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Compatibility of Sharia law with the European Convention on Human Rights: can States Parties to the Convention be signatories of the 'Cairo Declaration'?

Introductory memorandum

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1. Introduction

1.1. *Current state of proceedings*

1. The motion for a resolution entitled 'Compatibility of Sharia law with the European Convention on Human Rights: can States Parties to the Convention be signatories of the "Cairo Declaration"?'¹ was referred to the Committee on Legal Affairs and Human Rights on 27 January 2016 for report.² I was appointed rapporteur by the Committee at its meeting in Strasbourg on 19 April 2016.

1.2. *Issues*

2. Specifically citing the Cairo Declaration, the motion for a resolution focuses on the question of the compatibility of Sharia law with the values and principles enshrined in the European Convention on Human Rights. In addition, the reference to the case-law of the European Court of Human Rights and to the existence of informal Islamic courts in a number of member States has led me to study this matter in greater detail.

3. First of all, I believe it is important to underline the fact that it is difficult to compare an international legal document which is binding on States Parties, such as the European Convention on Human Rights, with a "political" (i.e. non-binding) declaration, such as the Cairo Declaration. Nonetheless, there are various relevant Islamic legal instruments in the field of human rights. In this introductory memorandum, I shall therefore highlight the most prominent of those instruments and consider their respective degrees of legal force, indicating which Council of Europe member States are signatories to them. I shall then explore certain aspects of the application of Sharia law in some Council of Europe member States through informal Islamic courts, which constitute a parallel judicial system. Lastly, I shall address the compatibility, or incompatibility, of Sharia law with the principles and values of the European Convention on Human Rights and the case-law of the European Court of Human Rights. In conclusion, I shall make some proposals concerning further work.

4. It should be pointed out that the Assembly and our Committee have on several occasions looked at issues relating to the co-existence of different religions in a democratic society and at the compatibility of certain religious attitudes with the European Convention on Human Rights. In particular, in November 2011 the Assembly adopted [Resolution 1846 \(2011\)](#) and [Recommendation 1987 \(2011\)](#) on combating all forms of

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¹ [Doc. 13965](#) of 27 January 2016.

² Reference to Committee No. 4188 of 4 March 2016.

discrimination based on religion, on the basis of the report written by our former colleague Mr Tudor Panțiru (Romania, Socialist Group), who had looked in detail at the concept of “reasonable accommodation”, the principle of state neutrality vis-à-vis religions and the fight against discrimination. Moreover, in September 2015, the Assembly adopted [Resolution 2076](#) on this subject – “Freedom of religion and living together in a democratic society”.³

2. Analysis of the relevant instruments and their legal force

2.1. Sharia law

5. For the purposes of this study, it is essential to define Sharia law, its sources, its legal force and its problematic aspects in terms of the European Convention on Human Rights.

6. Sharia law is understood as being ‘the path to be followed’, that is, the ‘law’ to be obeyed by every Muslim.⁴ It divides all human action into five categories – what is obligatory, recommended, neutral, disapproved of and prohibited – and takes two forms: a legal ruling (*hukm*), designed to organise society and deal with everyday situations, and the *fatwa*, a legal opinion intended to cover a special situation. Sharia law is therefore meant in essence to be positive law enforceable on Muslims. Accordingly, it can be defined as ‘the sacred Law of Islam’, that is, ‘an all-embracing body of religious duties, the totality of Allah’s commands that regulate the life of every Muslim in all its aspects’.⁵

2.1.1. Sources

7. The prescriptions of Sharia law originate in the **Qur’an**, held to be a work that is ‘perfect and unchangeable’.⁶ The Qur’an constitutes the primary source of law and consists of 114 surahs or chapters, themselves divided into 6,219 verses, which are sentences or groups of sentences expressing one or more revealed thoughts.⁷ However, an Islamic exegesis (*tafsir*) of the Qur’an is necessary for abstruse passages, and this has given rise to a number of schools.

8. The **Sunna**, the traditions and practices of the Prophet, is another original source, relating the religious deeds and sayings of the Prophet Muhammad as narrated by his disciples (Sunni branch) or by the imams (Shia branch).

9. In addition to these two basic texts of Islamic law there are secondary sources such as consensus (*ijma*), analogical deduction (*qiyas*) and individual reasoning based on the general principles of Islam (*ijtihad*), which have produced a plethora of interpretations. Added to these are spontaneous sources such as local custom (*urf*) and judicial practice (*ama*l).

10. *Fiqh*, the temporal interpretation of the rules of Sharia law, brings together all the rules that had been systematised by the end of the fifth century after the Hijra. There are various schools of Islamic jurisprudence. They include the four Sunni schools: the Hanafi school of Abu Hanifa, the Maliki school of Malik ibn Anas, the Shafi’i school of Muhammad ibn Idris al-Shafi’i and the Hanbali school of Ahmad ibn Hanbal. There are at least two main Shia schools: the Ja’fari and the Zaydi.⁸

2.1.2. Legal nature

11. While most States with Muslim majorities have inserted a provision referring to Islam or Islamic law in their constitutions, the effect of these provisions is symbolic or confined to family law. Admittedly, these religious provisions may have a legal effect if raised in the courts and a political effect if they intrude into institutional attitudes and practices.⁹ However, the authority of Sharia law is derived directly from the Qur’an, and traditional Islamic law contains no effective provisions concerning its position in the pyramid of norms.¹⁰

³ On the basis of a report by the Committee on Culture, Science, Education and Media, rapporteur: Mr Rafael Huseynov (Azerbaijan); [Doc. 13851](#).

⁴ Surah 5, The Table (*Al-Ma’idah*), verse 48: ‘We have ordained a law and assigned a path for each of you.’ See L. Milliot and F.-P. Blanc, *Introduction à l’étude du droit musulman*, Editions Dalloz, 2001, p. 105.

⁵ Joseph Schacht, *An Introduction to Islamic Law*, Oxford University Press, 1983, p. 1.

⁶ Surah 5, The Table (*Al-Ma’idah*), verse 3: ‘This day I have perfected your religion for you.’

⁷ See Milliot and Blanc, *Introduction à l’étude du droit musulman*, pp. 83-84.

⁸ See Baudouin Dupret, *La Charia. Des sources à la pratique, un concept pluriel*, Paris, La Découverte, 2014, pp. 13-16.

⁹ See Nathalie Bernard-Maugiron, ‘La place de la charia dans la hiérarchie des normes’ in B. Dupret (ed.), *La charia aujourd’hui. Usages de la référence au droit islamique*, La Découverte, 2012, pp. 51-64.

¹⁰ *Ibid.*

2.1.3. Sharia law: problematic rules in relation to the European Convention on Human Rights

12. In this study I shall be looking at the general principles of Sharia law in relation to the European Convention on Human Rights and particularly Article 14, which prohibits discrimination on grounds such as sex or religion and Article 5 of Protocol No. 7 to the Convention, which establishes equality between spouses in law. In this context, reference should also be made to other provisions of the Convention and its additional protocols – such as Article 2 (right to life), Article 3 (prohibition of torture or inhuman or degrading treatment), Article 6 (right to a fair trial), Article 8 (Right to respect for private and family life), Article 9 (freedom of religion), Article 1 of Protocol No. 1 (protection of property) and Protocols Nos. 6 and 13 prohibiting the death penalty. Here we shall find some problematic features that warrant further analysis.

13. In Islamic family law, men have authority over women. Surah 4:34 states: ‘Men have authority over women because God has made the one superior to the other, and because they spend their wealth to maintain them. Good women are obedient. They guard their unseen parts because God has guarded them. As for those from whom you fear disobedience, admonish them and forsake them in beds apart, and beat them. Then if they obey you, take no further action against them. Surely God is high, supreme.’¹¹ While wives clearly have a duty of fidelity,¹² husbands do not.¹³ In Sharia law, adultery is strictly prohibited.¹⁴ Legal doctrine holds that the evidence must take the form of corroborating testimony from four witnesses¹⁵ to prove an individual’s guilt. These witnesses must be men of good repute and good Muslims. The punishment is severe and degrading, namely ‘a hundred lashes’.¹⁶ In the case of rape, which is seldom committed in public before four male witnesses who are good Muslims, punishing the rapist is difficult if not impossible.¹⁷ In practice, this obliges women to be accompanied by men when they go out and is not conducive to their independence. While divorce by mutual consent is enshrined in Islamic law,¹⁸ the application has to come from the wife, since the husband can repudiate his wife at any time.¹⁹ There is also the question of equal rights with regard to divorce arrangements such as custody of children.

14. For division of an estate among the heirs, distinctions are made according to the sex of the heir. A male heir has a double share, whereas a female heir has a single share.²⁰ The rights of a surviving wife are half those of a surviving husband.²¹

15. In criminal cases, cruel, inhuman and degrading punishments are authorised by Sharia law, including death by stoning, beheading and hanging, amputation of limbs, and flogging.²² Apostasy results, firstly, in the apostate’s civil death, with the estate passing to the heirs, and, secondly, in the apostate’s execution if he or she does not recant.²³ Lastly, non-Muslims do not have the same rights as Muslims in civil and criminal law,²⁴ which is discrimination on the ground of religion within the meaning of Article 14 of the Convention.

¹¹ Translation: N.J. Dawood, Penguin, 1998.

¹² Surah 4:34: ‘Good women are obedient. They guard their unseen parts because God has guarded them.’

¹³ For the husbands’ obligations, see Milliot and Blanc, *Introduction à l’étude du droit musulman*, pp. 318-337.

¹⁴ Joseph Schacht, ‘Zina’, *First Encyclopaedia of Islam 1913-1936*, New York, E.J. Brill, 1987, pp. 1227-1228.

¹⁵ Surah 4:15: ‘If any of your women commit a lewd act, call in four witnesses from among yourselves against them; if they testify to their guilt confine them to their houses till death overtakes them or till God finds another way for them.’

¹⁶ Surah 24:2: ‘The adulterer and the adulteress shall each be given a hundred lashes. Let no pity for them cause you to disobey God, if you truly believe in God and the Last Day; and let their punishment be witnessed by a number of believers.’

¹⁷ See Lyne Marie Larocque, ‘De l’inévitable écart entre la logique religieuse et la réalité sociale: le viol en Islam’, *Religiologiques*, No. 11, spring 1995, pp. 193-208.

¹⁸ Surah 2:229 and Surah 4:128.

¹⁹ For the different forms of repudiation allowed by Islamic law, see Milliot and Blanc, *Introduction à l’étude du droit musulman*, pp. 350-399.

²⁰ Milliot and Blanc, *Introduction à l’étude du droit musulman*, p. 519.

²¹ Surah 4:12: ‘Your wives shall inherit one quarter of your estate if you die childless. If you leave children, they shall inherit one eighth, after payment of any legacy you may have bequeathed or any debt you may have owed.’

²² Milliot and Blanc, *Introduction à l’étude du droit musulman*, pp. 589-597.

²³ Surah 2:217: ‘But whoever of you recants and dies an unbeliever, his works shall come to nothing in this world and in the world to come. Such men shall be the tenants of the Fire, wherein they shall abide for ever’ and Surah 4:89: ‘They would have you disbelieve as they themselves have disbelieved, so that you may be all alike. Do not befriend them until they have fled their homes in the cause of God. If they desert you, seize them and put them to death wherever you find them.’ See also Milliot and Blanc, *Introduction à l’étude du droit musulman*, pp. 349-350.

²⁴ See Milliot and Blanc, *Introduction à l’étude du droit musulman*, pp. 349-350.

2.2. *The Arab Charter on Human Rights*

16. In response to the emergence of regional systems of human rights protection,²⁵ Arab countries have adopted various legal instruments in this field.

2.2.1. *The draft 1994 Arab Charter on Human Rights*

17. Founded in 1945, the League of Arab States set up its Arab Standing Committee on Human Rights in 1968.²⁶ Although an initial draft was drawn up by the Committee's experts in 1971, the first version of the **Arab Charter on Human Rights** was eventually adopted in Cairo in 1994.²⁷

18. In substance, the draft Arab Charter on Human Rights was designed to recognise and protect human rights. The Charter's preamble is premised directly on these rights and affirms its commitment to the 1948 Universal Declaration of Human Rights.

19. However, this initial version of the Arab Charter on Human Rights did not satisfy anybody: neither the Arab States, since no States ratified it and only Iraq signed it, nor the various Arab and international non-governmental organisations, which were very critical of it.²⁸ The most serious criticisms concerned its tentative affirmation of gender equality²⁹ and the right of peoples to self-determination, enforcement of which was left uncertain.³⁰ While the draft Charter appears to prohibit the death penalty for minors,³¹ it nevertheless allows domestic legislation the possibility of providing otherwise, which considerably restricts the effect of this right or may even render it null and void.³² Similarly, the draft Arab Charter lists a number of rights for 'citizens' only,³³ showing the existence of discrimination against non-nationals. Lastly, the draft Charter does not clearly prohibit cruel, inhuman and degrading punishment, and the right of asylum is manifestly called into question.³⁴

20. In point of fact, the Committee of Experts on Human Rights, which was to be the Charter's monitoring mechanism, never came into being, and the League of Arab States accepted the principle that the draft Charter should be revised.³⁵

2.2.2. *The 2004 Arab Charter on Human Rights*

21. A new version of the Arab Charter on Human Rights was adopted at a summit of the League of Arab States in Tunis on 23 May 2004. It was the Arab Standing Committee on Human Rights, assisted³⁶ by the

²⁵ The European Convention on Human Rights was adopted on 4 November 1950, the American Convention on Human Rights on 22 November 1969 and the African Charter on Human and Peoples' Rights on 27 June 1981.

²⁶ Resolution R 2443/48 (XLVIII) of the Council of the League of Arab States dated 3 September 1968.

²⁷ Resolution R 5437 of the Council of the League of Arab States. Under Article 42 of this Charter, it was to enter into effect 'two months after the date of deposit of the seventh instrument of ratification or accession with the Secretariat of the League of Arab States'.

²⁸ See Mohammed Amin Al-Midani, *Les droits de l'homme et l'Islam. Textes des Organisations arabes et islamiques*, Université de Strasbourg, 2010, pp. 85-86.

²⁹ [Article 2](#) of the draft Arab Charter on Human Rights makes mention of non-discrimination between men and women in the following terms: 'Each State Party to the present Charter undertakes to ensure to all individuals within its territory and subject to its jurisdiction the right to enjoy all the rights and freedoms recognised 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.'

³⁰ [Article 1\(a\)](#) states, 'All peoples have the right of self-determination and control over their natural wealth and resources' but does not specify that this right is to be exercised in line with the principles of international law, including human rights and humanitarian law.

³¹ [Article 12](#) states, 'The death penalty shall not be inflicted on a person under 18 years of age, on a pregnant woman prior to her delivery or on a nursing mother within two years from the date on which she gave birth.'

³² Frédéric Sudre, *Droit européen et international des droits de l'homme*, 6th revised edition, Presses universitaires de France, Paris, 2003, p. 203.

³³ Article 24 of the draft Arab Charter on Human Rights states, 'No citizen shall be arbitrarily deprived of his original nationality, nor shall his right to acquire another nationality be denied without a legally valid reason.' In [Article 25](#) of the draft Charter, the right to own private property is confined to 'citizens', as is the right to freedom of assembly and association ([Article 28](#)). [Article 30](#) specifies that the right to work and to social security is guaranteed to 'every citizen'. [Article 34](#) reserves the right to education to 'every citizen' and maintains discrimination between 'citizens' and non-nationals.

³⁴ [Article 23](#) states, 'Every citizen shall have the right to seek political asylum in other countries in order to escape persecution,' but this right cannot be exercised 'by persons facing prosecution for an offence under the ordinary law'.

³⁵ The proposal to revise the Arab Charter on Human Rights was endorsed by Resolution 6302/119 (Part II) of the Council of the League of Arab States dated 24 March 2003.

Office of the United Nations High Commissioner for Human Rights, that was in charge of revising the Charter.

22. The **2004 Charter** has 53 articles and clarifies a considerable number of rights contained in the initial 1994 version. The preamble notes the close link that exists between human rights and international peace and security.³⁷ The new version enshrines equal opportunities and effective equality between men and women,³⁸ confines the death penalty to the most serious crimes³⁹ and prohibits slavery and trafficking in human beings.⁴⁰ As for rights relating to the proper functioning of the judicial system,⁴¹ there has been a genuine improvement in the rights guaranteed⁴² focusing on the idea of the right to a fair trial (Article 13 of the 2004 Charter).

23. Nevertheless, the 2004 Charter has also been the subject of much criticism.⁴³ It should be noted that the basis and preamble of the Arab Charter on Human Rights remain a problem. The retention in the preamble ([paragraph 5](#)) and [Article 2](#) of the 2004 Charter of references to Zionism and to the Cairo Declaration on Human Rights in Islam are problematic. The affirmation of the principle of non-discrimination is still vague regarding both women⁴⁴ and non-nationals.⁴⁵ The death penalty is maintained for minors,⁴⁶ and inhuman and degrading punishment is not expressly prohibited.⁴⁷

24. The 2004 version of the Arab Charter on Human Rights entered into effect on 15 March 2008.⁴⁸ More recently, the Council of Foreign Ministers of the League of Arab States approved the Statute of the Arab Court of Human Rights on 7 September 2014.⁴⁹

³⁶ The Arab Standing Committee on Human Rights met in Cairo in two sessions (4-8 and 11-14 January 2004), assisted by experts from the Office of the United Nations High Commissioner for Human Rights, for the purpose of updating the Charter.

³⁷ [Paragraph 5](#) of the Charter's preamble. [Article 1.4](#) of the Charter refers to the universality, interdependence and indivisibility of human rights.

³⁸ [Article 3](#) of the new version of the Charter enshrines the principle of non-discrimination, equal opportunities and equality between men and women in the enjoyment of all the rights set out in the Charter.

³⁹ [Article 6](#) of the new version of the Charter confines the death penalty to the most serious crimes, and [Article 7](#) prohibits it outright for pregnant women and nursing mothers.

⁴⁰ In [Article 10](#) the new version of the Charter prohibits slavery, servitude and trafficking in human beings and exploitation of children in armed conflict.

⁴¹ See [Articles 11 to 20](#) of the 2004 Arab Charter on Human Rights.

⁴² Equality before the law and equal protection by the law are now guaranteed ([Article 11](#)), together with equality before the courts and independence of the judiciary ([Article 12](#)), the right to a fair trial before a competent, independent and impartial court constituted by law and to legal aid ([Article 13](#)), the right to liberty and security of the person and to the safeguards of habeas corpus ([Article 14](#)), offences and penalties to be strictly defined by law ([Article 15](#)), the presumption of innocence, the right to be informed promptly and in detail of the charges against one, the right to have adequate time and facilities for the preparation of one's defence, the right to communicate with one's family, the right of the accused to a lawyer of his or her own choosing and, if necessary, the free assistance of an interpreter, and the right of any person convicted to lodge an appeal with a higher tribunal ([Article 16](#)), a special legal system for minors ([Article 17](#)), no one to be tried twice for the same offence ([Article 19](#)), no imprisonment for civil debt ([Article 18](#)) and humane treatment of prisoners ([Article 20](#)).

⁴³ See the February 2004 [comments of the International Commission of Jurists](#) (in French). On the drafting of the second version of the Arab Charter on Human Rights see Mohammed Amin Al-Midani, *Les droits de l'homme et l'Islam. Textes des organisations arabes et islamiques*, pp. 85-91 and the 30 January 2008 [statement](#) by Louise Arbour, High Commissioner for Human Rights.

⁴⁴ See [Articles 3 and 33](#) of the 2004 Arab Charter on Human Rights. See also the February 2004 comments of the [International Commission of Jurists](#) (in French only), p. 8.

⁴⁵ [Article 24.6](#) restricts freedom of association and peaceful assembly to 'citizens' only. [Article 34](#) specifies that the right to work is a natural right of every 'citizen', and [Article 36](#) restricts the right to social security to 'citizens' alone. [Article 41](#) admittedly enshrines the right to education, but primary education free of charge is limited to 'citizens' only. See the February 2004 comments of the [International Commission of Jurists](#) (in French), pp. 8-10.

⁴⁶ See [Article 7](#) of the 2004 Arab Charter on Human Rights, which does not rule out the death penalty for minors, depending on the laws in force at the time the crime was committed, or for any individual suffering from mental illness.

⁴⁷ [Article 8.1](#) of the 2004 Arab Charter on Human Rights does indeed specify that '[n]o one shall be subjected to physical or mental torture or to cruel, inhuman or degrading treatment or punishment' but does not actually prohibit cruel, degrading or inhuman punishment. Corporal punishment is therefore not prohibited. See the February 2004 comments of the [International Commission of Jurists](#) (in French), pp. 12-13.

⁴⁸ Under its [Article 49](#), the Arab Charter on Human Rights entered into effect on 15 March 2008, two months from the date on which the seventh instrument of ratification was deposited with the secretariat of the League of Arab States.

⁴⁹ At its 142nd meeting, the Council of Foreign Ministers of the League of Arab States approved the Statute of the Arab Court of Human Rights on 7 September 2014 in Resolution R 7790. The seat of the Court will be in Manama, the capital of Bahrain. For the English version of the Court's Statute, see <https://www.acihl.org/texts.htm>.

2.3. Declarations on human rights in Islam

25. While there are a number of Arab and/or Muslim declarations on human rights, whether from Arab-Islamic NGOs or the Organisation of Islamic Co-operation (OIC),⁵⁰ we shall consider the most prominent amongst them.

2.3.1. Universal Islamic Declaration of Human Rights, proclaimed in Paris on 19 September 1981

26. The **Universal Islamic Declaration of Human Rights**⁵¹ was proposed by the Islamic Council of Europe, a non-governmental organisation based in London. The declaration was proclaimed on 19 September 1981 by the Secretary-General of the Islamic Council of Europe at a meeting organised by UNESCO in Paris. This universal Islamic declaration contains a preamble and 23 articles and is based on the rights enshrined not only in the 1948 Universal Declaration of Human Rights⁵² but also in the 1966 International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), whilst adding more specific rights.⁵³

27. However, [this declaration](#) presents an alternative vision of human rights based on Sharia law. It refers in its preamble and the body of the text to the 'Divine Law' and to 'Law', which means that its provisions are subject to Sharia law.⁵⁴ The declaration reveals contradictions: while the [preamble](#) recognises the equality of all human beings, Articles 19 and 20 uphold the traditional position: '[...] Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law' ([Article 19\(a\)](#)), and a married woman is entitled to 'inherit from her husband, her parents, her children and other relatives according to the Law' ([Article 20\(d\)](#)). According to the declaration's Explanatory Note 1(b), the term 'Law' denotes Sharia law. The declaration ultimately stresses the pre-eminence of Islamic law over international law,⁵⁵ leaving in abeyance fundamental issues such as gender equality, and discriminates between Muslims and non-Muslims with regard to freedom of movement in the Islamic world (Article 23).⁵⁶

2.3.2. The Dhaka Declaration on Human Rights in Islam (1983)

28. The **Dhaka Declaration on Human Rights in Islam** was adopted in 1983 at the 14th conference of the Foreign Ministers of the Organisation of the Islamic Conference.⁵⁷ One advance is the recognition of equality among men, that is, between men and women.⁵⁸ Nevertheless, the provisions of this declaration are based directly on Sharia law (paragraph 6: 'fundamental rights and freedoms according to Islam are an integral part of the Islamic faith') and make no reference to the fundamental rights and freedoms protected by international instruments.

2.3.3 The Cairo Declaration on Human Rights in Islam, issued by the OIC on 5 August 1990

29. On 5 August 1990 the conference of Foreign Ministers of the Organisation of the Islamic Conference

⁵⁰ The [Organisation of Islamic Co-operation \(OIC\)](#), known as the Organisation of the Islamic Conference until 2011, is an intergovernmental organisation with 57 member States that was founded on 25 September 1969. Its headquarters is in Jeddah in Saudi Arabia, and it has a permanent delegation at the United Nations.

⁵¹ See [Universal Islamic Declaration of Human Rights](#) and Mohammed Amin Al-Midani, *Les droits de l'homme et l'Islam. Textes des organisations arabes et islamiques*, pp. 273-292.

⁵² Most of its provisions are similar to those proclaimed in the Universal Declaration of Human Rights of 10 December 1948: the right to life ([Article 1](#)), the right to freedom ([Article 2](#)), the right to prohibition of discrimination ([Article 3](#)), the right to justice ([Article 4](#)), the right to fair trial ([Article 5](#)), the right to protection against torture ([Article 7](#)), the right to asylum ([Article 9](#)), the rights of minorities ([Article 10](#)), the right to freedom of belief, thought and speech ([Article 12](#)), the right to freedom of religion ([Article 13](#)), the right to free association ([Article 14](#)), the right to protection of property ([Article 16](#)), the status and dignity of workers ([Article 17](#)) and the right to privacy ([Article 22](#)).

⁵³ For example, protection against abuse of power ([Article 6](#)), protection of honour and reputation ([Article 8](#)), the economic order and the rights evolving therefrom ([Article 15](#)) and the rights of married women ([Article 20](#)).

⁵⁴ See the declaration's Explanatory Note 1(b) and Mohammed Amin Al-Midani, *Les droits de l'homme et l'Islam. Textes des organisations arabes et islamiques*, pp. 273-276.

⁵⁵ This can be inferred from the [preamble](#) to the Universal Islamic Declaration and from its 23 articles, which refer not to the international law but rather to 'divine law', which here again means Sharia law.

⁵⁶ See Yannick Lécuyer, 'L'Islam, la Turquie et la Cour européenne des droits de l'homme', *Revue trimestrielle des droits de l'homme*, No. 67, 2006, p. 739.

⁵⁷ Resolution 3/14-ORG adopting the Dhaka Declaration on Human Rights in Islam at the 14th conference of Foreign Ministers of the Organisation of the Islamic Conference (OIC) held in Dhaka (Bangladesh) on 6-11 December 1983. The text of the declaration is reproduced in Sharma A, (ed.) *The World's Religions After September 11*, Volume 1, Praeger Perspectives Series, 2008.

⁵⁸ See paragraphs 7 and 8 of the Dhaka Declaration on Human Rights in Islam.

adopted the **Cairo Declaration on Human Rights in Islam**.⁵⁹ The declaration⁶⁰ on the one hand acknowledges human rights by considering them sacred and divine⁶¹ and, on the other, recognises the need to protect them from 'exploitation and persecution'.⁶² The Cairo Declaration acknowledges enhanced importance of collective rights, whether civil and political or economic, social and cultural, and also enshrines specific rights.⁶³

30. However, the Cairo Declaration has given rise to much controversy⁶⁴ such as that concerning the concept of equality, the right to marry and the notable failure to recognise freedom of belief. [Article 5\(a\)](#) of the Cairo Declaration lays down the right to marry as follows: 'Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from exercising this right.' According to experts, the reason why religion is not mentioned here is because Sharia law does not recognise a woman's right to marry a non-Muslim.⁶⁵ The declaration further holds that 'Islam is the religion of true unspoiled nature' (Article 10). [Article 1](#) of the 1990 Cairo Declaration recognises that '[a]ll 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'. This suggests that equality is to be understood in terms of dignity, obligations and responsibilities but not in terms of law. To put it plainly, women and non-Muslims have the same obligations and responsibilities as men and Muslims but not the same rights (just the same 'dignity'). Last but not least, the Cairo Declaration is based solely on the rights and freedoms of Sharia law,⁶⁶ which is considered 'the only source of reference for the explanation or clarification of any of the articles'.⁶⁷

31. In 2011 the OIC set up the Independent Permanent Human Rights Commission (IPHRC) as an expert body with an advisory capacity and one of the principal organs working independently in the field of human rights.⁶⁸ The OIC has adopted a number of declarations and conventions, including the Declaration on the Rights and Care of the Child in Islam (1994), the OIC Convention on Combating International Terrorism (1999), the Covenant on the Rights of the Child in Islam (2005) and the Statute of the OIC Women's Development Organisation (2009).

2.4. Legal force of Islamic legal instruments

2.4.1. Legal force of the 2004 Arab Charter on Human Rights

32. The Arab Charter on Human Rights in its initial 1994 version never came into force, whereas the 2004 version entered into effect on 15 March 2008. The 2004 Charter is a binding legal instrument expressing the concurring wills of two or more States to be bound by it and intended to have legal effects under the rules of

⁵⁹ Resolution 49/19-P adopting the Cairo Declaration on Human Rights in Islam.

⁶⁰ See [Cairo Declaration on Human Rights in Islam](#) and Mohammed Amin Al-Midani, *Les droits de l'homme et l'Islam. Textes des organisations arabes et islamiques*, pp. 189-206.

⁶¹ The preamble to the [Cairo Declaration](#) states that its provisions are 'binding divine commands'.

⁶² From the [preamble](#): 'In contribution to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Sharia'.

⁶³ The Cairo Declaration has sixteen articles on civil and political rights (Articles 1-8, 10-12 and 18-23, which lay down the right to life ([Article 2](#)), prohibition of enslavement, humiliation and exploitation of human beings, who are born free ([Article 11](#)), the right to respect for private and family life ([Article 18](#)), and freedom of expression and information ([Article 22](#))) and six articles on economic, social and cultural rights (Articles 9 and 13-16 enshrining the right to work and the right to own property and affirming the right to education and 'seeking of knowledge'). The Cairo Declaration includes specific provisions such as prohibition of taking hostages ([Article 21](#)) and the right to live in a clean environment ([Article 17](#)).

⁶⁴ See Sélim Jahel, *La place de la Chari'a dans les systèmes juridiques des pays arabes*, Editions Panthéon Assas, 2012, pp. 35-55.

⁶⁵ See Mohammed Amin Al-Midani, *Les droits de l'homme et l'Islam. Textes des organisations arabes et islamiques*, p. 193.

⁶⁶ Article 24: 'All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.'

⁶⁷ Article 25: 'The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration'.

⁶⁸ [Article 15](#) of the OIC Charter provides for the establishment of an Independent Permanent Commission on Human Rights (IPCHR) to 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'. Establishment of the IPCHR was therefore laid down in the Organisation's new charter, adopted at the 11th Islamic Summit held in Dakar (Senegal) on 13-14 March 2008. The Commission was officially inaugurated with the adoption of its Statute by the 38th session of the Council of Foreign Ministers held in Astana (Kazakhstan) on 28-30 June 2011.

international law.⁶⁹

33. Ten States have ratified the Charter to date: Algeria, Bahrain, **Jordan**, Libya, **Palestine**, Qatar, Saudi Arabia, Syria, the United Arab Emirates and Yemen.⁷⁰ Moreover, the Charter in its 2004 version makes provision for an amendment procedure and a monitoring mechanism that requires each State Party to submit an initial report on Charter implementation within one year of ratification and a periodic report every three years thereafter. It also provides for the establishment of an Arab Human Rights Committee as a monitoring body for implementation of the Charter.

34. In 2014 the adoption of the Statute of the Arab Court of Human Rights by the League of Arab States was prompted by existing regional systems of human rights protection. It would seem that, to date, only Iraq has ratified the Court's Statute.

2.4.2. Legal force of Islamic declarations of human rights

35. Islamic declarations of human rights are an attempt to combine Islam with human rights in the universalist sense under the auspices of the Organisation of Islamic Co-operation (OIC) and non-governmental organisations such as the Islamic Council of Europe.

36. In legal terms, these are political declarations, representing a position taken by a number of States with regard to human rights in Islam. However, in public international law, these declarations are not legally binding, since they are merely 'declaratory'. A declaration is a legal instrument which is not a treaty, constituting a position taken by a State on a situation, demand or action, which may contribute to the development of a peremptory norm.⁷¹ Moreover, a State can enter reservations when acceding to an international organisation, as in the case of Turkey when it joined the Organisation of Islamic Co-operation. In practice, this limits the effects of the 1990 Cairo Declaration to compliance with the Turkish Constitution.⁷²

37. While the 1990 Cairo Declaration is not legally binding, it has symbolic value in terms of human rights policy in Islam.

3. Council of Europe member States that are signatories to one or more Islamic legal instruments

38. To date, no Council of Europe member States are signatories to the 2004 Arab Charter on Human Rights and none has ratified the Statute of the Arab Court of Human Rights. However, **Palestine** and **Jordan**, whose National Council and Parliament respectively have 'partner for democracy' status with our Assembly, have signed it.

39. Three Council of Europe member States are also members of the Organisation of Islamic Co-operation, namely **Azerbaijan** (since 1992), **Albania** (since 1992) and **Turkey** (since 1969). The following States have observer status with the OIC: Bosnia and Herzegovina (since 1994) and the Russian Federation (since 2005). Lastly, **Jordan**, **Kyrgyzstan**, **Morocco** and **Palestine**, whose parliaments have 'partner for democracy' status with the Parliamentary Assembly, are also members of the OIC.

40. Among Council of Europe member States, **Albania**, **Azerbaijan** and **Turkey** are signatories to the 1990 Cairo Declaration. **Jordan**, **Kyrgyzstan**, **Morocco** and **Palestine** have also signed it.

⁶⁹ The terms 'charter', 'treaty' and 'convention' are interchangeable and may be defined as follows: 'A treaty is an expression of concurring wills attributable to two or more subjects of international law and intended to have legal effects under the rules of international law.' Paul Reuter, *Introduction to the Law of Treaties*, Routledge, 1995, p. 30.

⁷⁰ <http://www.humanrights.ch/en/standards/other-regions-instruments/arab-charter-on-human-rights/>

⁷¹ See [Article 36](#) of the Statute of the International Court of Justice, together with the article by Emmanuel Decaux in *Cahiers du Conseil constitutionnel*, [No. 21](#) (French only), January 2007.

⁷² See replies from the Council to the European Parliament on 14 February 2006 ([OJ C 327 of 30/12/2006](#)) and 30 May 2005 ([OJ C 299 of 8/12/2006](#)). In its answers, the Council alluded to a general reservation entered by Turkey when it acceded to the Charter of the Organisation of Islamic Co-operation, stating that it would implement the provisions of the Charter to the extent and within the framework of the Turkish Constitution. [Article 2](#) of this Constitution states that the Republic of Turkey is a democratic, secular and social state governed by the rule of law.

4. Application of Sharia law on all or part of the territory of a Council of Europe member State

4.1. Western Thrace in Greece

41. Under the Treaty of Lausanne of 24 July 1923,⁷³ the Greek State recognised the existence of only one minority on Greek territory, namely the 'Muslim' minority of Western Thrace in north-eastern Greece. The 'Muslim inhabitants of Western Thrace' and the 'Greek inhabitants of Constantinople' were expressly excluded from the compulsory population exchange between Greece and Turkey that took place under the Convention Concerning the Exchange of Greek and Turkish Populations signed in Lausanne on 30 January 1923.⁷⁴ Greek law allows Greek citizens who are Muslims and resident in Western Thrace to use Sharia law as a parallel legal system for private law.⁷⁵ The law gives *muftis* judicial power to rule on disputes between Muslims concerning inheritance (Law No. 2345/1920).

42. Since 1990 there have been five *muftis* in Thrace: three officially appointed by the Greek State and two elected by the minority but not recognised by the Greek authorities,⁷⁶ which has given rise to disputes⁷⁷ and led the European Court of Human Rights to find violations of Article 9 of the Convention.⁷⁸

43. In theory, every Muslim citizen in Greece is able to choose freely between a *mufti* and a Greek court.⁷⁹ However, this right to choose is interpreted very narrowly by the Greek Supreme Court, and the coexistence of this parallel legal system has been much criticised.⁸⁰ In its Judgment No. 1097/2007 of 16 May 2007, the Greek Supreme Court acknowledged that for Greek Muslims inheritance of unencumbered property was strictly governed by 'Islamic holy law' and not the Greek Civil Code. Under 'Islamic holy law' it is not possible, amongst other things, to inherit through a will.⁸¹ A number of experts and international bodies have noted an extension of the *muftis'* authority and application of Sharia law to Greek Muslims living outside Western Thrace⁸² and even outside Greece (in Australia, under Ruling No. 12/2001 of the Komotini Religious Court; in the United Kingdom, under Ruling No. 146/2002 of the Xanthi Religious Court),⁸³ with no real review of *muftis'* rulings by the Greek civil courts.⁸⁴ Law No. 1920/1991 extends *muftis'* jurisdiction to cover maintenance, guardianship and trusteeship, and emancipation of minors.

⁷³ [Part I of the Lausanne Peace Treaty of 24 July 1923](#) provides for protection of Greece's 'Muslim minority' and Turkey's 'non-Muslim' minorities. This includes, amongst other things, 'protection of life and liberty', 'free exercise, whether in public or private, of any creed, religion or belief', 'freedom of movement and of emigration' and 'the same treatment and security in law and in fact'.

⁷⁴ See [Article 2](#) of the Convention concerning the Exchange of Greek and Turkish Populations signed in Lausanne on 30 January 1923. [Article 14](#) of the Lausanne Peace Treaty of 24 July 1923 also excluded from the population exchange 'the inhabitants of the islands of Imbros and Tenedos'. See the report by our former Committee colleague, Andreas Gross (Switzerland), 'Gökçeada (Imbros) and Bozcaada (Tenedos): preserving the bicultural character of the two Turkish islands as a model for co-operation between Turkey and Greece in the interest of the people concerned'. [Doc. 11629](#), 6 June 2008.

⁷⁵ Under the law of 5 January 1914 and the 1923 Treaty of Lausanne and not challenged by the entry into force of the Greek Civil Code in 1946.

⁷⁶ See [Doc. 11860](#) of our Committee, rapporteur Mr Michel Hunault (France) 'Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (Eastern Greece)', particularly paragraphs 46 and 47, in which it is stated: 'In 1990 [...] the system for appointing *muftis* was amended following a legislative reform. The Presidential Decree of 24 December 1990 repealing Law No. 2345/1990 provides that the *muftis* must be appointed by presidential decree on nominations from the ministry of education and religious affairs [...]. Following these legislative changes, the Muslim community has elected its own *muftis*, even where *muftis* have been appointed by the President of the Republic in accordance with the 1990 legislation.'

⁷⁷ The *muftis* elected by the minority but not recognised by the public authorities have been prosecuted for illegal use of religious symbols.

⁷⁸ The judgments delivered by the European Court of Human Rights were in the cases of *Serif v. Greece*, No. 38178/97, 14 December 1999, and *Agga v. Greece (No. 2)*, No. 50776/99, 17 October 2002.

⁷⁹ Subject to the principle of congruent forms: a marriage officiated by a *mufti* can be annulled only by a *mufti*.

⁸⁰ The United Nations Committee on the Elimination of Discrimination against Women (CEDAW) 'expresses concern about the non-application of the general law of Greece to the Muslim minority on matters of marriage and inheritance' (CEDAW, Concluding comments on Greece, 2 February 2007, paragraph 33), since women receive only one third of an inheritance, while men get two thirds.

⁸¹ See in particular the [report](#) by Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008, pp. 9/10.

⁸² *Muftis* have declared themselves 'legitimate judges' of Greek citizens of the Muslim faith wherever they live, not only in Western Thrace but also in Santorini (Komotini Religious Court, Ruling No. 24/2003) and Euboea (Komotini Religious Court, Ruling No. 22/2003). See Alexis Varende, '[La charia appliquée en Grèce](#)', 19 August 2014.

⁸³ See Alexis Varende, '[La charia appliquée en Grèce](#)', 19 August 2014.

⁸⁴ According to the expert Mr Konstantinos Tsitselikis, '99% of the *muftis'* decisions are ratified by the Greek courts, even where they infringe women's and children's rights as laid down in the constitution or the ECHR'. See [Doc. 11860](#) of our

44. Furthermore, the application of Sharia law in Western Thrace is prejudicial to women.⁸⁵ It should be pointed out that *muftis* have officiated at a number of Muslim weddings by proxy, without the express consent of the brides,⁸⁶ who are sometimes even underage girls.⁸⁷ As regards matters of inheritance, an application against Greece has been lodged with the European Court of Human Rights by a woman who is a member of the Muslim minority.⁸⁸ The applicant is challenging the ruling of the Greek Supreme Court that the will of a deceased Muslim citizen in favour of his wife was invalid on the ground that it was against Sharia law.⁸⁹

45. Lastly, the Commissioner for Human Rights of the Council of Europe has clearly stated that he is 'favourably positioned towards the withdrawal of the judicial competence from *muftis*, given the serious, aforementioned issues of compatibility of this practice with international and European human rights standards'.⁹⁰

4.2. France with Mayotte until 2011

46. The French experience concerning the transformation of Mayotte into an overseas *département* is relevant with respect to the handling of a local civil status based on Islamic law and *qadi* justice (justice dispensed by Muslim judges (*qadis*)). Mayotte is a French territory in the Indian Ocean off Madagascar, and one of its distinctive feature is the key role of Islam in its society. 95% of the population is Muslim.⁹¹ This has had a considerable influence on the law applying in Mayotte and on the existence of *qadi* justice in civil and commercial cases.

47. Until Mayotte was made a *département* in 2011 the inhabitants had two types of status: personal status (local civil law) and ordinary civil status. Personal status was governed by customary law modelled on Islamic law and African and Madagascan customs. This special system of civil law applied automatically to Muslim citizens of Mayotte,⁹² who nevertheless had the option of waiving it in favour of ordinary civil status.⁹³

48. However, this personal status was incompatible with the principles of the French Republic⁹⁴ and possibly in contradiction with the European Convention on Human Rights. Polygamy was permitted, a woman could be repudiated by her husband, and discrimination against women in matters of inheritance remained. From 2000 onwards, an acceleration of the process of making Mayotte a *département* led the

Committee on 'Freedom of religion and other human rights for non-Muslim minorities in Turkey and for the Muslim minority in Thrace (Eastern Greece)'.
⁸⁵ See the report on the situation of fundamental rights in Greece in 2005, EU Network of Independent Experts on Fundamental Rights, CFR-CDF/GR/2005, p. 42.

⁸⁶ Nineteen such weddings were celebrated in 2002 and ten in 2003. See the decision of 7 May 2003 by the Greek National Commission for Human Rights regarding Muslim weddings by proxy in Greece and the [report](#) by Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008, p. 9.

⁸⁷ Although under Sharia law the minimum age for marriage is twelve, a *mufti* had, in one particular case, officiated at the wedding of an eleven-year-old girl 'in order to protect the girls' interests'. See the [resolution](#) of 31 March 2005 by the Greek National Commission for Human Rights on the marriage of minors by the *muftis* in Greece, and the [report](#) by Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008, p. 10.

⁸⁸ This is Application No. 20452/14, *Molla Sali v. Greece*, filed with the Court on 12 March 2014. The application is pending, and for the time being no documents relating to this application are available.

⁸⁹ This was a ruling by the Greek Supreme Court dated 7 October 2013 which established that matters of inheritance involving members of the Muslim minority had to be settled by the *mufti*, as required by Sharia law. See also the [article](#) by Adéa Guillot, 'La charia au cœur de l'Europe' in *Le Monde* of 12 February 2015 and the [Arte report](#) (in French) of 21 October 2014.

⁹⁰ See the [report](#) by Mr Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008 (CommDH(2009)9, 19 February 2009, Issue reviewed: human rights of minorities), p. 14.

⁹¹ French Senate Information Report [No. 675](#) (in French), tabled on 18 July 2012, p. 25.

⁹² Vote No. 64-12 bis of 3 June 1964 of the Chamber of Deputies of the Comoros on reorganisation of Muslim legal proceedings. 'Muslim citizens of Mayotte' is taken to mean French citizens considered to be natives of Mayotte, even if they were born in the Comoros, so long as they have not renounced this connection.

⁹³ See [Article 75](#) of the French Constitution of 4 October 1958. Renunciation of personal status is irreversible.

⁹⁴ See French Senate Information Report [No. 675](#) (in French), p. 26, tabled on 18 July 2012 which states that 'certain rights conferred by personal status appeared incompatible with the constitutional principles of equality for all citizens and the secular nature of the French Republic'.

French Parliament to undertake a radical transformation of local civil status to bring it into line with the principles of the French Republic and closer to ordinary civil status.⁹⁵

49. The transformation of Mayotte into a *département* also marked the end of *qadi* justice, with the introduction of a judicial system based on ordinary law and a reorganisation of the courts.⁹⁶ It should be noted that *qadi* justice had been heavily criticised by the population of Mayotte, who rejected the application of some principles of customary law⁹⁷ and the random nature of *qadi* justice, which failed to respect the principle of a fair hearing.⁹⁸ Mayotte society's strong attachment to France, combined with the lengthy process of turning Mayotte into a *département*, allowed an overhaul of local civil status and an end to *qadi* justice in favour of a judicial system based on ordinary law.

4.3. Islamic courts in the United Kingdom

50. While in principle UK law applies to persons residing on UK soil, the family life of many Muslims is unofficially governed by Islamic law. The Islamic Sharia Council, based in London, represents this parallel legal system. It is an independent arbitration tribunal issuing private-law decisions and able to grant Islamic divorces⁹⁹ and offer advice on family matters.

51. According to a study, there are believed to be some thirty Sharia councils affiliated to local mosques and having genuine legal authority among the Muslim population of the UK.¹⁰⁰ Since the enactment of the Divorce (Religious Marriages) Act in 2002, a court in England or Wales could theoretically require a marriage to be dissolved in accordance with religious practices and customs, such as a divorce certificate from a Sharia council, before the divorce is made absolute in civil law.¹⁰¹

52. The existence of Sharia councils is nevertheless controversial, especially regarding the impact of their discriminatory decisions on women living in the UK.¹⁰² The British media have drawn attention to Sharia council procedures that fail to respect women's rights with regard to divorce and custody of children.¹⁰³

53. In response, on 26 May 2016 the then Home Secretary Theresa May, who is now Prime Minister, launched an independent review by a panel of experts into the compatibility of Sharia law with the law in England and Wales.¹⁰⁴ This Sharia law review, chaired by Professor Mona Siddiqui, is to be completed by 2017.

4.4. Russian Federation

54. The Russian Federation, which has been a member of the Council of Europe since 1996 and an observer at the Organisation of Islamic Co-operation since 2005, is a patchwork of ethnic and religious groups. Islam is considered to be the country's second religion,¹⁰⁵ covering some 20 million Muslims¹⁰⁶

⁹⁵ See Overseas Programme Law [No. 2003-660](#) of 21 July 2003 (in French) and [Order No. 2010-590](#) of 3 June 2010 (in French) laying down provisions with regard to the local civil status applicable in Mayotte and in the courts competent to rule on it. See also French Senate Information Report [No. 675](#) (in French), pp. 27-29.

⁹⁶ See French Senate Information Report [No. 675](#) (in French), pp. 29-33.

⁹⁷ Including repudiation, polygamy and men's double share of inheritances; *ibid.*, pp. 30-31.

⁹⁸ *Qadi* justice did not accept representation by a lawyer or the rule that both parties must be heard and had virtually no procedural rules.

⁹⁹ The [Islamic Sharia Council](#) issues divorce certificates, which are certificates dissolving Islamic marriages but having no force in civil law. The husband and wife must then apply to the UK courts for a civil divorce. The decisions of a Sharia council are confidential, as emphasised in the study by Dr Samia Bano, [An exploratory study of Shariah councils in England with respect to family law](#), University of Reading, 2012, p. 24.

¹⁰⁰ *Ibid.*, pp. 15-26.

¹⁰¹ See [Divorce \(Religious Marriages\) Act 2002](#).

¹⁰² See Machteld Zee's doctoral thesis, *Choosing Sharia? Multiculturalism, Islamic Fundamentalism and British Sharia Councils*, Eleven International, January 2016.

¹⁰³ Jane Corbin, ['Are Sharia councils failing vulnerable women?'](#), BBC News Online, 6 April 2013, and Myriam Francois-Cerrah, ['Why banning Sharia courts would harm British Muslim women'](#), *The Telegraph*, 17 July 2014.

¹⁰⁴ See UK Government [press release](#) of 26 May 2016 and *Guardian* article of the same date, ['Theresa May launches sharia law review'](#).

¹⁰⁵ Agnieszka Moniak-Azzopardi, 'Les religions et l'Etat en Russie. Une relation équivoque', *Le Courrier des pays de l'Est*, No. 1045, 2004/5, La Documentation Française, pp. 28-38.

¹⁰⁶ "Géopolitique de la Russie", *Hérodote*, No. 138, 2010/3, La Découverte; Xavier Le Torrivellec, ['État et enjeux de l'islam "de" Russie' \(2/3\)](#), *Le Courrier de Russie*, 11 December 2013 and [reply](#) from the Observatoire franco-russe to an article by Jean-Baptiste Naudet, ['Russie. Aux origines de la xénophobie'](#), published in the *Nouvel Observateur* on 15 October 2013.

belonging to over 40 different ethnic groups, the largest of which are the Tatars, Bashkirs and Chechens.¹⁰⁷ Most Russian Muslims live in the Northern Caucasus, particularly in Chechnya, Ingushetia, Dagestan and Tatarstan.¹⁰⁸ Russia's Muslims also have their own institutions.¹⁰⁹

55. In the Northern Caucasus, and particularly Chechnya, family and property matters are usually judged under Sharia law, while disputes arising out of violence, abduction, insults and adultery come under orally transmitted customary law ('*adat*').¹¹⁰ Here, under the guise of 'tradition', women and girls are victims of violence and discriminatory practices such as early marriage, abduction for forced marriage,¹¹¹ 'honour' killings,¹¹² female genital mutilation and polygamy,¹¹³ despite the provisions of Russian federal law.¹¹⁴ Moreover, family relations are governed by the idea that children are the 'property' of the father, so that women lose all custody and access rights for their children after a divorce.¹¹⁵ The recent report by our former Committee colleague Michael McNamara (Ireland, Socialist Group) notes that '[t]he deterioration of the situation of women in the Chechen Republic through the rigid enforcement of religious norms has continued'.¹¹⁶

56. In the Chechen Republic the authorities continue to interfere in citizens' private and social lives with their imposition of Islamic values.¹¹⁷ For example, the leaders of the Chechen Republic are in favour of incorporating religious education in the school curriculum,¹¹⁸ require women to dress according to Islamic rules¹¹⁹ and tolerate violent attacks on women whose dress is considered indecent.¹²⁰ Such actions are clearly in breach of the rights enshrined in the Constitution of the Russian Federation and Article 11 of the Constitution of the Chechen Republic.¹²¹ A number of cases are currently pending before the European Court of Human Rights.¹²²

4.5. Turkey

57. Turkey is a founder member of the Organisation of Islamic Co-operation and a signatory to the Cairo Declaration and since 2011 has had observer status at the League of Arab States. The Turkish Constitution puts the principle of secularism above the fundamental right to freedom of religion. The principle of secularism is enshrined in the preamble and Article 2 of the 1982 Constitution (revised in 2001). Under Article 4, the provisions of the first three articles of the Constitution 'shall not be amended'. Article 14 also

¹⁰⁷ Elisabeth Sieca-Kozłowski, 'Un exemple de la gestion des minorités ethniques et religieuses dans l'armée russe: le cas des musulmans', *Les Études du CERI*, No. 164, April 2010.

¹⁰⁸ Russia's Muslims are fairly well represented in eight republics: Adygea, Bashkiria, Chechnya, Dagestan, Ingushetia, Kabardino-Balkaria, Karachay-Cherkessia and Tatarstan.

¹⁰⁹ Among the Muslim organisations claiming federal status are the Russian Council of Muftis (based in Moscow), the Central Spiritual Directorate of Russian Muslims (based in Ufa) and spiritual directorates in each independent republic, and the North Caucasus Muslim Co-ordination Centre; see Sylvie Gangloff, *Islam au Caucase – Introduction* (in French), *CEMOTI*, No. 38, 2006.

¹¹⁰ International Crisis Group, *The North Caucasus: The Challenges of Integration (I), Ethnicity and Conflict*, Europe Report No. 220, 19 October 2012.

¹¹¹ *Caucasian Knot*, '[Grozny residents report disappearance of young woman](#)', 27 November 2013.

¹¹² *Ibid.* See also Memorial Human Rights Centre, 'Young Woman Abducted in Grozny', 30 July 2013 and the OFPRA (French Office for the Protection of Refugees and Stateless Persons) issue paper *Tchéchénie: le régime de Ramzan Kadyrov*, March 2015.

¹¹³ See Human Rights Watch, '[Dispatches: Will Russia Protect A Child Bride?](#)', 13 May 2015.

¹¹⁴ International Crisis Group, '[Women in the North Caucasus Conflicts: An Under-reported Plight](#)', Commentary, 9 June 2016; Russian Justice Initiative, '[RJI submits shadow report to UN Women's Committee on Women's Rights in the North Caucasus](#)', 13 October 2015.

¹¹⁵ CEDAW, Concluding observations on the eighth periodic report of the Russian Federation, CEDAW/C/RUS/CO/8, 20 November 2015, pp. 6-14.

¹¹⁶ See our Committee's report on *Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?*, Doc. 14083, Rapporteur: Mr Michael McNamara (Ireland).

¹¹⁷ See second information report of the Committee on Legal Affairs and Human Rights, *Situation in the North Caucasus Region: security and human rights*, Rapporteur: Mr Dick Marty, 2009, pp. 4-5.

¹¹⁸ Jonathan Littell, *Tchéchénie, An III*, Gallimard, 2009, pp. 93-104; Régis Gente, '[Tchéchénie: un islam néo-traditionnel après le conflit](#)', *Relioscope*, 12 August 2013.

¹¹⁹ Human Rights Watch report, *You Dress According to Their Rules: Enforcement of an Islamic Dress Code for Women in Chechnya*, March 2011.

¹²⁰ *Ibid.* The attacks described in the report were perpetrated between June and September 2010 by unidentified men said to be police officers, in the centre of Grozny, the Chechen capital.

¹²¹ *Constitution of the Chechen Republic*, Chapter 1: Fundamentals of the Constitutional Structure, Article 11: '1. The Chechen Republic is a secular state. No religion is allowed to determine matters of government or its obligations. 2. Religious organisations are separate from government and equal under the law.'

¹²² See report on *Human rights in the North Caucasus: what follow-up to Resolution 1738 (2010)?*, Doc. 14083, paragraph 38.

provides that none of the fundamental rights and freedoms enshrined in the Constitution (freedom of conscience, religious belief and conviction being guaranteed in Article 24) 'shall be exercised with the aim of [...] endangering the existence of the democratic and secular order of the Turkish Republic'.

58. Sharia law does not apply in Turkey, even though most of the population obeys the precepts and rituals of Islam. It would appear that action by the AKP government has had the effect of weakening the principle of secularism rather than abolishing it.¹²³ However, the ban on the Islamic headscarf was lifted first in state universities,¹²⁴ then in the civil service¹²⁵ and subsequently in secondary schools.¹²⁶ Furthermore, religious education is now compulsory in schools,¹²⁷ which is problematic for religious minorities, whether Muslim¹²⁸ or non-Muslim.¹²⁹

5. Sharia law seen through the prism of the European Convention on Human Rights

59. The Islamic declarations of human rights adopted since the 1980s are imperfect attempts to combine Islam with human rights.¹³⁰ Firstly, they are often more religious than legal texts, with constant references to Sharia law. The preamble to the Cairo Declaration, for example, states that fundamental rights are an integral part of the 'Islamic religion' and refers directly to Sharia law as a source of reference for interpreting them.¹³¹ We often find provisions which can prove to be disguised limitations on the rights being proclaimed, reflected in references to states' domestic legislation,¹³² to Sharia law¹³³ or to rather vague definitions of the rights being guaranteed.¹³⁴ Lastly, there are serious omissions, particularly regarding freedom of religion.¹³⁵ The 1981 Universal Islamic Declaration of Human Rights leaves in abeyance fundamental issues such as gender equality and freedom of religion and discriminates between Muslims and non-Muslims with regard to freedom of movement in the "Islamic world".

60. The European Court of Human Rights had the opportunity to rule on the incompatibility of Sharia law with human rights in its 2001 and 2003 judgments in the *Refah Partisi v. Turkey* case, holding that: 'Turkey, like any other Contracting Party, may legitimately prevent the application within its jurisdiction of private-law rules of religious inspiration prejudicial to public order and the values of democracy for Convention purposes (such as rules permitting discrimination based on the gender of the parties concerned, as in polygamy and privileges for the male sex in matters of divorce and succession).'¹³⁶

61. In this particular case, the decision by the Turkish Constitutional Court to order the dissolution of the Welfare Party (Refah Partisi), which advocated the introduction of Sharia law, was held to be compatible with the Convention, and the Court clearly affirmed the following: 'It is difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on sharia, which clearly

¹²³ See Ariane Bozon, '[La Turquie est-elle toujours laïque?](#)', *Slate*, 26 July 2016.

¹²⁴ The [start of the 2010 academic year](#) saw a lifting of the ban on headscarves in Turkish universities.

¹²⁵ Wearing of the headscarf has been allowed in the [civil service](#) since 2013.

¹²⁶ Since 2014, [girls in secondary schools](#) have been authorised to wear the headscarf.

¹²⁷ Article 24 of the 1982 Turkish Constitution states: 'Education and instruction in religion and ethics shall be conducted under state supervision and control. Instruction in religious culture and moral education shall be compulsory in the curricula of primary and secondary schools. Other religious education and instruction shall be subject to the individual's own desire, and in the case of minors, to the request of their legal representatives.'

¹²⁸ The Alevis are a non-Sunni religious minority practising a heterodox and syncretic strand of Islam. The European Court of Human Rights found against Turkey following an application from an Alevi concerning compulsory religious education at school relating mainly to Sunni Islam and the impossibility of exemption for non-Muslims: *Hasan and Eylem Zengin v. Turkey* (No. 1448/04), 9 October 2007. This issue has led to a number of Alevi demonstrations in Istanbul, such as that on [8 February 2015](#).

¹²⁹ See Ariane Bozon, '[La Turquie est-elle toujours laïque?](#)', *Slate*, 26 July 2016: 'When asked what should be done about the rights of non-Muslim minorities (for the most part 1,500 Orthodox Greeks, 15,000 Jews and 60,000 Armenians), Hrant Dink, the Armenian-Turkish journalist and militant killed in 2007, would reply, "The Treaty of Lausanne, nothing but the Treaty of Lausanne and the whole Treaty of Lausanne." In other words, "We have the instrument, but it is not being used; we have to revisit it."

¹³⁰ See Yannick Lécuyer, 'L'Islam, la Turquie et la Cour européenne des droits de l'homme', *Revue trimestrielle des droits de l'homme*, No. 67, 2006, p. 739.

¹³¹ See fourth paragraph of the preamble to the [Cairo Declaration](#) and Articles 24 and 25.

¹³² The retention of the death penalty for minors in the 2004 Charter ([Article 7](#)) can be inferred from the reference to states' domestic legislation, which may make provision for it. Nor is any mention made of prohibiting the death penalty in the 1990 Cairo Declaration ([Article 20](#)).

¹³³ See Articles 24 and 25 of the [Cairo Declaration](#), which refer to Sharia law as the only source of reference for clarification of the Declaration's articles.

¹³⁴ See the cursory affirmation of protection of minorities in the 2004 Charter ([Article 25](#)).

¹³⁵ [Article 10](#) of the Cairo Declaration makes no reference to freedom of belief or freedom to manifest one's religion, stating only that '[i]t is prohibited to exercise any form of pressure on man [...] to force him to change his religion'.

¹³⁶ *Refah Partisi and Others v. Turkey*, Grand Chamber, Application No. 41340/98, 13 February 2003, paragraph 128.

diverges from Convention values, particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts.' With respect to Sharia law itself, the Court expressly stated that 'a political party whose actions seem to be aimed at introducing Sharia in a State Party to the Convention can hardly be regarded as an association complying with the democratic ideal that underlies the whole of the Convention'.¹³⁷ The Court reasserted these principles in the *Kasymakhunov and Saybatalov v. Russia* case.¹³⁸

62. The Court has ruled that Sharia law is incompatible with the European Convention on Human Rights, but obviously this does not mean that there is absolute incompatibility between the Convention and Islam, since the Court has recognised that religion is 'one of the most vital elements that go to make up the identity of believers and their conception of life'.¹³⁹ Accordingly, the Court's relatively firm position should perhaps be qualified, taking into account the existence of structural incompatibilities between Islam and the Convention which, as far as Sharia law is concerned, are sometimes absolute and sometimes relative.¹⁴⁰

63. It is also probable that a large number of cases never come before the ordinary courts or the European Court of Human Rights because women are under enormous pressure from their families and their 'parallel society' to comply with the demands of the religious courts. In such cases there arises the question of whether to use the concept of public order to refuse to recognise (or enforce) discriminatory decisions even if they are not challenged by the women concerned.

6. Further work

64. This study of the most prominent Islamic declarations on human rights has compared them, superficially, with the principles enshrined in the Convention. However, I should like to study this issue further in the light of recent developments such as the creation of an Arab Court of Human Rights. It would also be worth collecting additional information on the application of Sharia law as a parallel legal system in member States.

65. To continue my work, I should like to ask the Committee for permission to hear a number of experts at future meetings. I should like to invite an expert on Sharia law (material provisions, specific procedural rules, different schools of interpretation), an expert on the human rights texts of Arab and Islamic organisations, and one or more experts on Council of Europe member States in which Sharia law is applied, directly or indirectly. At a later date, I think it would be particularly useful to invite Professor Mona Siddiqui, who is leading the Sharia law review in the United Kingdom, to present the findings of her study for the UK government. I hope the Committee will support these proposals.

¹³⁷ *Refah Partisi and Others v. Turkey*, Application No. 41340/98, 31 July 2001, paragraph 72, cited in the *Refah Partisi and Others v. Turkey* judgment of 13 February 2003, paragraph 123.

¹³⁸ *Kasymakhunov and Saybatalov v. Russia* (Applications Nos. 26261/05 and 26377/06), 13 March 2013, paragraphs 99, 100 and 111, reaffirming the landmark ruling in *Refah Partisi and Others v. Turkey*, No. 41340/98, [31 July 2001](#) and [13 February 2003](#). See also the statement of facts in a similar case that is pending: *Vasilyev and Others v. Russia* (No. [38891/08](#)).

¹³⁹ *Otto Preminger Institut v. Austria*, 20 September 1994, paragraph 47.

¹⁴⁰ See Yannick Lécuyer, 'L'Islam, la Turquie et la Cour européenne des droits de l'homme', *Revue trimestrielle des droits de l'homme*, No. 67, 2006, p. 739.