

**14<sup>TH</sup> REGULAR SESSION OF OIC  
INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION (IPHRC)**

**CONCEPT PAPER OF THEMATIC DEBATE ON**

***“PROMOTING AND PROTECTING THE RIGHTS OF REFUGEES AND MIGRANTS;  
AN ISLAMIC AND INTERNATIONAL HUMAN RIGHTS OBLIGATION”***



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## **A. MIGRATION: AN INTRODUCTION**

The phenomenon of migration is as old as life on the planet. Human history is the history of human mobility. Since prehistoric times, migration evolved as a natural human response to flee from hunger, deprivation, persecution, conflicts or natural and manmade disasters. In the process, human beings have crossed cultural and political borders as well as natural obstacles<sup>1</sup>. However, in modern historical context, the interactions between different patterns of human mobility from slave trade, labour migration for industrialization of Europe to post-colonial globalized labour market involve intricate socio-economic, demographic and political factors.

The emergence of nation States, flow of capital and development of transport and communication infrastructure and media technologies have erected regulatory barriers to manage free movement of people across boundaries. The nation States successfully usurped *the “monopoly of the legitimate means of movement,” and with the introduction of citizenship and identity documentation, entry regulations became more restrictive and demands for military service and loyalty to the nation increased*<sup>2</sup>.

Since the contemporary debate on migration is taking place within the context of sovereign States and its national boundaries, the emerging realm of migration can be broadly classified into; (a) voluntary or (b) involuntary, which includes forced migration (in various forms such as slave trade, human trafficking, refugees fleeing from wars and ethnic cleansing) and such movement is either controlled under legal mechanisms or uncontrolled and in violation of national laws termed as ‘illegal’ migration.

Migration in the context of globalization brings opportunities but also important challenges of vulnerability and discrimination. If migrants lack access to human rights, their ability to benefit from migration is compromised, as is their potential to positively contribute to the development of societies in which they live or with which they are connected. The Global Migration Group has, therefore, pointed out; *“Protecting [human] rights is not only a legal obligation; it is also a matter of public interest and intrinsically linked to human development.”*<sup>3</sup>

## **B. ISLAMIC PERSPECTIVE ON MIGRATION:**

The history of Islam is replete with instances of Prophets who migrated to spread the message of God and escape from persecution such as Prophet Ibrahim (PBUH)’s migration to Makkah leaving behind his wife and son or forced migration of early Muslims who sought refuge with the Christian King Negus of Abyssinia to flee from the persecution in Makkah. Later, when Prophet Muhammad (PBUH) and his companions felt that their lives and their faith is under threat in Mecca, they decided to migrate “en masse” to Madinah. The centrality of migration to the Islamic tradition is perhaps best evidenced by the Islamic calendar system, which starts with the *hijrah (migration)* of the Prophet Muhammad (PBUH) and his companions to Madinah.

In the context of migration, Islam requires believers to assist and protect vulnerable people and offers a number of mechanisms for their care and support. Islam laid down the basis *Aman* (guaranteed protection to those seeking refuge in “Dar-al-Islam- *House of Islam*) for granting refuge, which is now deeply ingrained in Islamic faith, heritage and tradition. It is a term Islamic law uses to refer to the refuge that Muslims offer to non- Muslims. The Islamic tradition, therefore, recognizes in its own

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<sup>1</sup> Dirk Hoerder, Human Mobility, in: Iriye Akira/Pierre-Yves Saunier (eds.), The Palgrave Dictionary of Transnational History, Basingstoke 2009, pp. 502-508.

<sup>2</sup> John Torpey, The Invention of the Passport. Surveillance, Citizenship and the State, Cambridge 2000; id., Coming and Going. On the State Monopolization of the Legitimate ‘Means of Movement’, in: Sociological Theory 16 (1998), pp. 239-259.

<sup>3</sup> Global Migration Group, Statement of the Global Migration Group on the Human Rights of Migrants in Irregular Situation, 30 September 2010

precepts the principle of *non-refoulement*, which is the basis of international refugee law. Throughout its history, the Islamic world remained committed to this tradition. Islam provides a set of instructions in dealing with refugees and migrants, praising those who assist the people in distress and protect refugees. Rights to justice, equality, safety, security and human dignity are among those rights deemed indispensable in Islam. These are supplemented by further rights such as social solidarity, the right to education and to own property and freedom from slavery.

The Islamic concept of forced migration is of a conscious choice to preserve one's life and dignity as per the commands of God. The Quranic injunctions describes that migration can become a necessity for anyone in times of trouble or when one's life and beliefs are in danger. The Holy Quran has described it as "*And whoever emigrates for the cause of Allah will find on the earth many [alternative] locations and abundance*<sup>4</sup>."

### **C. RIGHTS OF REFUGEES AND MIGRANTS: INTERNATIONAL HUMAN RIGHTS FRAMEWORK**

**The Convention Relating to the Status of Refugees (the Refugee Convention) of 1951 and the Protocol Relating to the Status of Refugees of 1967** defines refugee as any person who is *outside their country of origin and unable or unwilling to return there or to avail themselves of its protection, on account of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular group, or political opinion*<sup>5</sup>.

**The International Organization for Migration (IOM)** defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) the causes for the movement; or (4) the length of the stay<sup>6</sup>.

The basic human rights of migrants and refugees are to be protected and respected, regardless of their status at the points of departure, arrival or in transit. Everyone documented or undocumented; enjoys basic human rights such as the right to life, liberty, and security of person; freedom from slavery or torture; the right to equal protection of the law such as freedom from discrimination, from arbitrary arrest and detention; the presumption of innocence and freedom of association, religion, and expression.

The primary responsibility for providing protection to migrant and refugees lies with the States. All States have an obligation to provide protection, which involve all actions aimed at ensuring equal access to and enjoyment of the rights of refugees, migrants and asylum-seekers, based on international law; including international human rights and international humanitarian law. States that are parties to the 1951 Convention on Refugees and its 1967 Protocol also have obligations in accordance with the provisions of these instruments.

The *raison d'être* of international law rules that seek to protect migrants and refugees is that they are persons who require special protection due to their vulnerability being outside the jurisdiction of the State of their nationality. Thus, international law rules provide a dual form of protection for migrants and refugees: (i) general protection under human rights treaties applicable to all persons and (ii) specific protection applicable to particular categories of persons (in this case migrants and refugees) migrating willingly or persons who are victims of human trafficking<sup>7</sup>.

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<sup>4</sup> (Surah An Nisa: 100)

<sup>5</sup> The Convention Relating to the Status of Refugees (the Refugee Convention) of 1951 and the Protocol Relating to the Status of Refugees of 1967; <http://www.unhcr.org/3b66c2aa10>

<sup>6</sup> <https://www.iom.int/who-is-a-migrant>

<sup>7</sup> Migrants' and Refugees' Rights: A Brief International Law Perspective by Omar Grech

The element of persecution, in case of refugees, obligates special protection under the Convention, which ordains the right not to be returned to the country from which they have fled is known as the principle of *non-refoulement*. Most importantly, the UNHCR has affirmed that the principle of *non-refoulement* constitutes a norm of customary international law, thus obligatory not only for State parties to the Refugee Convention<sup>8</sup> but for all States.

**The UN 2030 Sustainable Development Goals** recognize the role of well-managed migration towards sustainable development of nations and highlight specific measures to combat forced labour, human trafficking and empowerment of refugees.

On 13<sup>th</sup> July 2018 the UN Member States finalized the text for the **Global Compact for Safe, Orderly and Regular Migration** to cover all dimensions of international migration in a holistic and comprehensive manner. It provides an excellent starting point for finalization of global compacts on migration and refugees to reassess national migration policies.

#### **D. STATE OF REFUGEES AND MIGRANTS IN OIC COUNTRIES:**

The 57 Organization of Islamic Cooperation (OIC) countries span across the regions of Africa, Asia, South America, and the Middle East, which remain at the cross roads of human mobility. Accordingly, these countries are directly and equally affected.

In the past decade or so, we have witnessed the largest movement of migrants and refugees across different regions, since the Second World War. While no country is immune from effects of migration, especially forced migration, the OIC countries are bearing the major brunt as nearly two thirds of all forced migrants (including refugees, asylum seekers and Internally Displaced Peoples) originate from OIC Member States and these countries also host over half of refugees and asylum seekers worldwide with many serving simultaneously as countries of origin, transit, and destination.<sup>9</sup> OIC countries, therefore, shoulder a disproportionate share of the global responsibility for protecting displaced people worldwide, even though their total GDP represents only 8.9 percent of the world's total<sup>10</sup>.

While the OIC countries, cognizant of their responsibilities towards refugees/migrants, are committed to providing protection to refugees within their respective national capabilities and domestic laws, they are also facing a number of challenges due to their limited resources and lack of technical expertise.

OIC countries also play an active role in the global discourse on migration. **The OIC Ministerial Conference on Refugees in the Muslim World** held in Ashgabat in May 2012, in collaboration with the UNHCR drew sharp focus on the subject. The Ashgabat Declaration on Refugees in the Muslim World also reflected the political will of the OIC Member States to comprehensively address this issue.

#### **E. AIMS & OBJECTIVES:**

The protection and promotion of human rights in Member States remain one of the priority areas for IPHRC's mandated work. Also, IPHRC is mandated to review the existing OIC instruments and mechanisms to identify and suggest recommendations to bridge any normative gaps in conformity with the international human rights instruments.

In the backdrop of ongoing grave global situation of refugees and migrants, which directly and disproportionately affects the OIC Countries, a thematic debate is scheduled during the upcoming 14<sup>th</sup> Regular Session of IPHRC, which will take place on 4 December 2018. It will contribute towards

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<sup>8</sup> <http://www.refworld.org/docid/437b6db64.html>

<sup>9</sup> Forced Migration in the OIC Member Countries: Policy Framework Adopted by Host Countries; A report by COMCEC (OIC Standing Committee for Economic and Commercial Cooperation)

<sup>10</sup> Forced Migration in the OIC Member Countries: Policy Framework Adopted by Host Countries. Report by Standing Committee for Economic and Commercial Cooperation of the OIC

identifying the challenges, suggesting way forward and raising awareness on this important topic. The specific aims and objectives of the thematic debate are to:

- (i) Identify major challenges confronting the protection of migrants and refugees and also opportunities available through streamlining of migration policies;
- (ii) Analyse on-going international, regional and OIC's initiatives, frameworks and organizational structures related to migrants and refugees, identify gaps and suggest way forward;
- (iii) Share best practices, policies and measures for protection and promotion of migrant and refugee rights in conformity with the international human rights obligations;
- (iv) Analyse ways and means to strengthen national legislations and action plans aimed at promotion of human rights-based policy formulation by involving different stakeholders such as security personnel, local communities, civil society and media on these issues; and
- (v) Identify contours of international cooperation to deal with transborder migration/refugees.

#### **F. FORMAT OF THE THEMATIC DEBATE:**

Experts from different relevant international and regional organizations as well as representatives of OIC Member and Observer States including their National Human Rights Institutions (NHRIs) will attend the thematic debate.

IPHRC Chairperson and the OIC Secretary General will inaugurate the debate. The inauguration will be followed by formal discussion on different aspects of the theme, which will be moderated by the IPHRC Chairperson. Invited Panellists will make presentations on various aspects of the theme, following which IPHRC Members will present their views. Thereafter, OIC Member and Observer States as well as their NHRIs will make interventions on the subject that may include information on their national practices on the subject, possible questions to the panellists as well as recommendations to the IPHRC. In the concluding session the Chairperson will wrap-up and present the key findings of the discussion in the shape of a draft outcome document, which will be adopted in the concluding plenary of the Session.