rights violations based on religious motives, there is an urgency to harmonize Human Rights and the religious debate together with CSO's work aided by the international community. It is crucial to do both simultaneously, implementing existing standards and engaging in an open discourse about their interpretation and improvement in the context of different cultural perspectives and changing political needs. Human Rights advocates, CSO and relevant stakeholders have the role to speak in behalf of those who are silenced.

Positively, the synergies proposed by the authors are already developing in a variety of Islamic societies. Now what is needed are 'ways of facilitating these processes and overcoming the limitations and difficulties that such developments are bound to face'.<sup>199</sup> Bielefeldt, points out some of the constitutionalist reforms made in many Muslim-majority countries, already criminalising or establishing some changes in their regulations. Progressively, the legal status of women, reforms and restricting practices as child marriage, polygamy and the husband's right to repudiate his wife unilaterally have been improved. However, Bielefeldt's opinion with regards to religious liberty, is that mainstream Islam clearly accepts religious pluralism but still seems reluctant to endorse unrestricted rights to interreligious marriage as well as allowing conversion from Islam.

Through the works of relevant authors, Chapter III has gone through the elements of contradiction between religion and Human Rights, focusing on religious minorities, has come up with consensuated solutions. It is important to engage in a dialogue that accommodates both common moral spaces, and involves the widely recognized legitimate actors. Religious minorities shall take advantage by the path opened by the women's movement in the Muslim world and indeed benefit from the work of CSO at the national, regional and international level. The movement should claim involvement and support from the international community. In order to boost solidarity on the ground, and influence the anti-discrimination policies, CSO may contribute with education

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199 An Naim, 2008, p. 75.

programmes, creating space for debate and prompt research. The role of the CSO in the Muslim world would be furthered in the next chapter.

#### **4. Chapter IV: Islamic Civil Society Organisation discourse on Religious Minorities rights**

The previous chapter went over the Muslim approaches on Human Rights universality, and the uniqueness of the Islam, to later on explore the common grounds between Human Rights and Islamic approaches and its possible ways forwards. This paper aims to identify how CSO's can contribute to the development of the protection of religious minorities in the Muslim world.

The UDHR recognises the rights of 'all people, everywhere in the world, to speak out, to organise, and to take action.' These rights and freedoms constitute the "civic space"- freedom of association, freedom of assembly, and freedom of expression- and allow a space for criticism, debate and active participation in the relationship between the society needs and the state's policies. This chapter will go over the concept and definition of civil society, highlight CSO's role and work at the international level.

To then, investigate the concept of civil society in the Islamic tradition, its development and the elements that characterize Islamic civil society. To better comprehend the relationship between democracy and civil society, and of the place of religion in the modern world<sup>200</sup> The SRFoRB together with religious leaders, CSO representatives and relevant stakeholders in the Marrackesh Declaraton, stated that religious communities' leaders can play an important role in society working together with CSO to achieve 'common goals.'

Finally, the chapter will explore the different ways forwards in the field of religious minorities. Some organisations have also done pioneering work concerning the development of women rights standards and that could be easily reproduced in the field of religious minorities in compliance with international law.

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200 C. Kukathas : *Islam, Democracy and Civil Society*. Journal des Economistes et des Etudes Humaines 13 (2). 2003, p.1.

#### **4.1. Concept and definition of civil society in the international Human Rights system.**

Many authors agree on the western roots of the concept of "civil society". The concept appeared in the late 1980s and 1990s in the context of the fall of the Berlin Wall, the end of the totalitarianism in Eastern Europe and the Soviet Union. Following Kelsay, civil society emerged due to the development of diverse socio-economic factors, as the divide among classes, professions, religions and other interest groups. Together with the advancement of capitalism, industrialization, increase of population, and the rise of nation-state, civil society was influenced by the progress on citizenship, political parties, trade unions, professional associations, clubs, and community organizations.<sup>201</sup> In this context religious communities and faith-based organisations came up as strong mediating institutions between the duty bearers and right holders.

Saad, Kelsay, Kukathas, and Madjid, agree that one of the basic elements of civil society is freedom, democracy and the connection to citizenship.<sup>202</sup> An important trait of freedom for CSO is the freedom all human beings to associate, to assemble peacefully, to express themselves and to speak up against injustice in a space without restrictions. Civil society needs a space where these individual freedoms are ensured under a legal system, where both the government and the governed are duty-bound.<sup>203</sup> Democracy is about equality and fair participation; civil society is the bridge that ensures that rules of the game are respected. The concept of citizenship is the guarantee that people can fully and equally participate in the political life of a modern state.<sup>204</sup> Saad Eddin lists 'The

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201 J. Kelsay; 'Civil society and government in Islam.' H. Hashmi, Sohail : *Islamic Political Ethics. Civil Society, Pluralism, and Conflict*. Princeton: Princeton University Press, Ethikon Series in Comparative Ethics, 2009 p. 3

202 Kukathas, p. 8.

203 Nurcholish Madjid 'Potential Islamic Doctrinal Resources for the Establishment and Appreciation of the Modern Concept of Civil Society'; Nakamura, M.; Bajunid, S.S.; Farouk, O.: *Islam and Civil Society in Southeast Asia*. Singapore: Institute of Southeast Asian Studies (ISEAS). Social Issues in Southeast Asia 2001.p 156.

204 Kelsay, p. 3

following attributes for civil society: tolerance, respect for and protection of human rights, transparency, a check on state power, rule of law, accountability, and promotion of citizenship and practices of democracy'.<sup>205</sup>

The definition by CIVICUS<sup>206</sup> has been widely accepted and used, and describes civil society as 'the arena outside the family, the state, and the market, which is created by individual and collective actions, organizations, and institutions to advance shared interests.' Critics are brought to the definition of civil society as it does not acquaintance different cultural values and attributes among diverse societies. Other cultural traditions have some 'distinct forms of social organization, cultural and political traditions'.<sup>207</sup>

A civil society organisation is then 'a complex association of individuals, who associate with one another for friendship, or to pursue common goals, or to exchange goods and ideas, joined together in relations shaped by personal interest, economic interdependence, and legal and customary rules.'<sup>208</sup> Those include a wide range of organisations as; non-governmental organisation (NGOs), faith-based organizations, and community-based organizations, who's often are registered entities with an organized structure and a mission. Online groups and social media communities are also considered civil society movements, despite being organized do not necessarily have physical, legal, or financial structures. In addition to social movements of collective action, labor organizations and social entrepreneurs<sup>209</sup>

For the purpose of this paper we will focus on NGOs working on Human Rights, and ultimately religious minorities rights. CSO's main tasks are to provide information, definition and 'to mobilise society. This tasks involve: to collect and process the

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205 I. Saad Eddin, *The Troubled Triangle: Populism, Islam and Civil Society in the Arab World*. International political science review. Vol 19 (4). Pp. 373-385, 1998, p. 374.

206 CIVICUS is a global alliance of civil society organisations and activists dedicated to strengthening citizen action and civil society throughout the world. See more: <https://www.civicus.org/index.php/who-we-are/about-civicus>

207 C. Kojo VanDyck,; *Concept and Definition of Civil Society Sustainability* Center for strategic and international studies. 30<sup>th</sup> June 2017. Accessed 06/07/2018. Available: <https://www.csis.org/analysis/concept-and-definition-civil-society-sustainability>

208 Kukathas, p. 3.

209 Kojo VanDyck, 30<sup>th</sup> June 2017.

information to be shared with either the governments, international organisations or other stakeholders. While working on the ground CSO and advantageous position to access to information which would not otherwise be available for these actors. Another objective aside of the provision of information and definition is to use so to mobilise the population and other stakeholders as politicians, media or representatives of Human Rights institutions. CSO have privileged first hand on the pressing needs and issues of the community and are crucial at agenda setting, norm making and policy development at the national, regional and international level. They can participate in international complaints mechanisms as the Universal Periodic Review (UPR), and in other treaty bodies' mechanisms, giving them "the opportunity to demand a structured dialogue with the government and specially to raise awareness on grave human rights violations in the stakeholder report."<sup>210</sup> Their work is essential to develop new human rights norms and to contribute to policy developments in their field of work. Once the new policies are passed CSO are vital in accompanying the implementation of the standards, implementation is a big part of international human rights law. CSO contribute extensively to path the implementation process by conducting stakeholders' consultation as well as providing policy recommendations on the shortfalls. Lastly, CSO play a large role through advocacy, assisting to and representing the victims of human rights violations, enhancing human rights awareness through education and capacity building activities or 'carrying out operational activities together with or on behalf of international institutions'.<sup>211</sup>

Human rights NGOs work is included under Art 71 of the UN Charter, it recognises the importance for the international Human Rights system of partnering with civil society in the achievement of goals. Art 71 also provides for CSO to contribute through consultation mechanisms.<sup>212</sup> The UN sincerely observes the spread of CSO during the second half of

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210 United Nations, *Section on Civil Society*. Accessed on 06/07/2018. Available: <http://www.un.org/en/sections/resources-different-audiences/civil-society/index.html>

211 M. Mayrhofer, C. Chavez, V. Hegde, M. Killander, J. Larik, B. Nkrumah, E. Salmón, K. Yigen; *International Human Rights Protection: Institutions and Instruments*. Package No. 2 - Deliverable No. 2.1. 2014, p. 173.

212 United Nations, *Section on Civil Society*. Accessed on 06/07/2018. Available: <http://www.un.org/en/sections/resources-different-audiences/civil-society/index.html>  
<http://www.un.org/en/sections/resources-different-audiences/civil-society/index.html>

the 20th century and highlights their involvement in performing decisive roles and functions and being active in relevant thematic areas.<sup>213</sup>

Despite the relevant work done by CSOs all over the globe on Human Rights issues, the working space of CSO is shrinking due to state policies, that aim to restrict the rights and freedoms that enable the enjoyment of a vivid civil society. National laws restricting freedom of assembly or association, attacks on the freedom of speech or the independence of the media, hinders people's participation in political life. That is a huge risk to democratic plurality and the rule of law. Foremost, it jeopardizes the work of CSO and threatens the essence of Human Rights and the global commitment. The shrinking space of CSO's work particularly affects marginalised communities and poses them a compromised situation. Attacks on CSO working on religious minorities are common in the Muslim world.

## **4.2. Civil society in the Muslim world**

Civil society has become an important issue in Islamic politics in recent years and a central topic of discourse for scholars, policy makers, and other observers. Similar to Biefeldet's approaches to Human rights and Islam mention above, Hanafi and Kazemi discuss different approaches to the concept of CSO and Islam. Some thinkers reject the idea of civil society, as it is alien to Islam, arguing that it is a Western, secular, anti-religious concept. Other approaches argue for the possibility of 'developing the ingredients of classical Islam to reflect modern social needs'. Additionally, the reformist or modernist alternative advocates for a reform in the understanding of Islamic principles and adapt to the modern notion of civil society, the concept is eminently applicable to Islamic politics.<sup>214</sup>

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213 United Nations, *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI. Art 71

214 Farhad Kazemi 'Perspectives on Islam and Civil Society' in H. Hashmi, Sohail : *Islamic Political Ethics. Civil Society, Pluralism, and Conflict*. Princeton: Princeton University Press, Ethikon Series in Comparative Ethics, 2009 p. 39.

#### 4.2.1. Islamic origins of civil society

Authors share discrepancies on whether the concept of the civil society in the Muslim world, is purely inherited from the West, the fact that it is linked to the initial movement toward democratization in the Muslim world, is widely accepted. Madjid, Kelsay inform that the civil society concept might have some predecessors in pre- modern Islamic history.

Kelsay identifies associated institutions that contribute to the Islamic notion of citizenship; the Mosque (*masjid*) place for communal gathering debate and discussions as well as educational institutions as the school (*madrassa*) and the university (*jamia*). This institutions are strongly rooted to the Islamic precepts and are very influential in the development of civil society. The first element of civil society agreed by various authors is the *ulama*, learned men of religion who acted as counsellors and advisers to rulers and provided a primitive system of checks and balances. The *ulama* were considered independent the protectors of liberty, against authoritarianism and bigotry, they were expected to be critical of government<sup>215</sup>. The influence of the *ulama*, provided a space, politically relevant but not quite “governmental,” that limited the power of government officials. This, for Kelsay and Madjid, constitutes 'the closest analogy in classical Islam to “civil society.”’<sup>216</sup>

Muslim pre-modern society was ordered around a political authority tasked to protect the peace under the empire while trying to expand the Islamic state through conquest. The public space was quickly shared by *ulama* merchants, guilds, Sufi orders, and sects (millets) <sup>217</sup> Hanafi specifies that Islamic notion of the *umma* is not just composed exclusively of Muslims, but an *umma* composed of the diverse groups living under Muslim rule. *Dhimmi*s are part of the *umma* while being bound by a treaty of non-belligerence and mutual respect (The Medina Pact). <sup>218</sup> The pact presented a moral commitment made to protect and defend all the members of the *umma*, including *dhimmi*

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215 Kelsay p.29.

216 Ibid, p.10 and Madjid.p 157.

217 Saad Eddin, p. 375.

218 Hanafi p. 75.

against foreign aggression as well as all forms of injustices, and promoted the community to live as allies and brothers. They were entitled like all other members of the community to all the rights and privileges of the community.<sup>219</sup> In the actuality, some liberal Islamists authors agree on extending the conception of citizenship, at least some religious minorities.

On the role of the head of state the *caliph*, as “commander of the faithful,” had the responsibility to protect the people and defend and if possible expand the borders of the Islamic state. The Muslim ruler is the peace keeper of the empire as well as in charge of the taxation and to be the fair and just administrator of ‘worldly affairs’. The *caliph* had governmental institutions to carry out those duties; the army, the courts, and the bureaucracy.<sup>220</sup> The *ulama* in their capacity of leaders, elders and notable religious men, used their influence to reduce the absolutist nature of the pre-modern Islamic states. They were supposed to be the voices of the unheard, the general population and their respective constituencies in particular, they also had a mediator’s role that legitimated the ruler's decisions.<sup>221</sup>

‘The abolition of the Ottoman caliphate created something of a crisis for Muslim political thought’.<sup>222</sup> The connection between politics and religion is closely intertwined in Muslim culture, some countries acquired a more westernised approach to the new independent winds, and others spread processes of Islamisation. Differing from the West's socio-economic developments, the Muslim processes of capitalization and industrialization lagged far behind. Therefore, the factors that were of relevance in the apparition of CSO in the West experienced a backslide and did not grow progressively nor evenly.<sup>223</sup>

Progressively, the Muslim world noticed a series of societal changes linked to the initial wave of democratization. Those events favoured the articulation of civil society and the development of the notion of nation-state. The development was aided by ‘rapid urbanization; dramatic increases in literacy, especially among females; regular and major

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219 Ibid p. 63

220 Ibid.

221 Saad Eddin, p.376.

222 Kelsay p.12.

223 Ibid.

movement of population within the region and abroad; increased use of different forms of electronic communication; and other similar factors'.<sup>224</sup> The scenario created in some parts of the Muslim world after the new wave of democratisation demanded the creation of a system of check and balances that would uphold the democratic values and rule of law, ahead of a highly increasing population. Hence, civil society appeared to be the vehicle of people's expressions and wishes of freedom in the omnipresent arms of the state.<sup>225</sup>

In the actuality, aided by internal, regional, and international factors, civil society in the Muslim world has reinvigorated itself in the last years. In the past decades, the increase of armed conflicts in the region had weakened the capacity of the states to manage the struggles and has pointed out states' inabilities to manage its resources and protect its people. Kazemi claims that the Islamic world views the need of state order in order to guarantee a vibrant civil society and permit equal participation in the political life.<sup>226</sup> For the author, it is the state's responsibility to provide protection, maintain legal order, and safeguard the rights of the individuals. 'A believing Muslim citizen is also expected to be an activist for the faith and involved in civic matters. Mutual need and dependency of state and society is eminently recognized in Islam'.<sup>227</sup>

#### ***4.2.2. Author's views on the concept of Civil Society Organisations***

Kazemi defines with an Islamic view the civil society concept as a relationship among individuals that freely chose to associate in institutions, as members of a society (citizens). The author recognises the family, groups, tribes, guilds, unions, clubs, associations, parties as institutions that moderate between the individual and the state and increases societal participation. These institutions permit individuals to express their attitudes, views, and orientations. They allow for participation in civil life.<sup>228</sup>

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224 Kazemi p.38.

225 Ibid.,

226 Ibid.,

227 Kazemi p. 41.

228 Ibid p. 40.

The concept of civil society, shared under Islamic doctrine similar concepts and approaches to citizenship, institutions, and recognised participation of society in public life. In addition, there was the legitimacy to raise people's concerns to the rulers as well as certain space for criticism toward state practices. The ruler ought recognition to organised groups of the society who had claims. For that purpose, Islamic tradition and practice recognised three characteristics (*al-khuruġ*, *al-tawil*, and *al-shawka*.) that a legitimate activist groups. The first, *al-khuruġ*, Arabic for "exiting" or "secession," indicated the will of the group to claim certain differences with the established regime. The second characteristic, *al-tawil*, (interpretation) indicates that the activists provided public justification for their claims. It is implicit that this justification needs to meet the recognised Islamic sources. In this matter the activist group legitimised their action by demonstrating their adherence to the Muslim faith. Lastly, the strength (*al-shawka*) showed the gross of followers that the group had. The group had to prove that it has a certain size that it is representative of a significant part of the population<sup>229</sup> Under Islamic doctrine, while responding to an activist group's claims, that meets all the above criteria, the ruler is not allowed to deal with its members as criminals. Furthermore, recognised activist Muslim groups, must be treated in ways that will foster reconciliation.<sup>230</sup>

Under the Islamic doctrine the individual holds the responsibility for himself and the others, religious precepts promote mutual action for a common cause, often linked to missionary activities but also relating to charitable actions. Individuals, the family, the state, and nongovernmental institutions are responsible for the good management of civil society and the promotion of its values a reminder for the common good and public welfare.<sup>231</sup>

The notion of altruism and helping the less fortunate is, as in many religions, embedded in the Islamic doctrine. In Islamic society, solidarity from the rich to the poor, not only through *zakaat*, is one of the pillars of the Islam. Social justice is not confined to state action, it gives place to a multitude of NGOS, from mosques, to Sufi orders and

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229 Kelsay, p. 26.

230 Ibid.,

231 Hanafi. p. 68.

charitable organizations. 'They perform social welfare tasks in the name of Islam while the state remains oblivious to its population's problems'.<sup>232</sup> These values are strongly enshrined in the Muslim religious doctrine, hence the shared responsibility among individuals, families, CSO and state. Often some these values if not upheld by civil society, 'they can hardly be expected to be enforced by the state'.<sup>233</sup> In this regard, Mosques play extremely prominent social roles, and religious leaders become crucial actors and partners in the promotion of values.

#### ***4.2.3. Ways forward for religious minorities civil society organisations***

Several authors agree that due to the lack of democracy, in practice, civil society is not one uniform type in the Muslim world. Michael Walzer has stated, 'only a democratic state can create a democratic civil society; only a democratic civil society can sustain a democratic state'.<sup>234</sup> In addition, consulted Muslim authors' views affirm that 'there is nothing intrinsically Islamic that contradicts the codes of civil society or democratic principles'.<sup>235</sup> 'Islam's emphasis on the complementarity of religion and politics creates a number of possibilities for the relationship between the religious community and state authorities; or more generally, between civil society and government'.<sup>236</sup>

Increased interest from Muslim-Majority states to accommodate the work of CSO, due to international pressure aids the path towards democratization. The keenness of the states to get closer to the CSO concede an important bargain of power to civil society organizations and moving effect on several Islamic activist groups. As an example, in Jordan, Kuwait, Yemen Lebanon, Islamists groups 'have accepted the principle of political pluralism, participating alongside other secular forces in national elections. Islamists are currently represented in those countries' parliaments. In Lebanon, Yemen, and Jordan, women were elected for the first time, and the Islamists did not march out in

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232 Ibid., p. 67.

233 Ibid.,

234 M, Walzer; *Toward a Global Civil Society*. New York; Oxford: Berghahn Books, 2009.p. 57.

235 Kukathas, p. 14.

236 Ibid.,

protest.<sup>237</sup> Actions from the state to aim to enhance its control over civil society's work, are continuously being challenged in the majority of the Islamic world. The progressive and steady growth of a more vibrant civil society has balancing effect to state domination as it is indeed one of most hopeful and positive developments in the region.<sup>238</sup>

At the international sphere, Muslim CSO become a strong voice on Human Rights issues in the region and aiming to be influential. CSO were instrumental in criticising and pushing forward the revised version of the Arab Charter on Human Rights, in accordance with universally established international human rights standards. Although Arab civil society criticised the Charter as falling short of international human rights standards, the charter it does recognise key civil, political, economic, social, and cultural rights. 'Efforts have also been ongoing since 2013 to establish a regional human rights court for Arab League member states, operating within the framework of the Charter.'<sup>239</sup>

Following the CSO's functions mentioned above, Human Rights NGOs are additionally consulted in informal ways; in October 2009, the Arab Human Rights Committee celebrated a meeting with the aim to establish a dialogue with four international and regional human rights organisations. After that the Committee 'promised to ensure regular access for the NGOs to its sessions, although it did not make any commitment for NGOs to attend the meetings with State officials at which State party reports are considered'.<sup>240</sup> Despite not being representative of the CS in the region, the initiative of the commission is counted as a declaration of intentions and offer CSO the power to utilize those opportunities to bring their voice into the conversation.

Furthermore, after the events occurred in 2011 during the Arab spring, CSOs have increasingly acquired more relevance looking to involve the Arab League more actively to engage on Human Rights violations in the LAS region. The league, for instance, has been pushed to call for more effective sanctions on the Syrian government. CSO have

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237 Saad Eddin, p. 384.

238 Kazemi p. 44

239 International centre for Non-profit law, *Civic Freedom Monitor: League of Arab States*, 18<sup>th</sup> January 2018 Accessed on 19/05/2018, Available: <http://www.icnl.org/research/monitor/las.html>

240 M. Mayrhofer, C. Chavez, V. Hegde, M. Killander, J. Larik, B. Nkrumah, E. Salmón, K. Yigen. p. 68.

moved forwards discussions relating to ongoing violence between Egyptian state security forces and supporters of the Muslim Brotherhood. In 2015, thanks to CSO mobilisation, the LAS turned the eye on the raising violent conflict between Houthi militants and the Yemeni government. The LAS responded sending a delegation to Yemen with the aim 'to monitor and document suspected rights violations'.<sup>241</sup>

On February 2016, the UAE and other parties of the LAS recognised the role of CSO and appreciated its growing participation and involvement with the LAS. The League launched an event to name 2016-2026 the Decade of Arab Civil Society Organizations. 'It remains to be seen if and how extensively members of the League will act to implement those sentiments going forward'.<sup>242</sup>

At the OIC, CSOs are expected to be involved in a formal way through the Independent Permanent Human Rights Commission. The founding regulation of the IPCHR states that the Commission 'shall promote and support the role of Member States, accredited national institutions and civil society organisations active in the area of human rights in accordance with the OIC Charter and work procedures'.<sup>243</sup> However, members of CSO have raised their concern on their right of participation at the OIC level.<sup>244</sup> The Committee fails to provide information referring to how the civil society can participate to its procedures and activities. Strong criticism lies on their failure in engaging with CSO.

Many Muslim majority states as illustrated with the Special rapporteur's reports fail to protect and could improve religious minorities' rights. The most traditional Islamic countries do not fully appreciate the meaning of FoRB as fundamental right or feel uncomfortable while designating freedom of religion as a fundamental and non-derogable right. This failure is potentially detrimental not only to all non-Muslim minorities but can

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241 International centre for Non-profit law, *Civic Freedom Monitor: League of Arab States* 18<sup>th</sup> January 2018 Accessed on 19/05/2018, Available: <http://www.icnl.org/research/monitor/las.html>

242 Ibid.

243 I. Cismas, the Statute of the OIC Independent Permanent Human Rights Commission. *International Legal Materials*, 50(6), 1148-1160. 2011, Art 15

244 Ibid

certainly affect those who dissent from the officially orthodoxy of Islam<sup>245</sup> The refusal to deny rights and freedoms and recognition to religious minorities constitutes a grave breach of international standards. As examples, the Baha'is are denied recognition and designated as a political group in Iran, as a result member of the Baha'i community are persecuted, and citizenship rights are denied in Iran.<sup>246</sup>

In sum, the final chapter went through the concept of civil society, highlighting the importance of freedom, democracy and citizenship as a central element for the success of civil society. For the Muslim tradition, civil society developed as an internal religious check and balances, through the *Ulama*, and other institutions, that would give the *Umma* the legitimisation to challenge the power of the ruler. The modern Muslim world recognizes certain legitimate causes of CSO, and gradually accepts the importance of having them on their side, at the national and international level. Both the OIC and the LAS step up their involvement with civil society in order to accommodate CSOs demands and accept the notion of a dialogue with a variety of civil society actors. Still, the level of tolerance and range within which CSOs can operate in the Muslim countries remains narrow for a number of human rights topics (i.e. LGBTIQ, women rights, rights of the child), as well as freedom of religion and rights of religious minorities.

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245 Kazemi p. 50

246 Kazemi p. 49

## **Conclusion**

I have attempted to answer the question: *How can Islamic civil society organisations contribute to religious minorities' rights in view of the discrepancies between the Islamic doctrine on rights and the International Human Rights law?*

I have illustrated how the early Islamic societies, despite their quest to expand the religion and their empire adopted a primitive religious minority rights system whereas the early Muslims understood the need to respect people's religious freedoms in order to have a compact and united *Umma*. Through history, political developments complicated the situation. With the intrusion of the Western powers and the destabilization of the Arab dynasties and the fall of the Ottoman Empire, a new set of rules and morals made its entry in the region. That drove the Muslim society to a change of paradigm, with the introduction of the constitutionalism and the Western values. Some of the Muslim-majority countries rove themselves to close up in their cultural uniqueness and started Islamisation processes against the Western "intruder's" values. This resulted in the weaknesses of their regional systems, and Human Rights protection mechanism.

The legal comparison showcased a series of weaknesses, on the one hand a more detailed protection of the rights of minorities and religious freedoms lacks at the international level, considering the non-binding status of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. On the other side, the adherence to religious morals and values hinders the Human Rights protection of certain groups. The areas of equality, non-discrimination, equality before the law and religious freedom, particularly the right to change one's religion remain particularly problematic. Some authors suggested the need of introducing more binding documents in the area of freedom of religion and belief, however they raised the concern of the unviability of such movements in the actuality.

Presented literature demonstrated the existence of some concern by Muslim and non-Muslim authors to tackle those issues. The topic of cultural relativism has been largely discussed. The need to find a common shared space between religion and Human rights

has found already some international attention with the development of a series of initiatives as the Rabat plan of action and the “Faith for Rights” Beirut declaration. Similar initiatives appeared as well at the national and regional level. The literature consulted from the authors reveal a need to identify the legitimate actors to further these dialogues.

As discussed in Chapter III and drawn from the example of women’s movements, it is important to use Islamic notions to empower those who come from the religious background. Authors like An Naim, Al Fadl or Biefeldt agree on that an approach from the Human Rights actors that would be seen as an imposition would never work.

The thesis defends the power of Islamic civil society to achieve the goals. The advantage of being perceived as part of the culture and the religion confers them at the local level, the discussed legitimacy that a perceived ‘outsider’ would have. As ‘insiders’, they can prove and discuss Islamic examples of tolerance towards minorities. Religious minority rights protection can benefit from the influence of relevant actors. CSO, together with religious leaders, academics are an important piece in the debate. It is a fact that religious minorities, primarily, as well as CSO suffer a great deal of harassment both by state and non-state actors in the Muslim world. However, it is also a fact that there is a common space identified for the debate, and the involvement of more civil society actors can bring, progressively, higher degrees of tolerance and peaceful coexistence.

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## **Abstract**

The current turmoil in the Middle East as in other parts of the world concerning religious minorities, exposes states hostility towards minorities and adds controversy to the topic of freedom of religion and belief. The Muslim-majority world is home to many national, ethnic, religious and linguistic minorities and a sense of abuse and discrimination can often spark conflict and violence.

The Islamic tradition poses discrepancies to the universality of Human Rights that translate into a weaker Human Rights institutions or protection mechanisms. The lack of a unified approach among the Muslim world hinders the protection of religious minorities' rights and endangers the enjoyment of freedom of religion. The particularity of religion needs a renewed strategy to tackle those issues in behalf of the marginalised community. These efforts need to include relevant actors both from the religion and the Human Rights sphere.

In the quest for a plural and healthy democracy, the work of civil society is ultimately important to the achievement of these goals. The rights of equality and non-discrimination, right to education, freedom of assembly and association, freedom of expression and participation, are rights closely linked with civil society organisations, and can threaten as well its working space and endanger the work done in FoRB. Muslim civil society while having the insider position, becomes a crucial ally when it comes to the advancement of religious minorities' rights.

Key words: religious minorities, freedom of religion and belief, civil society

## **Abstrakt**

Die gegenwärtigen Unruhen im Nahen Osten und in anderen Regionen enthüllen staatlich institutionalisierte Feindlichkeit gegenüber Minderheiten und beleben die Diskussion rund um Religions- und Glaubensfreiheit. Zahlreiche nationale, ethnische, religiöse und sprachliche Minderheiten existieren in der mehrheitlich-muslimischen Welt und ein Gefühl von Missbrauch und Diskriminierung kann oft Konflikte und Gewaltausbrüche hervorrufen.

Die islamische Tradition steht in einigen Unstimmigkeiten mit der Universalität der Menschenrechte, die sich in geschwächten Menschenrechtsinstitutionen und Schutzmechanismen niederschlagen. Weiteres verhindert die uneinheitlichen Herangehensweisen innerhalb der muslimischen Welt den Schutz religiöser Minderheiten und gefährden Religionsfreiheit. Um diese Kernthemen zugunsten der marginalisierten Gruppen aufarbeiten zu können ist eine neu überdachte Herangehensweise notwendig – auch aufgrund der Besonderheit religiöser Aspekte. Dieser Vorgang soll sowohl Akteure der religiösen wie auch der Menschenrechtssphäre miteinbeziehen.

Der Beitrag der Zivilgesellschaft ist grundlegend um eine plurale und vitale Demokratie zu etablieren. Rechte wie das Recht auf Gleichbehandlung und Antidiskriminierung, auf Bildung, Versammlungs- und Vereinigungsfreiheit und auf Meinungsfreiheit sind allesamt eng mit zivilgesellschaftlichen Organisationen verbunden und deren Beschränkung kann sowohl zu einer Beeinträchtigung des Arbeitsraums führen wie auch die Arbeit hinsichtlich Glaubens- und Religionsfreiheit gefährden. Die muslimische Zivilgesellschaft wird, auch aufgrund ihrer Insider-Position, zu einem unverzichtbaren Mitstreiter in der Förderung von Rechten religiöser Minderheiten.

Key words: religiöse Minderheiten, Glaubens- und Religionsfreiheit, Zivilgesellschaft

