



RESEARCH PAPER

CDHRI and International Human Rights Framework

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PAPER INFO	ABSTRACT
Received: April 15, 2020	The Cairo Declaration stipulates Islamic version of human rights. It is considered as an alternative instrument to the Universal Declaration of Human Rights by those who believe in the common standards of human rights for all individuals to be protected universally. The mandate of promoting and advancing international human rights can be achieved by creating harmony between both instruments. This paper analyzes the principles upon which the Cairo Declaration was formed, in order to establish its complimentary nature to the UDHR. The research suggests due consideration to the cultural context of the human rights in the interpretation of international human rights instruments.
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Introduction

International human rights are referred to the rights stipulated and assured in forms of treaties, conventions, covenants, and declarations. They are considered interrelated, interdependent, and indivisible (United Nations UDHR, n.d.). The Universal Declaration of Human Rights (UDHR) lays down foundation of international human rights regime. Many states have expressed their dissatisfaction to the standards incorporated in the UDHR and other human rights treaties. The number and nature of reservations formulated to the human rights instruments is an evidence of the discontentment of the member states. As for instance, Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) is the second highest ratified treaty following the Convention on Rights of Child. However, it carries with it the highest number of reservations (UN Women, n.d.). The consensus on the universality of human rights has been opposed by several states from the developing, underdeveloped, and Muslim world. In response to the UDHR, the Organization of the

Islamic Conference (OIC) adopted the Cairo Declaration on Human Rights in Islam (CDHRI) in 1990.

The Cairo Declaration presents the Islamic version of human rights and believes that Islam is the cornerstone of all fundamental rights and every individual and community is collectively responsible for their safeguard (Saleh, 2012). A tension was created between Muslim states and the proponents of the universality of human rights after the enforcement of the CDHRI. The Cairo Declaration has been reprovved by many Universalists scholars on account of undermining the rights incorporated in the UDHR and other human rights treaties. On the other hand, Muslim states have criticized the UDHR for not considering the cultural and religious context of non-Western societies. The stress was released by acceptance of the Cairo Declaration into the international human rights instruments, vol. II, 1997, pp 478-84 in 1997 (Sheikh, n.d.). However, the status of the Cairo Declaration as an alternative or complimentary to UDHR has been in debate among the scholars. The Cairo Declaration has incorporated many rights as stipulated in the Universal Declaration. However, due to some divergencies between the two, the CDHRI is seen as an alternative to the UDHR. The criticism on the Cairo Declaration is due to misunderstanding of its principles, scope, and harmonious nature to other human rights instruments. The mandate of promoting and advancing international human rights across the globe cannot be achieved without reaching a consonance between both instruments. This paper analyzes the scope and principle upon which, the Cairo Declaration was formed. The research adopts historical approach to trace the origin of the Cairo Declaration. In addition, it examines critically the rights and freedoms enunciated in both instruments and addresses misunderstandings about the Cairo Declaration, in order to highlight its complimentary nature to the international human rights treaties. In addition, the paper analyzes the contributions of the Cairo Declaration in the development of international human rights framework.

Background to the Cairo Declaration

The international human rights are based on the principle of universality. They were first announced in the UDHR in 1948 and later on incorporated in several international human rights instruments. The global acceptance and recognition of UDHR is evident from three facts: first, the UDHR has been translated into 360 languages. It implies its recognition across the globe (United Nations Human Rights Office of the High Commissioner, n.d.). Second, the UDHR was adopted by 48 votes with no absentee. No member state voted against the adoption of the UDHR. Only eight states including USSR, Saudi Arabia, and South Africa abstained from voting. Therefore, it can be claimed that the UDHR was accepted by all member states of the United Nations in 1948 (Vitkauskaite, 2010). Third, the UDHR is the source of inspiration to other instruments and constitutions of the world. There are around two hundred assorted international instruments on human rights wherein sixty-five have claimed sovereignty of the UDHR (Sofi, 2016).

International human rights treaties obligate member states to safeguard fundamental rights and freedoms of individuals or groups in their respective states.

Donnelly (2013) maintains that human rights are inalienable, self-evident and entitled to all humans without any discrimination. He holds the universality of human rights to be adopted by all states globally. Universalists believe that human rights are pre-political; therefore, they are not contingent on cultural or political variations (Haveric, 2020). The ratification of human rights instruments by the member states implies universal recognition of human rights. However, the reservations reflect dissatisfaction of the member states to the universal standards set out in the human rights instruments.

The consensus on the universality of human rights has been opposed by the cultural relativists. They argue that rights and values are determined by the cultural and traditional perceptions. Therefore, universal standards in human rights are not applicable across the globe. The cultural relativists consider the notion of universalism as an excuse by the western political neocolonialism to intervene in the affairs of their cultures and domestic affairs (Saleh, 2012). They maintain that cultural differences are real and have practical implications on the rights of individuals. For instance, the accepted behavior of women in many cultures is primary to the society's recognition of her honor. As a result, it is not possible to have common set of women's rights universally in the divergences of cultural practice in the world (Tharoor, 2011).

The differences in viewpoints on universality of human rights were visible at the time of adoption of UDHR. The discussion was based on two schools of thoughts: one group supported the ideology of national sovereignty and subordination of the individuals to the state. The other group was supported by the democratic states that propagated for the respect of individuals' rights (Yearbook of the United Nations, 1948-49). The USSR filled his objection by stating that the Universal Declaration is against the national sovereignty and principles of the United Nations (Yearbook of the UN, 1948-49). Most of the under-developed countries and Muslim states were either under the colonial rule or did not exist at the time of adoption of UDHR. The countries that were independent could not have influence the others by incorporation of their concept of human rights due to lack of political weight (Olayemi, Hamza & Hidayah, 2015). After the independence of many states, Muslim countries rejected the idea of universality by claiming that the international human rights are vested in the western secular ideology and colonization (Vitkauskaite, 2010). Raja'I Khorasani, an Iranian representative, rejected the universality of UDHR. While addressing the United Nations in 1984, he declared UDHR a secular understanding of 'Judaean-Christian tradition'. In addition, he asserts that it is not possible for Muslim states to implement the provisions of UDHR without contravening Islamic Law (Russell, 2012). The dissatisfaction of the Muslim states over the international human rights instruments led the OIC to adopt CDHRI in 1990 (Olayemi, Hamzah & Hidayah, 2015).

Cairo Declaration on Human Rights in Islam

Prior to the adoption of CDHRI in 1990, the Universal Islamic Declaration of Human Rights (UIDHR) was presented by the representatives from various Muslim states including Egypt, Pakistan and Saudi Arabia. The UIDHR was adopted under the

patronage of a private organization, 'Islamic Council' that was affiliated with a Saudi Organization 'Muslim World League'. Nine years after the adoption of UIDHR, 56 member states of the OIC, endorsed the Cairo Declaration to guide the Muslim states in the field of human rights. The OIC was established on 25th September 1969. It constitutes the second largest international inter-governmental organization having 57 member states. The organization endeavors to promote peace and harmony in the world, while protecting the interests of the Muslims (Organization of the Islamic Cooperation, n.d.). The Cairo Declaration is similar in its basis to UIDHR with a difference that Cairo Declaration is a state perspective whereas UIDHR presents a non-state outlook. The CDHRI stipulates fundamental human rights based on traditional Islamic law (Saleh, 2012). The Cairo Declaration not by itself depicts that Muslim states intend to have an alternative and independent human rights system, rather it only intends to provide protection and safeguard to the rights given in Islam, which are indispensable for Muslims to apart from. The Cairo Declaration, in its preamble, explicates to uphold human rights that are inviolable and inalienable in Islam.

The viewpoint of the Muslim states and scholars in Islam varies in their approach to the international human rights treaties. The Muslim states consider that the modern concept of human rights has developed from the western enlightenment. In the international human rights treaties, due consideration has not been paid even to those values of a culture that can be carried in harmony with international human rights norms (Sheikh, n.d.). Many Muslim scholars consider the Cairo Declaration superior to UDHR. The International Islamic Fiqh Academy, established at the second summit of OIC, supports CDHRI on account of freedom to follow religious and cultural characteristics. *Ali El Qassemi*, an Iraqi scholar, maintains the supremacy of CDHRI over the Universal Declaration. He argued that the rights incorporated in CDHRI are based on principles of *Shariah* law, which were marked fourteen hundred years ago than the Universal Declaration. Moreover, the CDHRI presents a comprehensive set of rights for the individuals as compared to UDHR (Taskhiri, n.d.). He further argued that the historical context of both documents is different. The UDHR was adopted in the post-World War II epoch and the purpose was to avoid another conflict among the states.

However, the *Shariah* is not subject to such context (Masr, 1990). Another scholar, former representative in the OIC and drafter of the Cairo Declaration from Iran, Al-Taskhiri also preserves the dominance of the Cairo Declaration over the Universal Declaration in several matters. He asserts that the Cairo Declaration outlines several rights which are notably missing from the Universal Declaration. They include denouncing all forms colonization and imperialism, code of conduct during armed conflicts, rights of family members and protection to the human remains and burial sites (Taskhiri, n.d.). Contrary to this viewpoint, some Muslim scholars consider that international human rights are in fact in accordance with the protections granted in Islam. *Mustafa Cerić*, a Bosnian imam, grand mufti, opined that Muslim documents on the human rights were not required as UDHR is largely compatible with the core of *Shariah* (Haveric, 2020). *An-Naim* has rejected the claim that Islam is fully consistent with international human rights. He argues that Islam has always protected the disadvantaged groups, including women and disables (Saleh, 2012).

The Cairo Declaration and UDHR

The prime values of human rights as enshrined in international instruments are justice and dignity. The Cairo Declaration and UDHR have stressed on these values. Both instruments ensure justice, fairness, welfare, prosperity, and happiness to all human beings without any discrimination on any ground. Considering justice and dignity from the Islamic perspective, justice is considered as a cornerstone to the vision and philosophy of *Shariah*. The Quran says "We sent Our messengers with clear proofs, and with them We sent down the Scripture and the balance 'of justice' so that people may administer justice" (Quran 57:25). Similarly, the principle of human dignity is also reflected in both instruments. The Universal Declaration in its preamble and article 1 recognizes the inherent dignity of all human family. The Cairo Declaration in Article 1 (a) and Article 6 (a) protects every person's dignity, declaring all human beings as one family and stating that they all are equal without any discrimination on any ground, i.e. sex, religion, race, political affiliation, belief, colour, language, social status or other considerations. The principle of human dignity, as enshrined in international instruments is in total harmony with the *Quran* and *Hadith*. The *Quran* has stressed on the dignity for human being in many verses. The *Quran* says, "We have certainly honored the children of Adam and provided for them of the good things and preferred them over much of what We have created" (Al-Isra, 17:70). The protection of the dignity of human beings has also been emphasized in several Hadiths. Once Prophet Muhammad (SAW) scolded his companion for yelling at another Muslim by calling him "the son of a black woman". Prophet (SAW) condemned his act of degrading the dignity of other fellows. He called such an act of primitive and ignorant societies. In nutshell, Islam considers all human beings 'unconditionally equal' in dignity and it is the best gift that God has granted to the humans (Qurashi, n.d.).

The rights and freedoms enunciated in UDHR and CDHRI reflect that the common domains of rights in both instruments are larger than they differ. The UIDHR shares more commonalities with UDHR than the Cairo Declaration as it is a non-state document. The UIDHR shares twenty and the Cairo Declaration shares fourteen themes of rights with the Universal Declaration (Saleh, 2012). Employing the principle of similarity and considering the common domains of both instruments would be completely relevant to restore harmony between the Cairo Declaration and the Universal Declaration. Even if there are some dissimilarities or divergences between the two, they do not make them irreconcilable and alternative, as one must see the extent and nature of these dissimilarities or divergences and not the number. The proponents of the universality of human rights criticize Cairo Declaration on account of its contradicting nature to the principles of the Universal Declaration. The Universalists disapprove the Cairo Declaration for restricting rights and freedoms, including right to religion and women's rights. In a written statement, submitted to the United Nations General Assembly by a non-governmental organization, it was stressed that the international community should condemn threats to the universality of the human rights. It stated that the declarations based on specific culture, religion or nationalism can led the international community to confusion (United Nations General

Assembly, 2008). The International Commission of Jurists raised these points at the time that the CDHRI was presented for adoption in OIC. The Commission showed its concerns about the negative implications of the CDHRI. The Commission criticized the CDHRI on account of its threat to the inter-cultural consensus of the world community on the standards set out in human rights treaties. The Commission reproved the Cairo Declaration for discriminating the non-Muslims and women (United Nations General Assembly, 2008). *Adama Dieng* enumerated threats of the Cairo Declaration to the inter-cultural consensus in form of human rights instruments (Littman, 1999). *J. Russals* criticizes the CDHRI for limiting the rights under UDHR and other international covenants. The critic does not view CDHRI as complementary to the UDHR (Russell, 2012).

The women's rights, one of the most criticized domains of rights by the Universalists, the critics hold that the Cairo Declaration does not endorse gender equality and affirms the superiority of men over the women. *Adama Dieng* argues that the Cairo Declaration incorporates intolerable discriminatory provisions against non-Muslims and women, especially, for restricting women right to marriage by her own choice (Littman, 1999). Women's rights are stipulated in Article 5 and 6 of the Cairo Declaration. Article 5 declares family as a foundation of society and marriage. It gives right to marriage without any restriction on the basis of race, colour or nationality and obligates the society and state parties to eliminate all hurdles to marriage and protection to the family. Article 6 incorporates equality for woman in human dignity and gives her personal rights and duties. The critics argue that Article 5 of the Cairo Declaration does not grant freedom to marriage on religion basis. The philosophy of Islam on human rights is based on equity and not equality. Islam appreciates the biological differences and keeps a balance between rights and obligations. As for instance, Islam puts the responsibility of maintenance and welfare of women and family on husband (Saleh, 2012). The Cairo Declaration endorses the philosophy of Islam and safeguards the vulnerable including women. It binds states to eliminate provisions that contribute to the subservience of women. The Cairo Declaration declares all humans equal in dignity, basic obligations and responsibilities without any discrimination (Saleh, 2012).

In the Inter-faith marriages, there are few extra challenges involved: a new convert could not adjust in his society of previous religion and cannot harmonize with the new community. For this reason, Islam allows inter-faith marriages only when the converters have fully believed in Islam. The Holy *Quran* in *sura Al-Baqarah* (2:221) says that "Do not marry unbelieving women until they believe... Nor marry your girls to unbelievers until they believe." By stating "do not marry unbelieving women until they believe" the *Quran's* command is for both men and women and not for women only.

The Cairo Declaration has also been reproved for restricting the freedom of religion. In response to this, it is pertinent to note that there is nothing mentioned in the Cairo Declaration, the right to change religion, which can be considered as inconsistency to other human rights instruments. The Cairo Declaration in Article 10 prohibits only forced conversion of religion by using pressure in any form, exploiting poverty or *ignorance*. Article 10 of the CDHRI prohibits every kind of pressure to

convert from his religion. This Article applies to all religions and not only to Islam. Thus, forced conversion from other religions to Islam is also prohibited under Article 10 if any of the means mentioned in it are exercised. Islam not only endorses the freedom of conscience and thought, but also teaches tolerance and respect for other religions. The *Quran* (2:257) prohibits use of coercion in matters of faith (Rafi, n.d.).

CDHRI and International Human Rights Instrument

The international human rights law works at global and regional levels. At the global level, there are nine core human rights treaties. These instruments have developed a mechanism to implement and monitor the treaty provisions. The Committee of independent experts reviews periodic reports of member states and give comments and recommendations for guidance of the states (United Nations Core International Instruments, n.d.). In addition to the international treaties, regional inter-government organizations have developed regional systems that cover five part of the world, i.e. Africa, America, Europe, the Arab Charter, and the ASEAN. The European system is the oldest and well developed. It was followed by the Inter-American and African system on human rights (Georgetown Law, n.d.). Considering the United Nations perspective on human rights, i.e. universality, initially the questions were raised on the regional systems. However, the benefits of these systems have been recognized today. The regional systems are beneficial in several ways: they provide a mean to board regional values that are shared in a region with common standards. They have helped to localize international human rights norms (Vitkauskaite, 2010). Keeping in view the role of regional systems in supporting the international human rights framework, the regional systems are appreciated.

The Cairo Declaration does not fall under the regional human rights systems, as its application is not confined to a region. The Cairo Declaration was adopted by the Muslim states under the auspices of the OIC. The CDHRI provides an Islamic description of human rights for the Muslim community across the globe. In this sense, CDHRI is a specialized human rights system for a specific community (Saleh, 2012). Such human rights systems could be proved more beneficial in realizing human rights. Muslim states succeeded in recognizing the Cairo Declaration as a human rights instrument. The CDHRI was presented in 1992 to the United Nations for recognition as human rights instrument. In 1997, the Office of the High Commissioner published CDHRI in compilation of international instruments for human rights Vol II, pp 478-84, of international instruments (Olayemi, Hamzah & Hidayah, 2015; Littman, 1999). The Cairo Declaration has strengthened the international human rights system by promoting the rights enunciated in international human rights instruments. As for instance, the institutions of marriage and family have seen significant challenges in the world due to macro societal and economic transformation. Resultantly, these institutions are losing their traditional status. The OIC has developed a marriage and family institution (MaFi) to strengthen the constructive role of the marriage and families as enunciated in CDHRI. International instruments have also incorporated the rights to support families. As for instance, the Convention on the Rights of the Child, Convention on the Protection of the Rights of All Migrant Workers and Members of

their Families, and the Convention on the Rights of Persons with Disabilities all reiterate the families' salient role. The OIC strategy for the empowerment of marriage and family institution in the Islamic world is aimed to strengthen stability and development of the MaFi during 2020-2025 (OIC Mafi, 2020-2025). The commitment of the Muslim states to promote global agenda of human rights is noticeable from the fact that the preamble has referred to the International Bill of Human Rights and Article 43 of the Arab Charter states that the interpretation of the provisions of the Charter must be in lined with the principles of international law. This implies that Muslim states consider international rules superior to the regional instruments (Mattar, 2013).

The OIC is the sole force behind highlighting the law of blasphemy at international level. None of the human rights instruments, including UDHR have incorporated the provisions on blasphemy. The members of the OIC have argued for codify the law for the protection of the religion. Since 1999 through 2010, the OIC has presented the resolution on defamation of religions. The first resolution was proposed by Pakistan, focusing on the defamation of Islam. However, the scope of the resolution was widened to all religions on account of concerns from the UNHRC members. The resolutions presented during that period stated that the religious discrimination violates human rights of individuals. The resolutions condemned the religious discrimination and prohibit the defamation of religions. The United Nations Human Rights Commission, after an acute debate and support from OIC, enquired about the instances of the racial and religious discrimination from the Special Rapporteur on the Freedom of Expression (Holzapfel, 2014). The Resolution on the defamation of religions was brought with an intention to protect all religions from defamation. It demanded the blasphemous acts a crime. The resolution was adopted by a vote 21 to 10 by the United Nations Human Rights Council regardless of European states' concern that such laws would limit the freedom of speech (Olayemi, Hamzah & Hidayah, 2015).

Conclusion

International human rights instruments provide a common set of rights for individuals across the globe. The universal recognition of human rights treaties by the member states reflects acceptance of rights enunciated in these treaties. However, large number of reservations formulated to human rights instruments show disagreement of the member states on the standards set out in these instruments. Many states have expressed their concerns on universality of human rights on account of cultural, traditional, and religious context. The Cairo Declaration was adopted by Muslim states in response to the Universal Declaration. The idea was to guide Muslim states in field of human rights and project rights that are considered inalienable by the Muslims. The principles upon which CDHRI was formed were totally in harmony with the principles of the UDHR. The principles of justice, dignity, and common domain of rights in CDHRI and UDHR reflect consonance between both documents. Because of not considering cultural and traditions concerns of the world communities in drafting international human rights instruments, the world community could not achieved the desired universalism in human rights. A rational approach in this context needs to be adopted, i.e., cultural-sensitive universalism. The cultural and religious context of the

human rights should be given due consideration in interpretation of rights incorporated in international instruments. The regional human rights systems can be used to strengthen international framework so as to ensure effective mechanism for human rights.

References

- Donnelly, J. (2013). *Universal human rights in theory and practice*. Cornell University Press.
- Georgetown Law. Human Rights Law Research Guide. <https://guides.ll.georgetown.edu/c.php?g=273364&p=6025368#Brief%20Overview>
- Holzapfel, C. (2014). Can I Say That: How an International Blasphemy Law Pits the Freedom of Religion against the Freedom of Speech. *Emory Int'l L. Rev.*, 28, 597.
- Haveric, D. (2020). Islamic perspectives on human rights: A brief socio-historical overview. *Zadok Papers*, (246/247/248), 13.
- Littman, D. (1999). Universal human rights and human rights in Islam. *Midstream*, 45(2), 2-7
- Masr Midam. (1990). Rights and Protections- International Agreements, Cairo Declaration on Human Rights in Islam. Available at www.midanmasr.com/en/datafile.aspx?FileID=47
- Mattar, M. Y. (2013). Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards. *Harv. Hum. Rts. J.*, 26, 91.
- Olayemi, A. A. M., Hamzah Alabi, A., & Hidayah Buang, A. (2015). Islamic Human Rights Law: A Critical Evaluation of UIDHR & CDHRI In Context Of UDHR. *Journal of Islam, Law and Judiciary*, 1(3), 27-36.
- OIC Strategy for the Empowerment of the Marriage and Family Institution 2020-2025, A Guiding Strategy. https://www.oic-oci.org/upload/departments/family/oic_family_strategy_2020_2025_en.pdf.
- Organization of Islamic Cooperation. http://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en
- Qarashi B. Sharif. *The Life of Muhammad, The Greatest Liberator, The Holiest Prophet*. <http://alhasanain.org/english/?com=book&id=182&page=7>
- Rafi Ahmad. Islam, Universal Human Rights and Cairo Declaration, available at www.alislam.org/egazette/updates/islam-universal-human-rights-and-cairo-declaration
- Russell, J. (2012). Human Rights: The Universal Declaration Vs the Cairo Declaration. *Middle East Blog*.
- Saleh, N. S. S. N. (2012). A conceptual analysis of 'rights' in the international and Islamic human rights instruments. *American International Journal of Contemporary Research*, 2(4), 155-164.

- Sheikh, R. A. Muslim Discourse on Human Rights: A Study of Cairo Declaration.
- Sofi, S. A. (2016). A Comparative Study of Human Rights in Islam and Universal Declaration of Human Rights. *Journal of Islamic Thought and Civilization (JITC)*, 6(1), 37-46.
- Tashkiri, S. Mohammed, Essential Differences in Human Rights in the two Declarations. Available at <https://www.al-islam.org/human-rights-ayatullah-muhammad-ali-tashkiri/essential-differences-human-rights-two-declarations>
- Tharoor, S. (2001). Are human rights universal?. *New Internationalist*, (332), 34-35.
- UN Women. Reservations to CEDAW. <https://www.un.org/womenwatch/daw/cedaw/reservations.htm#:~:text=The%20Convention%20permits%20ratification%20subject,in%20other%20human%20rights%20treaties>.
- United Nations General Assembly. 2008. Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development. Ninth session, Agenda item 3. A/HRC/9/NGO/2
- United Nations Human Rights Office of the High Commissioner. <https://www.ohchr.org/en/udhr/pages/udhrindex.aspx>
- United Nations Universal Declaration of Human Rights. <http://www.un.org/en/universal-declaration-human-rights/>
- United Nations, Core International Instruments. <https://www.ohchr.org/en/professionalinterest/pages/coreinstruments.aspx>
- Vitkauskaitė-Meurice, D. (2010). The Arab charter on human rights: the naissance of new regional human rights system or a challenge to the universality of human rights?. *Jurisprudencija*, 1(119).
- Yearbook of the United Nations, 1948-1949. Nov, 1950.