



الهيئة الدائمة المستقلة لحقوق الإنسان

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des Droits de l'Homme

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FOREWARD

On behalf of the entire team of the Independent Permanent Human Rights Commission (IPHRC) of the Organization of Islamic Cooperation (OIC), we are pleased to present the Second volume of compilation of all thematic studies, reports and declarations prepared by its members and adopted by the Commission since the first edition of the Journal that was published in 2018. The release of this journal coincides with the holding of the 48th Session of the OIC Council of Foreign Ministers (CFM) being held in Islamabad, Islamic Republic of Pakistan from 22-23 March 2022.

The establishment of IPHRC, as one of the principal organs of the OIC, is a proud achievement and a milestone in the five-decade long history of the OIC. It has aptly highlighted the convergence and compatibility of the universal human rights and fundamental freedoms with Islamic values as well as the importance of respecting the cultural and religious diversity of the Organization for promoting peaceful, progressive and multicultural societies. Over the last decade, the progress made by the IPHRC has come to symbolize the defining characteristics of a 'New' and 'Reformed' OIC, which began with the New OIC Charter adopted by the 11th Islamic Summit held in Dakar, Senegal in 2008.

The Commission is pleased to share that it was able to comply with all the mandates given to it by the OIC-CFM including undertaking various fact-finding visits and writing corresponding reports, conducting research on various thematic human rights issues of contemporary concern, holding international Seminars and thematic debates with concrete and comprehensive outcome documents, and publishing press statements on human rights violations committed against innocents Muslim populations, communities and minorities around the globe, details of which are available on IPHRC website.

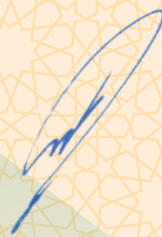
In yet another monumental achievement, the OIC-IPHRC, as mandated by the CFM, had reviewed and revised the OIC instruments on human rights such as the Cairo Declaration of the OIC on Human Rights which was adopted by the 47th CFM and is made part of this compendium. The IPHRC has also reviewed and revised the OIC Covenant on the Rights of Child in Islam, and the revised version is being discussed by an Inter-governmental Working Group, which is expected to finalize it soon for approval by the 49th CFM.

Finally, the Commission wishes to express gratitude to all OIC Member States for their trust and confidence on it. It shall continue to seek their guidance in fulfilling human rights mandates and objectives. In particular, we are grateful to the Government of the Kingdom of Saudi Arabia for generously hosting the Commission's Secretariat. We also appreciate the steadfast support provided by the OIC Secretary General and his entire team in the OIC General Secretariat.

The Commission hopes that this journal will enable a better understanding of the human rights issues in the OIC Member States and contribute to the joint efforts towards clarifying misperceptions about Islamic perspective on various human rights issues and in advancing the human rights agenda of the OIC. While acknowledging the ongoing cooperation between the IPHRC and various OIC institutions, we urge all relevant OIC institutions to take full advantage of the Commission's advisory expertise, including by enhancing interaction and exploring avenues for developing joint projects and cooperation.



Dr. Haci Ali Acikgul
Chairperson



Dr. Saeed Mohamed Alghfeli
Vice Chairperson



Amb. Muhammad Lawal Sulaiman
Vice Chairperson



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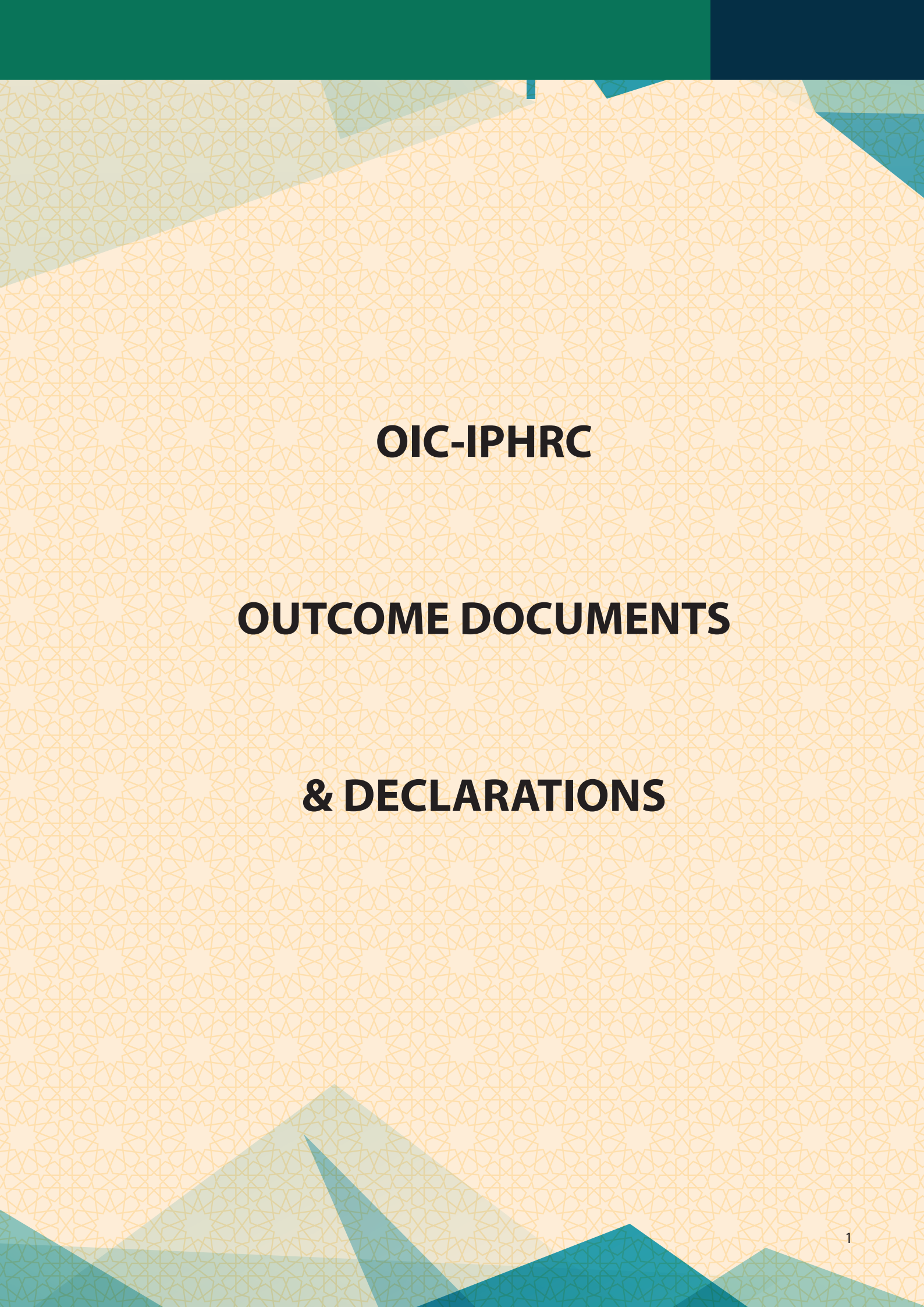
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OIC-IPHRC

OUTCOME DOCUMENTS

& DECLARATIONS



OIC-IPHRC 13th SESSION OUTCOME DOCUMENT OF THEMATIC DEBATE ON 'Revisiting the OIC Covenant on the Rights of Child in Islam to Reinforce the Rights of Children in Member States'

Jeddah 19 April 2018: During its 13th Regular Session, the OIC Independent Permanent Human Rights Commission (IPHRC) held a thematic debate on the subject of '*Revisiting the OIC Covenant on the Rights of Child in Islam to Reinforce the Rights of Children in Member States*'. Dr. Abdulla Mosa Altayer Chief Adviser of the OIC Secretary General and IPHRC Chairperson Dr. Rashid Al Balushi inaugurated the debate. Secretary of International Islamic Fiqh Academy, Members from the UN Committee on the Rights of the Child and Representative of UNICEF participated as key panelists. The Special Representative of the UN Secretary General on Violence against Children also participated through video link. A large number of Member States also participated actively and contributed to the discussion. Based on the comprehensive discussion, the Commission adopted the following:

Reaffirmed that Islam laid the architecture of human rights-based society where interests of the vulnerable and disadvantaged were secured through codification of rights and responsibilities. In Islam, progeny is regarded as a gift from Allah Almighty placed in the custody of parents or caregivers as a sacred trust. The Islamic jurisprudence is aimed at achieving five main objectives for humanity which include: the safeguarding of progeny, life, sanity, property and faith. The issue of childhood is at the core of the first objective, namely, safeguarding children and immunizing them against dangers¹;

Underscored that all children, before birth and after birth, including orphans, are regarded as vulnerable and deserving of care. Islam, therefore, accords utmost priority to the child's best interests within the framework of family, society and State. It regards protection and promotion of child rights as obligatory and stresses on provision of an enabling environment that nurtures positive future for every child in all settings without discrimination. It is, therefore, shared responsibility of parents and family members, civil society and State to ensure that child rights are respected, protected and fulfilled;

Guided by the divine guidance given in the Holy Quran, noble Islamic teachings and traditions of child care and contemporary international and regional normative frameworks which include OIC Covenant on the Rights of Child in Islam and UN Convention on the Rights of Child (CRC);

Highlighted the need for child centric legal frameworks to promote and protect the potential vulnerabilities and susceptibilities of children to social, economic and cultural exploitations as compared to adults. Hence, "by reason of his/(her) physical and mental immaturity, needs special safeguard and care."² Girls, in particular, are more susceptible to different forms of abuse and exploitation.

Acknowledged the contributions made by the UN Convention on the Rights of Child (CRC) and its Optional Protocols as well as that of the regional instruments (such as African Charter on the Rights and Welfare of the Child, 1990; Arab Charter of Human Rights, 1994; and the GCC Declaration of Human Rights, 2015; ASEAN Human Rights Declaration, 2012) in setting out the child rights in specific contexts and safeguards which States Parties agreed for the welfare of children.

Further acknowledged that almost universal ratification of CRC represents a giant leap forward in the global struggle to extend rights to children and established direct relationship between child and the State. It also articulated human rights addressed in other UN instruments from a child-centered perspective and provided a strong basis for legislative framework for realizing and protecting child rights in all settings. However, it also remains an undeniable fact that there exists disparity in the attitudes and actions of States towards its domestic application and enforceability.

¹ Children in Islam: Their Care, Upbringing and Protection 2005

² UN Declaration of the Rights of the Child

Highlighted the importance of context and cultural relevance in transformation of the CRC obligations into State laws and policies. While few of the OIC countries continue to struggle with the implementation of CRC due to perceived challenges concerning compatibility with the local cultures, traditions and family values, the CRC preamble does acknowledge the existence of cultural diversity and particularities³. It further identified that respect for cultural diversity and particularities should be one of the standing points of the review process of the OIC Covenant;

Noted that OIC 'Covenant on the Rights of the Child in Islam' (OCRCI) was adopted in 2005 to provide a legal framework, based on tenets of Islamic principles and ethos, to define the claims, rights, and obligations of the child, family, society, and the State. Although a significant development in its own right, the Covenant falls short of providing an institutional mechanism to convert claims into rights and render actions obligatory for the protection and development of children. It was further noted that only 8 Member States have so far signed the Covenant, out of which only two have ratified it. On the other hand, all the OIC Member States have signed and ratified the UN CRC, which substantiates the claim to review the OIC Covenant to bring it in conformity with the international human rights instruments and make it more representative, broad based and implementable.

Welcomed the timely mandate given by the OIC Council of Foreign Ministers (CFM) to review the "Covenant on the Rights of the Child in Islam" to address the evolving demographic, social and cultural challenges faced by the Member States in child care and Affirmed its resolve to continue updating and refining OIC human rights declarations and other covenants within the OIC framework in harmony with Islamic values and relevant universal human rights standards.

Underlined that the realization of child rights is threatened by persistence of poverty, inadequate social and economic conditions, pandemics, communicable and non-communicable diseases, climate change, natural disasters, armed conflicts, foreign occupation, displacement, violence, terrorism, abuse, communalism, discrimination, and inadequate legal protection in different parts of the world.

Further underlined that the main drivers of violation of child rights are multifaceted and its prevention and elimination requires an integrated multi-sectoral approach. To that end, among others, achieving all the targets of the SDGs, especially those related to ending poverty and child labor; addressing gender inequality and harmful practices; promoting health and education as well as access to justice through accountable and inclusive institutions will address the vulnerabilities of children.

Identified the child rights provided in the Islamic legal traditions, which among others include: (a) right of a child to life before and after birth; (b) right to a noble and good character parents; (c) right to lineage and be the product of legitimate wedlock (knowing the biological parents and the choice to maintain a relationship with them; child's right to information concerning her/his identity); (d) rights to freedom of expression and protection of privacy; (e) right to a family, home, kindred, name, property and inheritance; (f) right to socialization; (g) right to nurture, which include health care including immunization and protection against diseases, social security and proper nutrition; (h) right to education and the acquisition of skills; (i) right to lead a dignified and secure life free from all forms of vices, exploitation, abuse, neglect and maltreatment; (j) right to just and equal treatment; (k) right to equal opportunities to maintenance; (l) rights of orphans to enjoy equal rights of inheritance and protection; (m) right of the child to have society and the state; play a key role in protecting and ensuring children's rights; (n) right to play.

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Further identified that the child rights in Islam and other international covenants are safeguarded at three distinct levels, which include family, society and State.

³ UN CRC Preamble

- (a) **Family:** Parental care is the main foundation for providing protection for children and enabling them to enjoy the rights guaranteed to them by Islam. The importance of raising a child in its natural family environment is well established including its alternative Islamic model of Kafalah⁴. Furthermore, in Islamic law, concepts of rights and duties, especially within the family, are reciprocal. The parents, "duty to raise and educate their children and treat them with compassion and kindness is reciprocated by the child's duty of 'Ihsan,' to them, which imply deference and obedience⁵. This concept of reciprocal duty is also echoed in the African Children's Charter.⁶
- (b) **Society:** has a vital oversight role in preventing any abuse and creation of an enabling environment for positive psycho-social, mental and physical development of children. Community-based organizations and religious leaders can play an important role to expose abuses and governmental neglect in realisation of child rights. Zakat (alms) and charities also play a significant role in ensuring welfare of the orphans, vulnerable and destitute children.
- (c) **State:** For all children to enjoy their rights without discrimination, it is a prerequisite that the State constitution should unequivocally mention that children are holder of specific rights. States should take all appropriate measures to ensure realization of child rights including the highest attainable standard of physical and mental health without discrimination and, in doing so, be guided by the best interests of the child. States must pass specific laws guaranteeing the protection of children from exploitation; set up specific national mechanisms to enforce the CRC provisions and take all necessary measures to abolish harmful practices compromising the dignity and integrity of the child. States must also exercise due diligence to prohibit, prevent and investigate acts of violence against children, eliminate impunity and provide assistance to the victims in all settings.

Condemned the persistent denial and violations of rights of children living under foreign occupation and armed conflict situations those who suffer from illegal recruitment as child soldiers and endure brutalities at the hands of occupation/security forces causing severe bodily harm and psychological trauma.

Expressed grave concern over the critical situation of child refugees, internally displaced children, child asylum seekers and migrant child, in particular those unaccompanied or separated from their parents and affirmed the need to promote and protect effectively human rights and fundamental freedoms of children in all situations, regardless of their status and to provide for their health, education and psychosocial development in all settings.

Welcomed the steps taken and resolve expressed by all OIC Member States during the debate, to protect and promote the rights of children as an obligation to redeem their future generations including through continued collaboration with relevant regional and international partners in accordance with their obligations under respective international and regional human rights instruments.

Called upon all OIC Member States and other stake holders to:

- a. Consider incorporating the ratified conventions into national laws;
- b. Develop national child rights policies and legislative actions in accordance with the international human rights law ensuring that they grow up in safe, caring and enabling environment;
- c. Review and reinforce national legal frameworks as well as to develop relevant implementation mechanisms to transform the mind-sets, harmful traditional practices and socio-cultural customs. To this end, emphasized undertaking administrative and social measures to strengthen information- sharing awareness raising and engagement of community/religious leaders to overcome discriminatory attitudes for abolishing harmful practices that compromise the dignity and integrity of the child;
- d. Identified the need for the States Parties to establish an independent monitoring mechanism either as part of a national human rights institution with a child unit, or as a separate mechanism of ombudsperson for children to monitor the fulfilment of child rights.;
- e. Ensure full access to inclusive and equitable education and promotion of lifelong learning at all levels and in all situations, which is an essential precondition for full realization of child's rights;

⁴ UN CRC Article 20(3)

⁵ Hammudah Abdl al Ati "The Family structure in Islam"

⁶ African Children's Charter Art. 31

- f. Address the gender dimension of child rights, particularly against girl-child in all policies and actions;
- g. Make Early Childhood Development (ECD)⁷ interventions an integral part of national policies and educational and health systems by addressing childhood issues within an integrated approach;
- h. Implement programs and measures including access to inclusive, non-discriminatory and equitable health care, quality education and social services;
- i. Criminalize the recruitment and use of children in armed conflicts and take firm steps to ensure a society free from all forms of violence against children.
- j. Fulfil all obligations of CRC and Optional Protocols (OP) which are ratified; expedite ratification of OPs by those States who have not done so yet and consider periodic reviewing of their reservations;
- k. Establish a guiding and monitoring mechanism to which OIC countries would be accountable for the implementation of the revised OIC Covenant on the Rights of the Child in Islam.

Recommended that the review of the OIC Covenant on the Rights of Child in Islam may:

- i. Highlight positive contribution of Islamic legal thought and jurisprudence in elimination of harmful practices that are antithetical to child rights as well as to showcase the added value of Islamic teachings to strengthen the existing international human rights law concerning children in general and the girl child in particular;
- ii. Highlight human rights and safeguards exclusively granted by Islam to children, which may or may not be available in the existing international human rights law instruments i.e. rights of the unborn child and the rights of inheritance etc.;
- iii. Highlight constructive evaluation of the egalitarian principles of Islam related to social justice, equality and equity and preservation of honor and dignity, which can reinforce global advocacy for the promotion and protection of the status, rights and welfare of children;
- iv. Underscore that every action that adversely affects the chances of the child to lead a normal life or that harms its body or psychology, is prohibited;
- v. Emphasize the need to devise a robust implementation mechanism to convert rights and responsibilities into specific actions by the State, society and family/care givers and articulate ways and means to convert child rights and entitlements into legal rules and safeguards;
- vi. Emphasize the importance of measures such as education, moral responsibility and social environment which influence personal behavior to respect rules of law;
- vii. Highlight the important role of the State legislative, executive, and judicial institutions, as well as the civil society in supporting and protecting the rights of the child with equal opportunities for males and females;
- viii. Strengthen rights-based parenting approaches including positive disciplining approaches throughout all phases of childhood including use of social media and internet;
- ix. Underline the need for parents to set a good example of high moral conduct during child's upbringing based on kindness and compassion;
- x. Emphasize the need for special care, protection and promotion of the rights of children in all settings including the situations of armed conflict, natural and man-made disasters and other humanitarian emergencies;
- xi. Specify that the Islamic traditions forbade the employment of children in hard labour and violent tasks and even stipulated a specific age limit for those who could take part in combat operations;
- xii. Identified specific areas to be considered for improvements such as; (a) provide a specific 'definition of Child'; (b) define minimum marriageable age in accordance with the national legislations with provisions for exceptions to be adjudicated through a defined process of law; (c) to provide a minimum age for criminal liability and include specific provisions to deal with the juvenile offenders in accordance with the guarantees stated in the CRC and other international human rights instruments; (d) provide specific safeguards to protect the right of children with disabilities and special needs to protect them against discrimination and marginalization; (d) to enrich its content with respect to the primary consideration of the best interests of the child in all actions and decisions; (e) to guarantee the rights of the child to education, including human rights education, the rights of the child to freedom of expression and to access to information as referred to in articles 13 and 17 of the CRC, while ensuring the protection of the child from information and material injurious to his or her well-being and morality, including the internet. The obligation of the parents/guardian/ caregivers to exercise supervision and grant of religious and moral education must be upheld without any prejudice to the child's best interest.

⁷ ECD: The years from conception through birth to eight years of age are critical to the complete and healthy cognitive, emotional and physical growth of children.

OIC-IPHRC 14th SESSION OUTCOME DOCUMENT OF THEMATIC DEBATE ON 'Promoting and protecting the rights of refugees and migrants; An Islamic and international human rights obligation'the Rights of Children in Member States'

Jeddah 06 December 2018: During its 14th Regular Session, the OIC Independent Permanent Human Rights Commission (IPHRC) held a thematic debate on the subject of '**Promoting and protecting the rights of refugees and migrants; An Islamic and international human rights obligation**'. IPHRC Chairperson Dr. Rashid Balushi and Amb. Samir Bakr, on behalf of the OIC Secretary General, inaugurated the debate. Representatives of Islamic Fiqh Academy, United Nations High Commissioner for Refugees (UNHCR) International Organization for Migration (IOM) and OIC General Secretariat participated as key panelists. A large number of Member States also participated actively and contributed to the discussion.

The Commission welcomed the steps taken and resolve expressed by all OIC Member States during the debate, to protect and promote the rights of refugees and migrants through continued collaboration with relevant regional and international partners in accordance with their obligations under respective international and regional human rights instruments. Based on the comprehensive discussion, the Commission:

Guided by the enduring principles and values that underlie the divine guidance given in the Holy Quran, noble Islamic teachings and traditions of 'Mawakhat', and other relevant OIC, regional and international human rights and humanitarian instruments dealing with the rights of migrants and refugees.

Reaffirmed that Islam secures the rights of refugees and migrants based on divine injunctions and spirit of compassion and solidarity. According to Islamic precepts, forced migration can become a necessity for anyone in times of trouble or when one's life and beliefs are in danger. It provides a framework for the protection of rights such as the rights to dignity, justice, equality, shelter, healthcare, family reunification and freedom from slavery. Also, the concepts of Aman; guaranteed protection to those seeking refuge providing them relief under the concept of "Ilghathat Al Malahuf", and the principle of non-refoulement, which is the basis of international refugee law, have strong basis in Islamic traditions.

Highlighted the hosting of Prophet Muhammad (PBUH) and his companions in Madinah and the magnanimity shown by the Ansar of Madinah, set a shining example of 'Mawakhat-e-Madinah', 'Brotherhood between the migrants and residents of Madinah'. It is this noble spirit, which continues to inspire Muslims across the world to welcome millions of brothers and sisters in distressed situations.

Recalled that the UN 2030 Sustainable Development Goals and Global Compact for Safe, Orderly and Regular Migration recognize the role of well-managed migration towards sustainable development of nations. Further appreciated that both cover all dimensions of international migration in a comprehensive manner to provide a credible starting point for the countries to reassess their national migration policies to combat child and forced labour, human trafficking, exploitation and abuse. To this end, welcomed the upcoming Intergovernmental Conference to adopt the Global Compact for Safe, Orderly and Regular Migration, in Morocco on 1011- December 2018 and hoped that its adoption will pave the way for sustained cooperation among the Member States to deal with complex issues of migration in a structured manner.

Underscored that migration is a source of innovation, diversity, prosperity and sustainable development of societies. In today's globalized world, safe and orderly migration is a beneficial tool to address labor market needs of many industrialized/developed countries, which are confronting problems of either declining/ageing population or shortage of professional expertise. In doing so, migrants contribute to the economic growth and socio-cultural diversity of destination countries.

Identified that multitude of factors contributing to voluntary/ involuntary or forced migration flows have increased in intensity, magnitude and complexity over the past decades, which inter-alia include: (i) intensification of conflicts and wars; (ii) foreign occupation; (iii) denial of basic rights and fundamental freedoms including growing intolerance leading to religious, ethnic and communal persecution; (iv) widening of economic disparities within and among the nations; (v) natural disasters, ecological and environmental degradation; and (vi) demographic imbalances between nations causing labor shortages.

Expressed concern at the growing and increasingly complex and relapsing conflicts, crises and humanitarian emergencies, which contribute to the growing number of migrant and refugees as well as exposes them to host of risks, vulnerabilities and exploitations during the entire cycle of migration from origin to destination. Migrants and refugees are commonly subjected to multiple and intersecting forms of discrimination, xenophobia based on their sex, race, religion or origin.

Emphasized that refugees and migrants must be seen as distinct group of people with distinct rights and protection needs who are also dealt distinctively under international human rights and humanitarian laws. If migrants and refugees lack access to human rights, their ability to benefit from migration is compromised and they will not be able to effectively contribute to the development of their host societies. They are entitled to all universal human rights and fundamental freedoms, which must be respected, protected and fulfilled regardless of their status, caste, creed, color, religion or origin and at all times.

Further emphasized that the international law provides 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 i.e. migrants and refugees, including victims of human trafficking. Also, the element of persecution, in case of refugees, obligates special protection under the 1951 Refugee Convention and Optional Protocol of 1967, which ordains the right not to be returned to the country from which they have fled, known as the principle of non-refoulement.

Reaffirmed that the States have the sovereign right to devise their national migration policies and to govern migration within their jurisdiction taking into account peculiar national realities, policies, priorities and requirements in conformity with international law. Also, the States have the primary responsibility and obligation for providing protection to migrants and refugees within their jurisdiction, which involve all actions aimed at ensuring equal access to and enjoyment of the rights based on international human rights law and international humanitarian law.

Highlighted that presently nearly two thirds of all forced migrants (including refugees, asylum seekers and Internally Displaced Persons) are originating from OIC Member States. At the same time, these countries also host over half of the refugees and asylum seekers worldwide with many serving simultaneously as countries of origin, transit, and destination¹, thus shouldering a disproportionate share of the global responsibility for protecting displaced people worldwide. To this end, appreciated and acknowledged the commendable role of the OIC countries who have provided and continue to provide sustained and magnanimous humanitarian support and contributions to the refugees.

Further highlighted that majority of OIC countries have either in place or are in the process of enacting comprehensive labor laws, migration policies and developing asylum legislation, which reflects their political will and commitment to comprehensively addressing these issues within their respective national capabilities and domestic laws.

Expressed concern on the persistent denial and violations of human rights of displaced people living under foreign occupation and armed conflict situations who endure brutalities at the hands of occupation/security forces. To this end, expressed solidarity with the Palestinian, Afghan, Rohingya, Kashmiri and Syrian refugees; stressed the need for eliminating the root causes of all such conflicts and urged Member States to intensify their humanitarian measures to cater for refugees' health, education and psychological and social development needs.

¹ 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)

Further expressed concern over the negative humanitarian impacts due to the terrorist activities of groups and militias undermining State institutions, disrupting developmental programs, and destabilizing the global peace and security.

Appreciated the commendable humanitarian relief work done by entities like UNHCR, IOM, UNRWA, International Committee of the Red Cross and Red Crescent in supporting and rehabilitating refugees in different parts of the world especially in conflict zones of Occupied Palestinian Territory, Myanmar and Syria. Also expressed concern at the dwindling level of financial support received by these entities, in particular UNRWA, which is seriously affecting the much-needed humanitarian relief efforts in a sustainable manner. Further, highlighted that the humanitarian assistance from donor nations should not come in the form of loans rather on the basis of equitable burden sharing in keeping with the spirit of international solidarity.

Highlighted the need to adopt child sensitive and gender responsive administrative and legislative measures to uphold the principle of best interest of child and cater for the specific needs and protection of girls and women, which constitute more than half of the refugee population. Lack of access to education and medical care can be particularly challenging to protect the survival and developmental rights of children as well as their physical and mental development.

Identified challenges to migration governance, which include: (a) collation of disaggregated data on migration, which impedes the accurate need assessment and commissioning of interventions to deal with emergent conditions; (b) non-adherence to the relevant international legal instruments, which limits the national capacities to formulate and implement relevant laws and procedures for enforcing orderly migration policies; (c) disproportionate spread of refugee burden over the OIC countries, which overstretches their national infrastructure and institutional capacities to the extent of collapse; (d) lack of emphasis on safe and orderly migration policies with skill integration to meet the labor shortages of the developed countries and implementation of labor laws to protect the rights of migrant workers; and (e) lack of focus on the realization of the Right to Development, which has led to widening of socio-economic and technological gaps within and among the nations causing abrupt and unregulated movement of people.

Called upon all Member States, international community and other stake holders to, as appropriate:

- i. consider ratifying relevant International instruments and incorporating the provisions of ratified conventions into national laws for implementation of national migration/refugee policies;
- ii. intensify cooperation with the UN and related entities to take all legislative and administrative measures for guaranteeing the rights recognized in the relevant international human rights and humanitarian instruments through germane policies with special focus on women and children;
- iii. grant legal status to the refugees in conformity with the international law, enabling them to access crucial social services as well as be able to integrate and earn livelihood. This could be the first step to maintain their dignity and self-respect; avoid poverty trap, abuse and exploitation;
- iv. integrate voluntary repatriation, local integration and resettlement into one comprehensive approach to durable solutions for refugees, to be implemented in close cooperation among countries of origin, transit and destination, involving UN and its partners, as well as refugees;
- v. commit to addressing the root causes of refugee situations in accordance with international law, while respecting the sovereignty of Member States;
- vi. allocate more resources to support and assist refugee hosting countries, in line with the principle of international solidarity, cooperation and equitable burden sharing. The role of Islamic Development Bank, in the context of OIC countries, was highlighted for providing financial and technical assistance to deal with the infrastructure and development related challenges to fulfil the rights of the migrants and refugees;
- vii. adopt inclusive approaches to address multidimensional and cross-sectional issues of migration, which include policy coherence across all sectors and levels of government with the active involvement of all stakeholders including media, civil society, National Human Rights Institutions, private sector; so as to relieve pressure on State structures in generating additional funding for refugee programs and tailored responses to refugee situations;

- viii. Mainstream migration issues in the Human Rights Education programs to sensitize the public opinion aimed at creating awareness about the plight of refugees and their protection needs for integration, promoting culture of tolerance, countering xenophobia and discrimination; and
- ix. adopt legal framework that are accessible to migrants to claim their rights and guard against any potential exploitation including imparting human rights training to law enforcement authorities, decision makers and other national institutions dealing with refugees.

Recommended that:

- a. a combination of political will, advocacy and legislative reforms with emphasis on enforceability are needed to secure migrant rights. Transformation of domestic laws and legal frameworks are the most effective ways of bringing long lasting change. Institutional linkages with relevant human rights bodies should be established for promoting sustainable and migrant/refugee friendly policies;
- b. migration issues may be addressed within the context of development cooperation with focus on job creation, youth skill development, access to technologies, rural development, food security, social development and environmental protection to address the root causes of migration factors;
- c. the national poverty alleviation strategies of destination countries be integrated with their migration policies to strengthen the link between humanitarian assistance and long-term development measures to prevent further displacement, improve livelihoods with focus on labor market integration;
- d. the relevant UN organs and agencies as well as other international humanitarian organizations should support building and strengthening of the State structures and institutions in vulnerable / affected countries to avoid spillover of the conflicts and to build their capacities for good governance and better utilization of scarce/available resources for human development;
- e. the formal and informal conflict resolution and prevention mechanisms be strengthened and early warning systems reinforced to preempt and prevent humanitarian crises including large scale displacement / trafficking of people;
- f. the mechanisms of legal, safe and orderly migration be promoted through strengthening of bilateral and multilateral institutional mechanisms between labor markets within and among the nations, liberalizing visa regimes and border controls through mutually acceptable agreements and procedures. Also, national strategies on operationalization of integrated border management may be initiated to tackle migrant smuggling and trafficking in human beings; and
- g. there is a need to strengthen national capacities to collect and disseminate quality data with access to objective, evidence-based, clear information for policy making and legislative actions.

OUTCOME DOCUMENT OF THEMATIC DEBATE ON 'The Role Of Human Rights In Promoting Good Governance' Held On 23rd April 2019 During 15th Regular Session Of Iphrc

Jeddah 25 April 2019: During its 15th Regular Session, the OIC Independent Permanent Human Rights Commission (IPHRC) held a thematic debate on the subject of *"The Role of Human Rights in Promoting Good Governance"*. IPHRC Chairperson Prof. Akmal Saidov and Amb. Hisham Youssef, on behalf of the OIC Secretary General, inaugurated the debate. Representatives of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Program (UNDP), and the UN Special Rapporteur on the Right to Development (RtD) participated as key panelists. A large number of OIC Member and Observer States and their NHRIs also participated actively and contributed to the discussion.

The Commission welcomed the steps taken and resolve expressed by all OIC Member States during the debate to promote human rights and best practices that ensure good governance through institutional building and citizen empowerment, as well as to enhance collaboration with relevant partners in accordance with their obligations under respective international and regional human rights instruments. Based on the comprehensive discussion, the Commission adopted the following:

Guided by the eternal and divine guidance given in the Noble Quran; Islamic teachings of protecting rights, assuring justice and serving the public interest; and other relevant OIC and international human rights instruments dealing with good governance;

Reaffirmed that Islam is a religion, which guides all aspects of human life, in accordance with the guidance given in the Noble Quran and teachings of the Prophet Mohammed peace be upon him. Deriving from this guidance, the Islamic concept of good governance is based on a comprehensive approach to providing justice, assuming responsibilities, protecting rights and promoting the welfare of both the society and individuals by eliminating corruption and social injustice;

Emphasized that the concept of governance is as old as human civilization, which encompasses both the process of decision-making and the process by which decisions are implemented. States have the primary responsibility for human rights and good governance, while other actors, including political parties, religious institutions, economic and financial institutions, and various civil society actors, play an important role in making, influencing, and implementing the decisions at different levels;

Highlighted that in Islamic concept of good governance, values, leadership and pragmatism are emphasized as a guide to the institutional infrastructure. To this end, recalled the governance model of Prophet Mohammed peace be upon him as the ultimate inspiration for all Muslims that established justice and ensured the rights and duties of all in an inclusive and harmonious society;

Further highlighted that in Islam, the concept of 'Amanah' (trust) is at the heart of governance and assuming responsibility at all levels. Allah commends that one should perform his/her duties honestly and diligently to uphold his/her Amanah (Surat Al Anfal, verse 27). The Islamic concept of 'Taqwa' is also closely linked to good governance, which means that every believer should be mindful of Allah's omnipresence and be aware of accountability. Furthermore, Islam commends the attitude of carrying out responsibilities and tasks with perfection and dedication, as stated by the Prophet Mohamed peace be upon him: "indeed, Allah loves one, who when he does a work, he does it with perfection";

Recalled that the OIC Charter and its 2nd Ten Year Program of Action clearly recognize the strategic importance of promoting human rights and fundamental freedoms, good governance, rule of law, democracy and accountability for the prosperity and progress of all OIC Member States;

Further recalled that the 2030 Development Agenda and Sustainable Development Goals (SDGs) also recognize the role of good governance to foster sustainable development and build peaceful, just and inclusive societies;

Highlighted that governance has a direct impact on the lives of all people in any country, as it relates to all political and institutional processes and outcomes that are deemed necessary to effectively conduct public affairs, rationally manage public resources and guarantee the realization of human rights to all members of society, and to achieve the goals of development;

Affirmed that a good model of governance requires an institutionalized infrastructure, which guarantees the rule of law, empowers people at grass root level, ensures effective participation of citizens in the public affairs, multi-actor partnerships, political pluralism, transparent and accountable processes and institutions as well as delivery of services to population;

Stressed that human rights and good governance are two faces of the same coin. Good governance promotes human rights while human rights are a source of good governance. In fact, the basic purpose of good governance is to protect the human dignity and foster human development. As such, the implementation of human rights relies on a conducive and enabling environment, where appropriate legislative and policy frameworks are developed and implemented. Thus, the two concepts are intrinsic to each other and mutually reinforcing;

Further Stressed that when led by human rights values, good governance reforms create avenues for the public to participate in policymaking and improve its implementation, through formal or informal mechanisms. Human rights norms also help to establish mechanisms for the inclusion of multiple social groups, especially vulnerable ones, in decision-making processes, provide guiding standards for the administration of justice and equitable service delivery, as well as encourage civil society and local communities' engagement on issues of importance to them;

Underscored that human rights education and raising public awareness on human rights enable informed social and political dialogue that help to reform negative social and legal practices and strengthen good governance. Rights awareness is especially important among vulnerable and disadvantaged groups, as well as the State and civil society organizations working with them;

Highlighted that corruption is a major obstacle for achieving good governance. It is an assault on the inherent dignity of the human person and a betrayal of one's responsibility to others. It is defined as the pursuit of one's interests at the expense of the good of others, which undermines commitment and solidarity by corroding trust and hope. It robs all, particularly the poor and marginalized, of their rightful share in the common good and thus blocks integral development;

Stressed that it is the responsibility of States to have in place appropriate policies and measures to fight corruption at all levels, and that all persons have the duty to peacefully resist corruption in all its forms. Respect for the dignity of the person requires all persons to live in truth and in the exercise of solidarity, particularly with those directly resisting corruption;

Affirmed that the States have the sovereign right to devise their national policies for their convenient model of good governance within their jurisdiction, taking into account national realities, policies, priorities and requirements in conformity with international law and universal human rights norms and standards. Also, the States have the primary responsibility and obligation for establishing justice under a legitimate model of good governance;

Reaffirmed that each person has the responsibility to participate in the building of a free and just society rooted in the intrinsic and inviolable dignity of human beings, and that all States should make the best efforts in order to ensure active, free and meaningful participation in development and the fair distribution of its benefits resulting therefrom;

Commended all OIC Member States that have taken up specific initiatives for open and good governance and achieved significant improvements. However, expressed concerns that many of them still face tremendous challenges to

overcome complicated and multi-dimensional deficiencies of governance, especially related to corruption, conflicts and weak infrastructure of institutions. These realities across many OIC Member States make the need to improve good governance a top priority, in order to ensure socially and economically equitable societies that are inclusive in nature and enable human rights and sustainable development;

Urged all OIC Member States and other relevant stakeholders to utilize and integrate human rights principles as basis of their good governance efforts with a particular focus on transparency, accountability, non-discrimination, rule of law and access to justice, efficient and effective participation of all citizens to strengthen democratic institutions, delivery of justice and to eliminate corruption at all levels for responding to the rights and needs of their populations;

Underscored that a good model of governance should always be based on a people-centered perspective, which puts the expansion of human capabilities, choices and opportunities at the center of the governance process. This necessitates legitimate and accountable government and governance, based on the rule of law and fundamental human rights;

Identified some of the key elements needed to build a good governance model, which inter-alia include: i) assuring an effective, just and non-discriminatory delivery of public services pertaining to the rule of law, including administration of justice and legal aid; ii) upholding human rights and ensuring full and equal participation of all citizens, including in institutions of governance and the judicial system; and iii) recommitting to establishing appropriate legal and legislative frameworks to prevent and address all forms of discrimination, especially against women and other vulnerable members of society, to secure their empowerment and full access to justice;

Reiterated that while good governance is a State led process, global interconnectedness and contemporary challenges warrant international cooperation in the spirit of “the collective responsibility of the international community to ensure the attainment of the minimum standards of living necessary for the enjoyment of human rights and fundamental freedoms by all persons throughout the world”¹;

Called upon Member States to: (i) utilize development tools to implement human rights principles and standards to materialize good governance model in specific areas including service delivery; (ii) provide incentives to relevant actors through development strategies to improve good governance; (iii) ensure effective rule of law, including non-discriminatory measures to guarantee justice and equal access opportunity for all; (iv) strengthen legislative drafting and implementation of laws and judicial processes in line with human rights standards; (v) follow-up on Universal Periodic Review and Treaty Body recommendations through appropriate monitoring systems; and (vi) promote grassroots empowerment as a way to strengthen the quality and level of participation in development and governance processes;

Further called upon the international community to uphold good governance at the international level, which is fundamental for strengthening the global peace, justice and to democracies international order. To this end, stressed the importance of reforming the international governance structures, including the quotas and voting rights of the Bretton Woods institutions, to better reflect current realities and enhance the voice and participation of developing countries;

Noted that developing countries including many OIC Member States, as part of a globalized world, are confronted with unprecedented challenges in the climatic, technological, political, security and demographic arena and urged them to cooperate with each other in eliminating these obstacles to ensure good governance, development, and broad-based sustainable development for all;

Recommended to all OIC Member States to undertake coordinated and accelerated actions, in accordance with the commitments made in the revised OIC Charter and the 2nd Ten Year Plan of Action 2025 to: (a) promote human rights and

¹ The General Comment No. 3 of the UN Committee on Economic Social and Cultural Rights obligates State Parties to international cooperation for development for the realization of economic, social and cultural rights for all at all levels.

fundamental freedoms, good governance, rule of law, democracy and accountability in their countries; (b) create sound policy frameworks, at national, regional and international levels, based on pro-poor and all-inclusive development strategies to support accelerated investments in poverty eradication programs; and (c) promote cooperation among Member States to achieve sustained socioeconomic development and effective integration in the global economy, in conformity with the principles of partnership and equality;

Reaffirmed that the good governance remains a priority area both for the OIC and OIC-IPHRC, and **undertook** to continue to work for wider understanding, better implementation and realization at national, regional and international levels to ensure the institutional foundation for full enjoyment of human rights both by the individuals and peoples in all countries without discrimination on any grounds;

Agreed to launch a joint study involving the IPHRC, Islamic Development Bank and SESRIC to develop indicators to monitor progress on the principles outlined above for consideration and adoption by the OIC Member States.

OUTCOME DOCUMENT OF THE THEMATIC DEBATE ON “Climate Change and Environmental Protection; A Human Rights Perspective” During 16th regular session of the iphrc on 26 november 2019

Jeddah 26 November 2019: The OIC Independent Permanent Human Rights Commission (IPHRC), during its 16th Regular Session, held a thematic debate on the subject of *‘Climate Change and Environmental Protection: A Human Rights Perspective’*. IPHRC Vice Chairperson Mr. Adama Nana and **Dr. Abdalla Mosa Altayer, Chief Adviser and Director General of Cabinet, on behalf of the OIC Secretary General**, inaugurated the debate. Member of the UN Committee on Economic, Social and Cultural rights and representatives of the United Nations Environment Programme (UNEP), Statistical, Economic and Social Research and Training Centre for Islamic Countries (SESRIC), Islamic Educational, Scientific and Cultural Organization (ISESCO) participated as key panelists. A large number of OIC Member and Observer States and their National Human Rights Institutions (NHRIs) actively participated and contributed to the discussion.

The Commission welcomed the best practices shared by the OIC Member States to mitigate the impact of climate change and ensure environmental protection through policy coherence, technology-based solutions, institutional capacity building and engagement of civil society, as well as to enhance collaboration with relevant partners in accordance with their obligations under respective international and regional human rights instruments. Based on the comprehensive discussion, the Commission adopted the following as the Outcome of this thematic debate:

Guided by the Islamic principles of *‘Tauheed’* (oneness of Allah) and creation of human being as *‘Khalifah’* (trustee) on the basis of *‘Fitra’* (natural state) highlights that Allah has created the universe and its various resources as a trust in our care for the use and welfare of all people and for all living beings who are encouraged to benefit from these resources while avoiding extravagance and wastefulness and conserving for the progeny;

Affirmed that ‘Islamic worldview represents a unique model for a transition to sustainable development by focusing on justice, degrowth (low consumption) and harmony between human and nature’¹. In Islam utilization of natural resources is the right and privilege of all people and all species. Hence, every Muslim is ordained to ensure the interests and rights of all others as equal partners on earth. Islamic governance models emphasize building and maintaining a healthy and clean environment based on sustainable development and consumption for human benefits and fulfillment;

Reaffirmed that a clean, healthy and functional environment and ecosystem is a right in and of itself, integral to the enjoyment of all other human rights, such as the rights to life, health, food, water, housing, and an adequate standard of living;

Recognized that environmental degradation adversely affects millions of people and the ecosystems, natural resources, and physical infrastructure upon which they depend². It represents an existential threat for many vulnerable communities, groups and various species. The erratic weather patterns; decline in agricultural productivity and water levels; melting of icebergs and increasing sea levels are alarming telltale signs. These negative effects of environmental deterioration cause poverty, food and water insecurity and conflicts leading to mass migration, refugees and displaced population. It is estimated that 22% of global deaths attributed to air pollution are occurring in OIC countries and cost of land degradation alone could run into \$23 trillion by 2050³. Hence, these are not only environmental but also human rights issues.

Highlighted that climate change is one of the greatest threats to human rights of our generation, as it adversely impacts the full and effective enjoyment of the human rights enshrined in the international human rights instruments.

¹ <https://www.unenvironment.org/news-and-stories/story/how-islam-can-represent-model-environmental-stewardship>

² The Intergovernmental Panel on Climate Change (IPCC)'s Fifth Assessment Report (AR5)

³ OIC Environment Report 2019 by SESRIC

Accordingly, protecting environment is crucial to ensuring fundamental rights to life, health, food and an adequate standard of living for individuals and communities across the world. Environmental protection is also important to secure the rights to a healthy environment, natural resources, participation in cultural heritage, and intergenerational equity and sustainability;

Affirmed that the 'Third-generation or 'Solidarity' rights, which include the Right to Development and the Right to a healthy environment⁴ are important category of human rights that should be effectively implemented and recognized. These rights go beyond the civil, political and social rights, and are expressed in international law and many intergovernmental agreements;

Further Affirmed that States have a) Procedural obligations to ensure that the effected public is informed, involved and given access to remedies when rights are violated: (b) Substantive obligations to protect human rights from climate related harms, respond to core drivers of climate change and cooperate internationally to address transboundary impacts of climate change and safeguard human rights during mitigation and adaptation activities;

Recognized that private actors also have the responsibility to address human rights implications of climate change to ensure that they fully respect human rights in their activities;

Appreciated that 95 per cent of OIC Member States recognize the Right to a healthy environment through regional agreements and declarations including 40 States that have incorporated this right in their constitutions and national legislations;

Recalled that the OIC Charter aims 'to preserve and promote all aspects related to environment for present and future generations'⁵ and that the global community, including the OIC Member States, agreed on a set of 17 interconnected and interdependent Sustainable Development Goals (SDGs) to be achieved by 2030, including SDG13 on climate. Change. In addition, 196 countries agreed at the United Nations Framework Convention on Climate Change (UNFCCC) during 21st Conference (COP 21) to establish 'Paris Agreement' on climate change with a commitment to ensure best efforts to limit changes in global temperatures to 1.5° Celsius and in any event well below 2 degrees Celsius in 2100 compared to the pre-industrial levels;

Further recalled that Paris Agreement calls upon States to respect, promote and consider their respective Human rights obligations when taking action to address climate change."⁶ The 2nd Ten Year Program of Action of the OIC accords priority to 'protect and preserve the environment, including through mitigation and adaptation'⁷. The Rio Declaration on Environment and Development, The African Charter on Human and Peoples' Rights, the 2004 Arab Charter of Human Rights, also ensure many of these rights, such as right to natural resources and right to a healthy and satisfactory environment⁸. Human Rights Council (HRC) Resolution on 'Human Rights and Climate Change'⁹, its Special procedures and the Office of the High Commissioner for Human Rights too advocate for a human-rights based approach to mitigate the effects of climate change; UNEP's report "Climate Change and Human Right", which describes how governments and other actors may address climate change in a manner consistent with their obligations to respect, protect, promote and fulfill human rights. However, regrettably, some of these international and regional instruments form part of soft law which is based on the voluntary actions of States.

Identified that adherence to human rights, such as those that ensure public access to information, access to justice and meaningful and effective participation in decision making, contributes to judicious utilization and protection of environmental resources, and protects against potential for abuse during mitigation and adaptation measures. Thus,

⁴ Kiss, A & D Shelton. 2004. International environmental law. Ardsley, NY: Transnational Publishers, p 12ff; See reports of the UN Special Rapporteur on human rights and the environment, A/73188/ and A/74161/.

⁵ OIC Charter Preamble

⁶ https://unfccc.int/sites/default/files/english_paris_agreement.pdf

⁷ OIC-2025 POA

human rights-based approach to protect environment is instrumental in formulation of integrated policy action and strengthening of environmental laws;

Regretted that despite several international pronouncements and pledges, global targets on cutting Green House Gas (GHG) emissions, to limit the global warming below 1.5°C, have not been achieved. Developed countries, the major emitters of GHG, have failed to uphold their commitments. Resultantly, the developing countries bear disproportionate burden of the environmental degradation caused by uncontrolled consumption and irresponsible emission patterns;

Underscored that efforts to address climate change should not exacerbate inequalities within or between States. Particular care should be taken to comply with relevant human rights obligations related to participation of persons, groups and peoples in vulnerable situations in decision-making processes and to ensure that adaptation and mitigation efforts do not have adverse effects on the disadvantaged segments;

Endorsed that under the international human rights law, States have an obligation to prevent foreseeable human rights harm. UNFCCC call for States to protect future generations and to take action on climate change "on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities"¹⁰

Recognized that the OIC Member States are well endowed with environmental resources, which are inextricably linked to the livelihoods, employment opportunities and well-being of millions of people. Over the years, many OIC Member States have made tremendous progress in mainstreaming 'sustainability' into their national development agendas. Yet a lot more is required to be done. The OIC countries as a group are also highly vulnerable to environmental changes, especially low income and least developed member countries, due to lack of focus on 'environmental sustainability' and 'climate resilience' in urban development policies and ineffective adaptive capacities to deal with the vulnerabilities due to technological and financial limitations. Their higher environmental vulnerability emanates from high dependence on climate sensitive natural resources and low adaptive capacities.

Acknowledged the increasing awareness among OIC countries regarding the necessity of combating the negative impacts of climate change by embracing environment friendly policies and enhancing international collaborations. To this end, appreciated that most of the OIC Member States have ratified the UNFCCC, which reflects their seriousness to be part of global campaign to mitigate the challenges of climate change. Also appreciated the activities of the OIC specialized institutions that are helping Member States in employing climate-friendly technologies for economic development and capacity building to promote environmentally sustainable lifestyles.

Underscored that human rights education and raising public awareness on human rights issues enable informed social and political dialogue that help to strengthen environmental governance;

Reinforced the concept of 'Climate justice', which requires that climate action is consistent with existing human rights agreements, obligations, standards and principles. Those who have contributed the least to environmental damage (i.e. the poor, children, and future generations) unjustly and disproportionately suffer its harms. Equity in climate action requires that efforts to mitigate and adapt to the impacts of climate change should benefit people in developing countries, people in vulnerable situations, and future generations; Noted UNEP's work in support of enhancing the capacity of states and others to understand and operationalize the links between human rights protection and the fair, just and sustainable management of natural resources; also the recent report "Safe Climate: A report of the Special Rapporteur on Human Rights and the Environment which concludes that a safe climate is a vital element of the right to a healthy environment¹¹.

⁸ The African Charter on Human and Peoples Rights (Art. 24), the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Art. 11, para 1), The 2004 Arab Charter on Human Rights (Art. 38).

⁹ A/HRC/41/L.24

¹⁰ UNFCCC 1992, Article 3 paragraph

¹¹ (Safe Climate Report, OHCHR 2019)

Recommendations At International Level

Called upon the industrialized countries to:

- a) meet their respective emission targets;
- (b) assist in eliminating the environmental challenges and their human rights consequences faced by developing countries by adopting climate friendly sustainable development policies; and
- (c) support countries in the global South to achieve net zero emissions by year 2050 through greater reliance on renewable sources of energy.

To this end the international community must:

- (a) share resources, knowledge and technology needed to address climate change impacts;
- (b) extend international assistance to the developing countries in the form of technology transfer and financial support, which should be administered through participatory, accountable and non-discriminatory processes targeted towards most vulnerable;
- (c) cooperate to invent and disseminate affordable and environmentally clean /smart technologies, which should be fairly distributed between and within the countries;
- (d) ensure that global intellectual property regimes do not obstruct dissemination of mitigation and adaptation technologies;
- (e) engage in cooperative efforts to respond to climate-related displacement and migration as well as to address climate-related conflicts and security risks; and
- (f) recognize the right to a healthy environment at the global level.

OIC Member States

Called upon the Member States to undertake coordinated and accelerated actions, in accordance with the commitments made in the revised OIC Charter, its 2nd Ten Year Plan of Action, SDGs and UNFCCC to:

- (a) devise environmental laws, policy frame works, development plans and affirmative regulatory measures to prevent and address human rights harms caused by climate change especially anthropogenic emissions;
- (b) create enforcement mechanisms at the national and regional levels to benchmark the progress in establishing compatibility with the international environmental and human rights obligations and implementation of regulatory regimes;
- (c) adopt community led bottom-up human rights-based approaches for environment friendly sustainable developmental pathways;
- (d) ensure that appropriate adaptation measures are taken to protect and fulfil the rights of all persons, particularly those living in vulnerable areas;
- (e) guarantee effective remedies including judicial and other redress mechanisms for the affected individuals and communities. To this end the role of Ombudsman, NHRIs and civil society could be strengthened;
- (f) mobilize and allocate maximum available resources to address climate change, which should complement other efforts of governments to pursue realization of all human rights;
- (g) adopt innovative fiscal and non-fiscal measures based on the principle of 'Climate Justice' to minimize negative impacts on the poor;
- (h) mobilize additional resources to finance mitigation and adaptation efforts including active support for development and dissemination of new climate mitigation and adaptation technologies;
- (i) integrate the role of private sector in environmental protection strategies as part of corporate social responsibility and as viable business models to develop innovative mitigation and adaptive technologies;
- (j) ensure early-warning information regarding effects of climate change and natural disasters is available to all sectors of society;
- (k) develop and monitor relevant human rights indicators in the context of climate change, keeping disaggregated data to track varied impacts of climate change across demographic groups to enable effective, targeted and human rights compliant climate response;
- (l) promote awareness through education on impact of climate change and importance of environmental protection

using print, electronic and digital media;

(m) develop linkages between governments, NHRIs, religious institutions, media, community leaders to participate in designing and implementing environmental programmes including human rights impact assessments of these projects;

(n) implement the right to a healthy environment as a freestanding right in accordance with their existing commitment and obligations;

(o) enable Courts and other human rights mechanisms to ensure that business activities are appropriately regulated to support rather than undermine the efforts of States to combat climate change;

(p) promote public- private- people partnership in formulation of disaster risk reduction and mitigation strategies for wider ownership and better coverage; and

(q) cooperate with the UN Mechanisms and Special Procedures in implementation of laws and policies to deal with the climate change..



“PROMOTION AND PROTECTION OF RIGHTS OF PERSONS WITH DISABILITIES” 17th REGULAR SESSION OF OIC – IPHRC

Jeddah 31st March 2021: The Organization of Islamic Cooperation Independent Permanent Human Rights Commission (IPHRC) held a thematic debate titled: “Promotion and Protection of rights of persons with disabilities” during its 17th Regular Session held online on 30th March 2021. IPHRC Chairperson Dr. Saeed Alghufli inaugurated the debate and the OIC Secretary General Dr. Othaimeen delivered the keynote address through a pre-recorded message. Representatives of the Statistical, Economic and Social Research and Training Centre for Islamic Countries (SESRIC), and International Islamic Fiqh Academy (IIFA) participated as panelists. A large number of Member and Observer States also participated online and contributed to the discussion. Based on the comprehensive discussion, the Commission adopted the following as the outcome document of thematic debate:

Underscored that Islam regards all human beings as God’s noble creature, each of whom has a special relationship with the Creator, regardless of his or her physical and mental condition. The Quran and the traditions of Prophet Muhammad (peace be upon him) regard all having same worth with no distinction based on caste, creed, color or physical abilities. Accordingly, persons with disabilities are equal in dignity and status both in spiritual and mundane legal domains. In addition, Islam, while exalting their rights, exempts persons with disabilities from some of responsibilities and obligations, in proportion to their disability.

Inspired and guided by Prophet Muhammad’s (peace be upon him) behavior that manifests Islamic teachings that disability in and of itself is not necessarily a hindrance or disadvantage and that persons with disabilities are individuals with equal rights. Hence, appropriate response to disability is to facilitate them by meeting their physical, psychological and emotional needs.

Guided also by the recently adopted Cairo Declaration of the OIC on Human Rights, OIC Charter and Ten Years Program of Action (TYPOA), United Nations Convention on the Rights of Persons with Disabilities (CRPD), Universal Declaration of Human Rights, Vienna Declaration and Program of Action, Addis Ababa Action Agenda and relevant IIFA Resolutions which recognize equal rights of for persons with disabilities.

Welcomed ratification of UN CRPD – an international development tool to promote and protect rights of persons with disabilities on equal footing without creating new rights – by the majority of OIC Member States, which reflects their willingness to removing barriers impeding full participation and integration of persons with disabilities into society.

Affirmed that disability as explained by World Health Organization (WHO)¹ is “a limitation in a functional domain that arises from the interaction between a person’s intrinsic capacity, and environmental and personal factors.” From this perspective, disability is an umbrella term, covering impairments, activity limitations, and participation restrictions. Similarly, the CRPD² recognizes “that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.”

Highlighted that persons with disabilities represent one of the world’s largest and most vulnerable segments of society (approx. one billion persons, about 15% of the world’s population), 80% of which live in developing countries, including OIC States.

Recognized the importance of the overarching principles of diversity, gender equity, life- course and multisectoral approach, inclusiveness, and human dignity in addressing challenges faced by persons with disabilities.

¹ WHO (2001) International Classification of Functioning, Disability and Health. Available at: <http://www.who.int/classifications/icf/en/>

Recognized further the importance of promoting and protecting the rights of persons with disabilities for achievement of Sustainable Development Goals (SDGs).

Stressed that disability is a complex phenomenon, reflecting interaction between features of a person's body and features of society where he/she lives, which exacerbate effects of disability. Main barriers to persons with disabilities' inclusion entail discrimination and stigma on the grounds of disability; lack of accessibility to physical and virtual environments; lack of access to assistive technologies and essential services that are critical for their full and equal participation, as both agents of change and beneficiaries of development.

Further stressed that armed conflicts and disasters not only have disproportional negative effects on lives of persons with disabilities which puts growing pressure on affected societies. Accordingly, all humanitarian actions should give adequate priority to protecting and rescuing persons with disabilities. In this regard, urged all stakeholders including OIC Member States to make use of Incheon Strategy³, which provides useful strategic framework, linking the 2030 SDGs, CRPD and the Sendai Framework for Disaster Risk Reduction 2015– 2030 toward disability-inclusive sustainable development.

Expressed concern that persons with disabilities continue to face persistent inequalities in social, economic, cultural and political spheres. A country's economic, legislative, physical and social environment may create or maintain barriers to the participation of persons with disabilities in economic, civic and social life, which include inadequate means of rehabilitation and limited access to public goods and services.

Further expressed concern about persistent denial and violations of human rights of persons with disabilities living under foreign occupation and situations of armed conflict who endure brutalities at hands of occupation/security forces. To this end, expressed solidarity with the Palestinian, Afghan, Rohingya and Kashmiri persons with disabilities; and urged Member States to intensify humanitarian measures to cater for their health, education, psychological and social development needs.

Highlighted that the ongoing Covid-19 pandemic has exposed prevailing systemic inequalities that have devastating socio-economic costs for vulnerable persons across the world including persons with disabilities whose rights are often forgotten, even during normal times. The pandemic has proved that response and recovery efforts will not be effective unless everyone is equally valued and included in public emergency planning and health response.

Urged all States to reorient focus from viewing persons with disabilities as "objects" of charity, medical treatment and social protection to "subjects" with rights; and to undertake all appropriate measures to integrate them in decision making processes, especially public policies and programs that target this important segment of society.

Encouraged all States to share best practices on how rights of persons with disabilities are implemented in their jurisdictions and to improve integration of persons with disabilities.

Urged OIC General Secretariat to finalize OIC Plan of Action on the inclusion and empowerment of persons with disabilities in coordination with the relevant OIC organs for consideration and approval by the open-ended inter-governmental experts' group. This Action Plan will be a significant step forward to materialize willingness of OIC States to build inclusive and sustainable societies, in which persons with disabilities are fully integrated.

Called upon all OIC Member States to create programs aiming at promoting social protection and social inclusion of persons with disabilities, in line with the Final Communiqué of the 14th Session of the Islamic Summit, which called for investment in social protection. Also **called upon** Member States to build disaggregated data resources on disability issues to help make well focused and targeted policies, and to develop capacity-building strategies and programs, in consultation with relevant OIC institutions, including in the field of information technology to facilitate access and adaptation of technology for persons with disabilities as per their particular needs.

Also called upon all OIC States to consider the following recommendations for enhancing enjoyment of human rights by persons with disabilities:

² CRPD Preamble, paragraph (e).

³ UNESCAP Strategy: www.unescap.org/resources/incheon-strategy-make-right-real-persons-disabilities-asia-and-pacific-and-beijing

- (i) Design policies and targeted interventions to remove psychological, social, cultural and environmental barriers which hinder enjoyment of human rights in their societies;
- (ii) Create strong legislative framework for persons with disabilities, especially women and girls, to ensure their full and effective participation in and contribution to the development of their respective societies as equal and dignified citizens; including measures on positive discrimination for benefit of persons with disabilities.
- (iii) Integrate role of NHRIs and office of ombudsperson in implementation of national legislative framework in protecting and promoting rights of persons with disabilities;
- (iv) Invest into risk reduction to prevent disabilities and also design healthcare services friendly to meet their peculiar needs to improve accessibility and outcome;
- (v) Create tools to conduct impact assessment based on concrete data to determine which interventions are successful and what is needed to improve policies and programs targeting persons with disabilities.
- (vi) Invest in developing digital skills for persons with disabilities for their empowerment, integration and ensuring their independence in the society;
- (vii) Integrate various stakeholders, especially civil society and the private sector, to incorporate persons with disabilities into the labor market, improve their accessibility to education and healthcare services as well as to improve their standards of living;
- (viii) Involve media, religious and community leaders to change the perception about persons with disabilities for their better integration into society, and to share relevant best practices, policies, and measures to stimulate learning and cooperation among the Member States in addressing the common issues faced by persons with disabilities;
- (ix) Fulfil their human rights obligations as stated in CRPD and its Optional Protocol and expedite their ratification by those States who have not done so yet;
- (x) Address specific needs of women and girls with disabilities, and incorporate gender perspective in all relevant policies and actions;
- (xi) Ensure that enhancing accessibility for persons with disabilities is mainstreamed in national development plans and accordingly be reflected in the Member States' national reviews of their implementation of SDGs;
- (xii) Enhance international cooperation with UN and among Member States for sharing of knowledge and best practices to design national plans and strategies and also use of assistive technologies to build the capacities of persons with disabilities.

Called upon developed countries to facilitate technology transfer to the developing countries, and to provide technical assistance to achieving better integration of persons with disabilities in their local environments across the world, with a focus on the least developed countries.

Proposed establishing a focal point within the Humanitarian Affairs Department of the OIC General Secretariat to follow up on the implementation of the OIC Plan of Action on Persons with Disabilities and to publish an annual review of good practices that have been proven successful in promoting and protecting rights of persons with disabilities in OIC Countries.

Urged all national, regional and international organizations as well as other relevant employers, both in the public and private sectors, to set the example of inclusiveness by adopting employment policies that are inclusive of persons with disabilities, including implementation of positive discrimination measures for those having relevant capabilities.

Decided to prepare an analytical study on Islamic principles that call for protection and empowerment of persons with disabilities in light of the relevant universal standards, in coordination with relevant OIC institutions.



OUTCOME DOCUMENT OF THE THEMATIC DEBATE ON 'A HUMAN RIGHTS-BASED APPROACH TO ACHIEVING THE SUSTAINABLE DEVELOPMENT GOALS WITHIN THE OIC COUNTRIES.'

Jeddah 25 November 2021: During its 18th Regular Session, the OIC Independent Permanent Human Rights Commission (IPHRC) held a thematic debate on the subject of "A Human Rights- Based Approach to Achieving the Sustainable Development Goals Within the OIC Countries" on Tuesday, 23rd November 2021. Inaugural statements of the Thematic Debate were made by the IPHRC Chairperson, Dr. Saeed Alghfeli, and the OIC Secretary General, H.E. Mr. Hissein Brahim Taha, (delivered on his behalf by his Chef-de-Cabinet Dr. Mahamat Adoum Koulbou). Representatives of the Office of the High Commissioner for Human Rights (OHCHR), Statistical, Economic, Social and Research Training Center for Islamic Countries (SESRIC), and the Chair of the UN Committee on Economic, Social and Cultural Rights (CESCR) participated as key panelists. A large number of OIC Member and Observer States also actively participated in the discussion.

Besides making valid observations on the links between human rights and the Sustainable Development Goals (SDGs), the participants made valuable recommendations for functional integration of human rights as a guiding framework to improve the outcomes of sustainable development policies. The Commission welcomed the steps taken and resolve expressed by all OIC Member States, during the debate, to adopt a human rights-based approach to their sustainable development policies and programs through institution-building and citizens' empowerment in accordance with their obligations under respective international and regional human rights instruments. Based on the comprehensive discussion, the Commission adopted the following as the Outcome Document of its Thematic Debate on the subject:

Guided by the divine injunctions given in the Noble Quran; Islamic teachings of protecting rights, assuring justice in all aspects of human life and serving the public interest; as well as by the core values of equality and human dignity, which are fundamental human rights principles enshrined in the Cairo Declaration of OIC on Human Rights, International Bill of Rights, Agenda 2030, Declaration on the Right to Development (DRtD) and other universal human rights instruments;

Recalled that the advent of Islam heralded an unprecedented era of human rights based on equality, equity and non-discrimination, where all individuals were exalted to claimants of codified rights in all spheres of their lives. Islamic concept of development is also a moral and spiritual imperative, without any distinction of class, color, caste or sex. It provides for substantive equality, equity and distributive justice according to the needs and circumstances of every segment of human society, as well as assuring their sustainability in the future including to the environmental concerns and the corresponding responsibility of humans;

Further recalled that the OIC Charter recognizes the strategic importance of preserving and promoting the lofty Islamic values of justice, human dignity and fundamental freedoms for ensuring sustainable development and prosperity of all Member States. Cognizant of their interdependence, the OIC's Ten-Year Program of Action 2015- 2025 calls for utilizing these principles to revitalize Islam's pioneering role in the world and ensure sustainable development, progress and prosperity for the peoples of the OIC Member States;

Affirmed that human rights and the SDGs are mutually reinforcing. SDGs should be seen as an operational plan for realizing all human rights, including economic, social and cultural rights and the right to development. Sustainable development promotes human rights while human rights respecting societies provide enabling environment for achieving the SDGs;

Highlighted that the primary aim of the SDGs is to "realize the human rights of all" with an emphasis on the responsibility of all States to respect, protect, promote and fulfil human rights obligations and fundamental freedoms for all, while the significance of national and regional particularities and various historical, cultural, and religious backgrounds must be respected. Over 90 percent of the goals and targets of the SDGs correspond to specific human rights obligations. Hence, progress on SDGs should be regarded as progress on human rights obligations as well;

Underlined the crucial need for adopting a holistic approach to sustainable development initiatives, which takes into account the multidimensional aspects of social, economic and ecological development. Hence, the need for developing inclusive policies that consider everybody's needs, concerns, knowledge, enterprise and skills to ensure equitable distribution of resources for just and inclusive societies;

Expressed concerns that the Covid-19 Pandemic has thwarted the global progress towards achieving the SDGs, with real threats of reversing the achieved progress. Remarkably, there is an imminent threat that human rights could become the actual causality of the ongoing pandemic with receding freedoms and further marginalization of the persons in vulnerable situation, including women and girl child, elderly, people with disabilities, migrants and refugees, minorities and people living under occupation or in armed conflict situations;

Further expressed concerns that the recovery efforts from the pandemic remain slow and uneven with glaring inequalities and deficiencies. The pandemic has disproportionately affected the world's poorest and persons in vulnerable situation, which has deepened economic and social disparities and exposed inadequate health and social protection systems and inequitable distribution of vaccines within and among the countries;

Underlined that the pandemic clearly proved that the world needs structural changes to efficiently eradicate poverty beyond the ambitious political narratives that fail to inspire real action. Accordingly, the post-Covid-19 phase should not be guided by the simple need to address the damages inflicted by the pandemic but to transform the structures that could not protect the poor during the crisis. Human rights must be the guiding norm in shaping the post-pandemic response, both for the public health emergency and the broader impact on people's lives and livelihoods;

Noted that developing countries, including many OIC Member States, as part of a globalized world, are confronted with unprecedented challenges in the climatic, technological, political, security, and demographic arena. In this regard, the main challenges confronting the achievement of SDGs in Member States of the OIC are paucity of funds, COVID-19 pandemic, qualified manpower, weak infrastructure and instability. Member States are urged to cooperate with each other in eliminating these obstacles to ensure broad-based sustainable development for all;

Stressed that when led by human rights values, sustainable development initiatives help to establish inclusive societies where multiple social groups, especially vulnerable ones, are involved in decision-making processes. Civil society and local communities should be encouraged to engage in public affairs for effective implementation and ownership of sustainable development initiatives;

Highlighted the importance of using indicators and disaggregated data for measuring the disparities at the national, regional and international levels against the implementation of the SDGs programs with a view to taking corrective measures to remove obstacles and ensure development at all levels without discrimination;

Emphasized the importance of principles of accountability, participation and non-discrimination as crucial mechanisms to improve the implementation and effectiveness of SDGs and to ensure that no one is left behind. To this end, human rights mechanisms and institutions at the national, regional and global levels can make systematic and invaluable contributions for follow-up and review of the progress in achieving SDGs;

Noted with pride that OIC countries were at the forefront of formulating the SDGs and have also made significant efforts in realizing them. However, many of them still face tremendous challenges to overcome complicated and multi-dimensional socio-economic issues, especially those facing conflicts and weak infrastructure of institutions. These realities across many OIC countries indicate the need to concentrate on actions that operationalize structural synergies and linkages between SDGs and human rights, with the goal to ensure socially and economically equitable societies that are inclusive in nature and enable sustainable development;

Urged all governments to strengthen their legal frameworks with human dignity at the heart of their policies to address existing structural disadvantages and inequalities. Member States must prioritize the goal on eliminating poverty as a

milestone to realize the human dignity of every person as enshrined in the UDHR. In order to have real progress on this goal, people living in poverty must be meaningfully engaged in decision-making processes that directly affect their lives;

Identified some of the critical underlying obstacles to addressing and achieving the SDGs from a human rights perspective as: (i) regressive and discriminatory socio-cultural mindset, norms and laws that restrict equal access to opportunities, resources and power, particularly against women and girls; (ii) chronic under-investment in social sectors of health and education; (iii) asymmetry in

Reaffirmed that discrimination against persons in vulnerable situation is an obstacle to the achievement of the objectives of equality, development and peace, which are prerequisite for achieving SDGs. Accordingly urged the Member States to adopt, implement and periodically review legislations to ensure their effectiveness in eliminating all forms of discrimination in their economic and social policies;

Recognized the vital role and contribution of all civil society actors, media, human rights institutions, and other non-governmental and community-based organizations in realizing all human rights, especially empowerment of the persons in vulnerable situation, including women and girls and their full integration into the development process.

Cognizant of prevailing low literacy rates in Member States, the Commission identified investment in the right to education as one of the most potent ways to reduce poverty and promote sustainable development. Member States should endeavor to allocate at least five percent of their respective GDP to education with positive discrimination for skill-oriented vocational training to the persons in vulnerable situation, including science and technology, to enable all to actively participate in economic, social and cultural development, on equal footing.

Encouraged the OIC Member States to utilize all available human rights mechanisms and their expertise in the planning, execution, and the Follow-Up and Review processes of SDGs to help in strengthening national legislation, institutional infrastructures and action plans aimed at promoting a human rights-based approach to sustainable development.

Highlighted the important link between international cooperation and realization of SDGs by developing countries, which is aptly captured in the Right to Development. Accordingly, urged all countries to adopt, on priority, a legally binding instrument on the Right to Development, which will meaningfully contribute to achieving SDGs by all countries in a timely fashion.

Supported all international initiatives such as G20 Debt Relief initiative adopted by Riyadh Declaration to suspend debt of poor countries during the Covid 19 pandemic that help low-income developing countries in facing disasters and crises as well as the ability to achieve basic human rights and SDGs;

Urged all OIC States to undertake coordinated and accelerated actions to implement, monitor and review the progress on SDGs from a human rights approach, which can be done by:

- a. Building high-level political commitment and ownership for the OIC and international transformative initiatives on creating sound policy frameworks at national, regional and international levels, based on pro-poor and all-inclusive recovery and development strategies to support accelerated investments in poverty eradication programs;
- b. Collecting and collating disaggregated data by investing in national statistical capacity to systematically analyze and use data to guide governments in preparing and implementing informed policies, plans and impact assessment studies for the sustainable development of their societies;
- c. Building the capacity of NHRIs and civil society to ensure accountability in the implementation of SDGs; particularly, by developing SDGs indicators grounded in human rights norms and disaggregated data to guide the policymakers towards informed policy choices and ensure better monitoring and evaluation;
- d. Encouraging platforms for the sharing of experiences and best practices, including at the regional level, to support interested States and relevant stakeholders in driving the integrated implementation of human rights and the SDGs.

Further urged OIC countries to utilize the existing reporting mechanisms in the UN system to guide the implementation of SDGs, which can help build strong accountability structures at the national level through a human rights-based approach. Member States are also encouraged to keep IPHRC informed on the progress of implementing SDGs.

Thanked the SESRIC for providing statistical data about the state of SDGs in Member States. Also requested the SESRIC to develop benchmarks for human rights indicators to be used in the evaluation and monitoring of SDGs in OIC countries. In this regard, encouraged OIC General Secretariat and Islamic Development Bank to explore ways and means to cooperate with SESRIC and make use of its capacity building programs to support Member States efforts aligning their developmental policies with their human rights obligations.

Encouraged all OIC Member States to cooperate and assist one another, and to enhance collaboration with the UN and other relevant international and regional mechanisms, including IPHRC, SESRIC, and NHRIs, to share best practices, develop programs of technical assistance and capacity-building support, in consultation with, and with the consent of, the States concerned to direct their development policies towards achieving the SDGs through a human rights-based approach.

Emphasized the international community's collective responsibility to create a conducive socio- economic environment for the enjoyment of human rights by all persons worldwide. Accordingly, called upon the international community to translate the global focus on human rights protection and SDGs, which has been a central issue for international cooperation, into concrete, measurable actions on the ground to effectively address the core issue of poverty, including by providing the developing countries with the necessary development and technical assistance, while refraining from interfering in other countries' internal affairs. The principle of "leaving no one behind", being one of the most transformative elements of the SDGs, must guide the efforts to eradicate poverty at the national and global levels.

Underscored that the natural resources of many OIC Member States, particularly in Africa, which are still under the control of foreign companies and institutions, depriving the people of those States of the opportunities to benefit and develop their national economies; Hence called for early restoration of their sovereignty over own natural resources.

Reaffirmed that sustainable development remains a priority area for the OIC-IPHRC, and undertook to continue to work for its comprehensive understanding, better implementation, and realization at national, regional, and international levels to ensure the institutional foundation for full enjoyment of human rights both by the individuals and peoples in all Member States without discrimination on any grounds.

**OUTCOME DOCUMENT OF THE 5TH IPHRC INTERNATIONAL SEMINAR
ISTANBUL DECLARATION ON “ISLAMOPHOBIA:
A HUMAN RIGHTS VIOLATION AND A CONTEMPORARY MANIFESTATION OF RACISM”
ISTANBUL, 17-18 OCTOBER 2018**

OIC Independent Permanent Human Rights Commission (IPHRC), in collaboration with the Republic of Turkey, held its 5th Annual Seminar on the subject of “*Islamophobia: A Human Rights Violation and a Contemporary Manifestation of Racism*” in Istanbul from 17-18 October 2018. Besides Commission Members, the event brought together relevant experts from academia and international organizations such as the Office of the UN High Commissioner for Human Rights (OHCHR), Organization for Security and Co-operation in Europe (OSCE), European Commission (EC), and the OIC Women Advisory Council. A large number of OIC Member and Observer States and representatives of their National Human Rights Institutions (NHRI) also participated in the Seminar.

Both the experts and participants discussed the complexities, dilemmas, and paradoxes of Islamophobia in the context of racism with a view to proposing possible remedies to combat Islamophobic discrimination and racism. After an in-depth, comprehensive and inclusive discussion, the Commission concluded the following key points as the outcome of the Seminar:

Affirmed that Islam strongly stands against all forms of racism, discrimination and intolerance. In Islam people are equal and they enjoy equal rights regardless of their caste, creed, color or belief.

Recognized that respect for diversity, multiculturalism, inclusiveness, democracy and rule of law is at the core of human rights and fundamental freedoms as well as affirmed that the intellectual and political resistance to multiculturalism is one of the underlying causes of the resurgence of racism and xenophobia, including their contemporary manifestations such as Islamophobia or discrimination against any religion, which are against the norms and obligations of International Human Rights law.

Defined the concept of Islamophobia as a condition of unfounded fear, based on ignorance or misperception vis-a-vis Islam as a religion and Muslims resulting in biased and discriminatory behavior, attitudes and practices, including verbal and physical abuse and human rights violations against Muslims, their scripture, holy personalities and symbols such as mosques, cemeteries and religious sites etc.

Highlighted that the incidents of violence and hate crimes against Muslims and non-Muslims, who appear to be Muslim due to their physical and cultural appearance, are on the rise, especially in the aftermath of 9/11/ and significant increase in the migrant/refugee flows.

Further highlighted that the surge in Islamophobic hate crimes and discrimination against Muslims across the world is associated with the fact that Muslims are being portrayed as racially distinct, which has become evident in the case of Rohingya Muslims of Myanmar. Consequently, Islamophobia, as a form of racism, is being developed by the same means as all the social structures that involve race has been built into the mindset of people. Therefore, any effective understanding of Islamophobia must consider the full spectrum of racism and religion.

Stressed the need to address the root causes of extremism which inter-alia include foreign occupation that impinge upon all human rights of the affected populations, such as people of Palestine and Kashmir, that at times lead to mounting feelings of injustice, anger and violent responses, which are then used to negatively stereotype the involved individuals, their communities and religion.

Further stressed that Islamophobia does not belong to the realm of “rational” criticism of Islam or Muslims. It is plain discrimination against people who look different, and fuses racial and religious bias, largely because the stereotypical Muslim has been construed as an ominous figure. Based on these realities, including racial profiling of Muslims, Islamophobia has become a form of racism mixed with social, economic and cultural intolerance as a whole.

Rejected the stereotypical association of Islam with violence and terrorism - an association which is bolstered by misperceived intellectual constructs; used by right wing political rhetoric and exaggerated in the sensational media, thus creating a negative image that impacts the public mindset and opinion. Hence, identification of terrorism and extremism with religion, particularly Islam and Muslims, must be firmly and explicitly rejected.

Expressed concern that efforts to combat racism, racial discrimination, xenophobia and related intolerance are encountering a number of serious challenges, including the political trivialization, intellectual and democratic legitimization and institutionalization of racism and xenophobia, resulting in particular from the pervasiveness of racist and xenophobic platforms in the political programs of political parties, and some intellectual and media circles, which has created a deeply detrimental context, characterized by intolerance, indifference, connivance and even acceptance of racism, especially in connection with issues relating to migration, asylum, and terrorism.

Stressed that international developments, such as conflicts, socio-political and economic issues cannot justify intolerance, discrimination or violence. Guaranteeing fundamental freedoms and rights to all individuals and groups without discrimination is a precondition for effectively combating all manifestations of racism, discrimination and ethnic, cultural or religious intolerance.

Highlighted that hate speech motivated by racism, xenophobia and intolerance, coupled with impunity for perpetrators creates a climate of fear and social exclusion of the targeted persons and groups, which is anathema to the ideals of pluralism and democracy. Hence, the need for responsible use of freedom of expression to ensure protection of the rights of others, in line with the parameters set forth in Articles 19 & 20 of International Covenant on Civil and Political Rights (ICCPR).

Further highlighted the deep historical and cultural roots of racism and xenophobia; and opposed the use of freedom of expression as intellectual justification for these phenomena, or as a screen for incitement to racial and religious hatred. In this regard, recognized the complementarity, balances and limitations meticulously established by the relevant international human rights instruments, in particular the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)¹.

Recalled the important contributions made by UN Human Rights Council Resolution 1618/ and the Rabat Plan of Action in promoting steps needed to evaluate and combat incitement to hatred, discrimination and violence resulting from negative stereotyping, xenophobia, stigmatization and hate speech, while promoting the values of freedom of expression.

Further recalled the important role of UN Alliance of Civilizations initiative and other local/international dialogue networks, which aim at facilitating harmony through dialogue by underlining the common denominator of different cultures and religions. To this end, emphasized the importance of pursuing and encouraging interfaith and intercultural dialogue at all levels, including between religious communities and civil societies to improve understanding, respect and coexistence in the multicultural societies.

Further emphasized that any intellectual and cultural strategy to combat racism must focus on the acceptance and promotion of a democratic, egalitarian and interactive multiculturalism. Integration should be conceived not as a rejection of diversity and undermining of identity, but as a dialectical process of various communities getting to know each other and interacting peacefully.

Encouraged all Muslim communities to engage interactively within their host societies, especially to enhance their participation in social and political life through, inter alia, representative organizations. Political, religious, and community representatives can play a crucial role in the fight against intolerance and discrimination against Muslims. Political, religious and community leaders have a crucial role in combating all forms of racism, incitement to hatred, discrimination and violence as well as promoting awareness and improved understanding of the common values shared by all humankind.

¹ Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and corresponding General Comment No. XV also dwell on the importance of combating and proscribing hate speech.

Stressed the crucial role of media in combatting religious hate speech and racism and urged all stakeholders to work together to prioritize advocating respect for human rights, preventing hatred, discrimination, inequality and violence while building trust and promoting reconciliation through effective media strategies. The media must also work zealously to counter all manifestations of racism, discrimination, and hate speech in all media frameworks, by promoting ethical standards, while maintaining respect for freedom of expression.

Reiterated that the primary responsibility for addressing acts of Islamophobia rests with the States. Strong legislation and law enforcement are basic tools to combat crimes, including hostile and violent manifestations of intolerance and discrimination based on one's race or religion. To this end, urged all States, as a minimum, to apply the existing legal measures and best practices used by different countries to address hate crimes, incitement to hatred, discrimination and violence based on one's religion, in a universal manner to provide equal protection to all targeted groups and individuals, including against Muslims and Islam.

Further urged all States to promote and facilitate open and transparent interfaith and intercultural dialogue and partnerships towards tolerance, mutual respect and diversity by fighting prejudice, intolerance and marginalization. To this end, States must work together with political, religious and community leaders to promote better understanding of the common values shared by all humankind.

Encouraged all States to develop legislations and other measures to fulfill their obligations under the international law, international human rights law, including ICERD, which correspond to the concerns expressed in the Durban Declaration and its Program of Action. To this end, requested all States to develop effective political, legal and cultural frameworks and strategies to identify and combat the root causes of old and new forms of racism and xenophobia, including Islamophobia.

Further encouraged all States to create and strengthen national mechanisms to combat all forms of racism and hate speech in close cooperation with media, religious leaders and institutions and civil society and to report on their efforts to relevant UN Human Rights Treaty Bodies through periodic reports as well as during their Universal Periodic Review in the Human Rights Council.

Called upon the international community to: (i) transform the focus of countering Islamophobia strategies from theology to ethics and values as well as from ideology based approach to human rights based approach; (ii) formulate additional legally binding instruments to cover the new manifestation of racism involving affirmative punitive action; (iii) criminalize certain manifestations of hate speech such as incitement to hatred and violence as provided in the article 5-f of the UN HRC Res.1618/, (iv) build the capacity of national authorities, security officials and media to prevent acts of incitement to hatred; (v) intensify efforts to bridge the implementation gaps which exist within the prevailing normative frameworks including reactivation of Istanbul Process; (vi) establish an observatory within OHCHR to monitor and report on incidents of hate speech and incitement to religious hatred including in the print and social media as an early warning mechanism; (vii) mainstream human rights education in national curricula with emphasis on tolerance and respect for cultural sensitivities; (viii) formulate and implement integration policies for migrants and refugees enabling them to integrate into the local societies and contribute to their respective communities; and (ix) address the gender dimension of hate crimes against Muslim women through creation of awareness and ensuring adequate protection guaranteed by International Human Rights law.

Further called upon the OIC Member States to: (i) show unity and solidarity to resort to "collective action" in the form of protests or boycotts against countries, which promote, encourage or tolerate acts of Islamophobia and discrimination against Muslims (ii) undertake serious introspection of national policies, legislations and administrative actions to bring them in conformity with their relevant international human rights obligations for providing protection against all forms of discrimination based on race and religion; (iii) employ different media platform to effectively promote the Islamic values and its rich cultural heritage to counter misperceptions and stereotypes about Islam and Muslims.

Recommended that OIC General Secretariat to (i) formulate a comprehensive strategy for Muslim minorities/communities in non-Muslim countries to shun the victimhood narrative and address the challenge of

Islamophobia by encouraging them to be good law abiding citizens while actively employing all legal means to claim their due rights; and (ii) activate and strengthen OIC Groups at UN in New York and Geneva to effectively highlight and deal with the incidents of Islamophobia as well as to promote effective implementation of Res 1618/ and Rabat Plan of Action; and (iii) strengthen and empower the OIC Islamophobia observatory to work comprehensively both on raising awareness on Islamophobic manifestations as well as combating misperceptions in close cooperation with its counterpart organizations within the UN and other regional settings.

Appreciated the commendable role played by the Republic of Turkey in the field of human rights and emphasized the need to develop collaborative linkages among all OIC Member States and IPHRC for promoting better understanding of human rights perspective of Islam in accordance with Islamic teachings and international human rights law.

OUTCOME DOCUMENT OF THE 6TH IPHRC INTERNATIONAL SEMINAR OF TASHKENT DECLARATION ON IMPORTANCE OF PROMOTING AND PROTECTING THE RIGHTS OF YOUTH FOR BUILDING PEACEFUL DEMOCRATIC SOCIETIES AND SUSTAINABLE DEVELOPMENT.

Independent Permanent Human Rights Commission (IPHRC) of the Organization of Islamic Cooperation (OIC), in partnership with the Republic of Uzbekistan and the Office of the United Nations High Commissioner for Human Rights (OHCHR), held its 6th Annual Seminar on the subject of '*Importance of promoting and protecting the rights of youth for building peaceful democratic societies and sustainable development*' in Tashkent on 7-8 October 2019. Besides Commission Members, the Seminar was attended by relevant experts from academia and organizations such as the OHCHR, African Union, OIC Statistical, Economic and Social Research and Training Centre for Islamic Countries (SESRIC), Islamic Cooperation Youth Forum (ICYF), Council of Europe Advisory Council on Youth and Central Council of Union of Youth in Uzbekistan. A large number of representatives from all OIC Member and Observer States including their National Human Rights Institutions (NHRIs) also participated in the Seminar.

In addition to comprehensive presentations made by the experts/panellists, participants of the Seminar analysed the scope of existing international and regional human rights instruments and mechanisms to protect and promote youth rights; highlighted key challenges faced by the youth in the Member States for the full realization of their rights and proposed ways and means to strengthen the role of youth in building peaceful, democratic, resilient and sustainable societies. Based on the comprehensive deliberations and concrete recommendations during the Seminar, IPHRC concluded the following as outcome of the Seminar:

Affirmed that Islam ordains the elders to serve as role models for younger generation and investing in the character building of youth to uphold the value system on which Islamic societies are founded. Islam terms youth as the most important period of one's life as a young Muslim becomes accountable before Allah Almighty for all his/her thoughts and actions. It is also an age in which all sorts of ideas, including distorted ideologies, could be easily indoctrinated in their minds. Hence, Islamic principles ensure that young people have full access to all their rights without any barriers while also being accountable to fulfil their obligations.

Recognized that 'Youth' is a period of transition from the dependence of childhood to adulthood's independence and awareness of interdependence as members of a community¹. In practical terms, 'youth', instead of a strictly defined age-group, is considered as a cultural concept based on political, economic and socio-cultural contexts and perceptions of different communities and the transition from dependence to independence occurs at different stages in relation to different rights. It is because of the fluidity of the concept that UN, when it comes to implementation of youth policies and strategies at the national level, conforms to the age-group and definition of 'youth' in a more flexible manner as used by any Member State.

Identified that youth rights refer to the full enjoyment of fundamental rights and freedoms by young people. These rights have generally fallen into three categories: (a) **Provision**: Protect young people's access to amenities and services like food, clothes, shelter, education, etc.; (b) **Protection**: safety from abuses, including physical, mental, and psychological abuse; and (c) **Participation**: opportunity to engage and participate as partners in decision making that affect them throughout their life cycle.

Highlighted that youth rights are the rights that everyone should enjoy but are denied to some because of their young age. It impacts young people, sometimes overtly, through legal age restrictions, but, more importantly and invisibly, through negative attitudes, beliefs, biases and stereotypes about youth, thus denying them opportunities to enjoy their due rights. Given these barriers, there is a need for specific protection to tackle discrimination against young people, especially young women.

¹ <https://unevoc.unesco.org/go.php?q=TVETipedia+Glossary+A-Z&filt=all&id=9>

Highlighted that while the existing human rights framework applies to young people, there is no specific framework/instrument setting out their particular rights at a global level, which leaves a gap.

Acknowledged the contribution of the international and regional efforts in protection and promotion of youth rights, which inter alia include the OIC-2025 Plan of Action which emphasized the need for youth capacity building and youth exchange programs; Sessions of the Islamic Conference of the Ministers of Youth and Sports which adopted the OIC Youth Strategy; the Islamic Educational, Scientific and Cultural Organization (ISESCO) Triennial Action Plan (2016-2018-); World Programme of Action for Youth; UN Security Council resolutions 2250 (2015) and 2419 (2018) on youth, peace and security recognizing the role of youth in peace building; General Assembly resolution entitled "Transforming our world: the 2030 Agenda for Sustainable Development"; Human Rights Council resolution 35(2017) 14/ on youth and human rights which call for mainstreaming of youth rights; the African Youth Charter; and Lisboa+21 Declaration on Youth Policies and Programs;

Identified that the OIC region benefits from one of the highest youth concentrations in the world². Youth represents a remarkable demographic potential for the OIC Member States, offering it unprecedented advantages in industry, innovation and growth. Yet a significant part of young population continues to encounter significant legal, cultural, social and economic barriers affecting their empowerment and equal opportunities to reach their full potential. Young girls and women are often at a greater disadvantage due to their unequal access to resources, goods and services.

Further identified that the 'demographic youth bulge' in OIC region is happening at a time when technological revolution in the shape of Artificial Intelligence is transforming the way we operate and interact. These two forces, demography and technology, are influencing young people's aspirations. They expect free flow of information, responsive governance and accountable political systems and equality of opportunities in all aspects of life. They are talking about these matters in terms of 'rights' not as issues. Empowered by technology, young people are articulating their frustration to a global audience, which has profound implications at all levels. While promoting their right to positively influence the world opinion, they need to be cautioned about the pitfalls of the social media in fomenting fake news, terrorism, radicalization, stereotypes and xenophobia that lead to hatred, discrimination and extremism.

Identified numerous challenges faced by the young population in OIC countries due to socio-economic marginalization, lack of or inadequate education, stereotyping and disenfranchisement resulting in radicalization and extremism. Additionally, the prevalence of conflicts, poverty and political injustices have seriously affected the potential of youth to meaningfully contribute or even participate in the promotion of sustainable development of their respective societies.

Highlighted that Muslim youth suffer disproportionately in terms of loss of opportunities due to long standing unresolved conflicts in different parts of the world which require concerted efforts for conflict resolution and peace building;

Condemned in particular the human rights abuses endured by the Muslim youth in the Occupied Palestinian Territories (OPT), Indian Occupied Kashmir (IoK) and Myanmar who are being killed, tortured, physically disabled and raped with impunity and denied the rights to life, education, freedom of expression and movement as well as right to self-determination by the occupying powers;

Recognized the importance of safeguarding the family values and institution of marriage for comprehensive moral and social upbringing of the youth, which inter alia shield them from moral vices and extremist ideologies as well as promote development of peaceful societies based on mutual affection and understanding;

Recognized that youth are the rights holders of today and future of every society. Hence the need to engage them as partners, to devise policies to protect their rights as well as to build and harness their potentials, skills and energy for strengthening democratic institutions and building inclusive societies without discrimination.

² OIC Outlook | Key Challenges of Youth: A Report by SESRIC 2015

Welcomed the proposal by the Republic of Uzbekistan for the adoption of an International Convention on the Rights of Youth to meet the needs of the youth;

Recommended at international level to:

- i. intensify cooperation among key protagonists, especially the UN Inter-Agency Network on Youth Development and the United Nations Development Programme, for enhanced policy coherence, sharing of best practices, broadening stakeholder pool, and developing interlinkages for cooperation on mutual policy priorities;
- ii. work together to address the specific challenges young people face by articulating and promoting their rights through an international legal convention on youth rights. To this end, the African Youth Charter, a regional instrument, could serve as a positive normative framework for securing youth rights within the international law;
- iii. use the existing human rights instruments and mechanisms to mainstream youth rights such as addressing them through the Universal Periodic Review by involving youth organizations and NHRIs in national consultations;
- iv. consider establishing a Special Procedure on the human rights of young people and develop guidelines for States in implementing a rights-based approach to youth policies;
- v. compile data on the Youth Development Index and use it as a yardstick to measure future progress;
- vi. strengthen and align the World Programme of Action for Youth with the 2030 Agenda for Sustainable Development to promote environmental policies and initiatives aimed at building the capacity of youth as driving force in eradicating poverty in all its forms and dimensions, climate change and inequalities for sustainable development, in particular for developing countries; and
- vii. recognize that the majority of migrants, refugees, Internally Displaced People (IDPs) and those affected by armed conflicts are young men and women, hence the need to promote and protect the human rights and fundamental freedoms of all regardless of their age and status by involving them in relevant decision making;

Called upon the Member States to:

- i. promote democratic culture, integrate the role of young people in public affairs, provide them access to justice and empower them through meaningful youth representation, participation and engagement at decision-making platforms at the local, national and international levels. To this end, legislative measures to lower the age of candidacy for public offices as well as voting age are recommended;
- ii. create conducive environment for the youth to exercise their right to freedom of opinion and expression, right to information and freedom of association and assembly;
- iii. develop Plan of Action to create synergies between the OIC Youth Strategy, SDGs and UN Youth Strategy;
- iv. craft reporting mechanisms to monitor implementation of the OIC Youth Strategy, which should include timeframes, budgetary allocations, key performance indicators as well as specific roles of OIC Member States, the General Secretariat and relevant OIC Institutions;
- v. enact evidence based youth centered legislations, policies and programs for youth development and holistic cross-sectoral cooperation ensuring a human rights-based approach for transition from education to labor market by : (a) providing skill oriented education and training; (b) undertaking labor market reforms for job creation and transparency for equal access to both male and female, promoting intergenerational social mobility for better standards of living; (c) initiating specific incentives for employers to encourage youth entering the job market by setting quotas in private and public sectors;(d) encourage female participation in the labour force eliminating gender pay gaps and providing child care support for young mothers; and (e) establishing social security protection mechanisms;
- vi. ensure all necessary measures, including reviewing and, where appropriate, revising, amending or abolishing laws, regulations, policies, practices and customs that discriminate against young people, in particular girls and young women;
- vii. put emphasis on quality education with focus on integration into the knowledge economy to attain higher productivity and better competitiveness levels;
- viii. install effective monitoring and evaluation mechanisms, which could be in the form of disaggregated data and human rights indicators in the State reports to Treaty bodies;

- ix. address legal, administrative, social, economic, digital and cultural barriers that limit young people's participation and promote, supporting the establishment of independent youth-led councils, movements and networks for promoting cross-border youth exchange programmes for intercultural and interfaith dialogue and harmony;
- x. foster social integration of vulnerable or marginalized youth, such as those with disabilities, belonging to minorities, migrants, refugees, IDPs or any other vulnerable group on an equal basis with others;
- xi. ensure young people's access to reliable, safe and youth-friendly information communications technologies addressing the digital divide and promote cooperation towards developing innovative and sustainable solutions in the fields of science, technology and public policy;
- xii. encourage entrepreneurship through improved access to finance and capacity building programs for youth entrepreneurs;
- xiii. develop policies and programmes to reinforce evidence-based, scientifically accurate, age appropriate, comprehensive health and mental wellbeing awareness and reproductive health education, consistent with their evolving capacities and religious/cultural sensitivities, to help them make informed decisions in full partnership with parents, legal guardians and health-care providers;
- xiv. strengthen the capacity of national statistical offices to research, collect and analyze data disaggregated by sex and age to fill critical data gaps and ensure informed effective policy formulation;
- xv. devise policies to reverse brain drain by attracting young people through increased employability and improved economic integration through availability of funding and knowledge for successful entrepreneurship;
- xvi. focus on the character building of the youth and provide human rights education raising awareness about their rights and responsibilities thus ensuring respect for diversity to counter extremism and deviant ideologies as well as to train them for their future roles at different levels;
- xvii. enhance intra-OIC cooperation with a view to sharing best practices as well as developing and delivering joint capacity building programs. Relevant OIC institutions such as ICYF and SESRIC could play catalytic role in organizing such capacity building programs designed for public officials, national experts, civil society organizations and media working in the domain of youth;
- xviii. consider establishing the OIC Youth Waqf with the assistance of Islamic Development Bank to address the financial requirements for the implementation of the OIC youth strategy;
- xix. support the initiative of the Republic of Uzbekistan for adoption of a new Convention on the Rights of Youth by the UN General Assembly;

Called upon the OIC General Secretariat to encourage participation of Muslim youth in relevant OIC meetings and also consider granting Scholarships in different disciplines of learning to the Muslim youth affected by the conflicts;

Appreciated the notable leadership and commendable role played by the Republic of Uzbekistan in the field of human rights and emphasized the need to develop collaborative linkages among all OIC Member States and IPHRC for promoting better understanding of youth rights in accordance with Islamic teachings and international human rights law.

To this end, also recognized the role and contribution of the OIC General Secretariat, IPHRC, OHCHR, ICYF and SESRIC in promoting youth rights and requested them to develop targeted capacity building programs for policy makers, corporate sector and civil society to raise awareness and mainstream youth rights at all levels.

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OUTCOME DOCUMENT OF THE 7TH IPHRC INTERNATIONAL SEMINAR ISLAMABAD DECLARATION ON COMBATTING CORRUPTION FOR FULL REALIZATION OF ALL HUMAN RIGHTS AND SUSTAINABLE DEVELOPMENT

Islamabad, 7th January 2022: The Independent Permanent Human Rights Commission (IPHRC) of the Organization of Islamic Cooperation (OIC), in partnership with the Government of the Islamic Republic of Pakistan, the Office of the United Nations High Commissioner for Human Rights (OHCHR), United Nations Office on Drugs and Crime (UNODC), and United Nations Development Programme (UNDP) held its 7th International Seminar on the subject of 'Combating corruption – a pre-requisite for the full realization of all human rights and sustainable development' in Islamabad on 67-January 2022. Besides Commission Members, the Seminar was attended by experts from relevant organizations such as the OHCHR, UN Committee on Economic, Social, and Cultural Rights, UNDP and UNODC. A large number of representatives from a number of OIC Member and Observer States including their National Human Rights Institutions (NHRIs) as well as civil society also actively participated in the Seminar.

In addition to the comprehensive presentations made by the experts/panellists, participants of the Seminar analyzed the impact of corruption on human rights and sustainable development; highlighted key challenges related to corruption in different countries, which prevent the full realization of human rights and proposed ways and means to strengthen the role of existing national, regional and international human rights mechanisms in building resilient systems based on rule of law that prevent corruption and enable sustainable development. Based on the comprehensive deliberations and concrete recommendations during the Seminar, IPHRC adopted the following as outcome of the Seminar:

Affirmed that the fundamental principles of Islam emphasize high moral standards, ethics, values and norms of behavior, which govern personal, professional and business life. As such, there is a rich tradition in Islamic heritage, which presents a normative framework to address corruption in a comprehensive and holistic manner. Indeed, corruption is taken very seriously in Islam, including all its types and manifestations, such as bribery, extortion, nepotism and favoritism. The Prophet Mohammed, peace be upon him, has duly cautioned that: "Damned is the bribe-giver (or 'corrupter'), the bribe-taker (or 'corrupted'), and he who goes between them".¹ This stern rebuke illustrates the severity with which bribery and corruption is viewed in Islam.

Recalled that Islamic history and jurisprudence are replete with instances of anti-corruption measures taken by the governments. The concept of "Al-Amanah"² (trust) in Islam entails that every human being is a trustee on earth and is enjoined to carry on actions with honesty and corresponding accountability³ to rid the society from all harmful consequences. These standards, ethics and values have much in common with other religions. Hence, we must invoke these as common cultural values to create a unified opposition to end corrupt practices for safeguarding human rights for all and everywhere.

Further recalled that the OIC Charter and the 2nd Ten-Year Program of Action 2015-2025⁴ (TYPOA) have recognized the importance of fighting corruption for prosperity and progress of Member States, Muslim Ummah and the world as a whole. Cognizant of their interdependence, the OIC TYPOA puts human rights, anti-corruption and accountability under one cluster with interconnected goals, and calls for pitching efforts towards creating enabling environment for active participation of all relevant stakeholders and providing the normative framework for the eradication of corruption in all its forms, as a necessary requirement for good governance.

Noted that corruption is a widespread global problem causing a staggering \$3.6 trillion annually in the form of bribes

¹ Narrated by Imam Ahmed, Ibn Majah and authenticated by Al-Albani.

² Surah al-Ahzab 33: Ayah 72

³ Islam MS, Samsudin S. Interpretations of Al-amanah Among Muslim Scholars and Its Role in Establishing Peace in Society. Social Change. 2018;48(3):437-450

⁴ <https://www.oic-oci.org/docdown/?docID=16&refID=5>

and stolen money⁵ that has far-reaching negative consequences at all levels of society and State. It is of particular importance for developing world as corruption related crimes cost these countries about \$1.26 trillion annually⁶. This waste and diversion of public funds leave governments with fewer resources to fulfil their human rights obligations, deliver required services and improve the standard of living of their citizens. Hence, it is a serious impediment to sustainable development, especially in developing countries.

Further noted that corruption, as aptly stated in the UN Convention Against Corruption, “is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, allows organized crime, terrorism and other threats to human security to flourish.”⁷

Stressed that corruption is the antithesis of the core human rights principles of transparency, accountability, non-discrimination and meaningful participation in the life of a community or society as well as presents a structural barrier against the full enjoyment of all human rights. As corruption and human rights are mutually exclusive; systematic and systemic responses to combat corruption is a prerequisite for the full realization of human rights in any given society.

Further stressed that human rights violations usually occur where appropriate safeguards do not exist to address the corruption of public officials or private-to-private corruption. Importantly, corruption undermines the functioning and legitimacy of institutions and processes, the rule of law, and ultimately, the State itself. Corruption is detrimental to social cohesion and trust in institutions and authorities. It deepens grievances, drives protests and contributes to tensions and conflicts.

Affirmed that corruption drains public resources away from education, health-care and effective infrastructure - the kinds of investments needed to improve economic performance and raise living standards for all. Thus, corruption impacts the fundamental human rights of all segments of society in particular the poor and marginalized as well as those in vulnerable situations in any society.

Underscored that without meaningful action against corruption, progress towards the full realization of the SDGs and the Right to Development would be limited, hampering economic growth, increasing inequality and inhibiting prosperity. Therefore, all States must make full use of their political, moral and legal authority to combat all forms of corruption to ensure equality, non- discrimination, and the rule of law to foster development.

Further underscored that corruption not only distorts policies, but it also nullifies the efficiency of socio-economic reforms and development efforts. The 2030 Agenda for Sustainable Development has acknowledged this challenge in Goal 16 which calls upon States to “significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime”. The agenda also calls for “substantial reduction of corruption and bribery in all their forms.” Corruption also has a negative impact on all SDGs, and should therefore be seen as a cross-cutting impediment in realization of all human rights for all.

Highlighted that corruption is often transnational in nature, which requires strong international cooperation, including with relevant UN agencies, for the prevention, detection, investigation and prosecution of corruption offences, as well as in the recovery and return of illicit assets in accordance with the UN Convention against Corruption (UNCAC). Particularly, stressed that returning/repatriation of illicit funds belonging to the developing countries, particularly the least developed countries, cannot be achieved without full cooperation of safe haven/countries of destinations and their financial institutions where these funds are being transferred. Also called for abolition of safe havens for stolen money, assets, and corrupt individuals by States in their territories and in territories under their control. To this end, appreciated the role played by some of the OIC member States in proposing a relevant resolution on the subject during the Conference of the State Parties to UNCAC in 2021.

Underscored that the control and exploitation of natural resources of developing countries by foreign companies/institutions, is an example of transnational corruption that deprive the people of those States of the opportunities to benefit and develop their national economies. Hence, called for early restoration of peoples’ sovereignty

over their own natural resources.

Expressed particular concerns over increased risks of corruption during the ongoing Covid-19 pandemic, which is more damaging in the context of emergent economic and health relief spending. The solicitation of undue advantages during times of crises undermines fair and equitable access to life-saving services, including inequitable distribution of vaccines within and among the countries, which exacerbates poverty and inequality and disproportionately affect the most disadvantaged individuals in society.

Highlighted that a robust model of fighting corruption should inevitably be people-centric and follow human rights-based approach with particular focus on the protection of right to information, freedom of expression, freedom of assembly and association, an independent judiciary and a free and independent media equipped to protect whistle blowers, witnesses and anti-corruption activists.

Stressed that human dignity and equality of all cannot be achieved without strong political will to fight corruption while ensuring that anti-corruption laws are not to be used for political victimization and that the right to free and fair trial is fully guaranteed in line with the International Human Rights Law.

Further highlighted that the FACTI Panel's report and first-ever UN General Assembly Special Session against Corruption with its Political Declaration adopted in 2021 serve as important milestones in the global efforts to prevent and combat corruption. These need to be transformed into meaningful actions on ground through strong political support. Additionally, the UN may also consider establishing a global beneficial ownership registry and review and revise the unequal investment treaties procured through corruption.

Emphasized the importance of principles of shared responsibility, accountability, participation and non-discrimination as crucial elements to combat all forms of corruption by engaging all stakeholders, including governments, UN development agencies, private sector, and civil society. To this end, human rights mechanisms and institutions at the national, regional and global levels can make invaluable contributions for developing a holistic approach to the fight against corruption, within the entire spectrum of social development eco-system with specific attention to good governance, SDGs, human rights, social inclusion, and rule of law.

Further emphasized the vital role and contribution of civil society actors, media, human rights institutions, and other non-governmental and community-based organizations, including the NHRIs, in the fight against corruption. Particularly, a vibrant civic space and open access to information are essential requirements to eradicate corruption. Accordingly, urged all governments to engage civil society and local communities in public affairs for effectively combatting all types of corruption in both the public and private sectors.

Recognized the valuable achievements made by OIC member States in the fight against corruption, and urged them to intensify their efforts by developing robust guidelines to advance their commitments as signatories of the UNCAC to prevent, identify, investigate and prosecute corruption during times of emergencies and crisis response and recovery, including by sharing best practices and enhancing cooperation at the OIC level, particularly in the fields of prevention practices; strengthening cooperation between audit institutions and anti-corruption authorities, while fully respecting the principles of sovereign equality and non-intervention in the domestic affairs of other States. In this regard, also welcomed the concrete guidance provided by the UNODC for States and others actors on preventing corruption in the manufacture, allocation and distribution of vaccines; emergency rescue packages; fiscal responses to Covid-19⁸; as well as a Good Practices Compendium on combating corruption in Covid-19 responses.

Encouraged all OIC States to undertake accelerated actions to combat corruption in a comprehensive manner through:

- a. Strengthening the legal frameworks, with human dignity at the heart of policies, to address existing structural disadvantages and inequalities which reflect both causes and consequences of various forms of corruption in

⁸ https://www.unodc.org/documents/corruption/COVID-19/Policy_paper_on_COVID-19_vaccines_and_corruption_risks.pdf

respective societies and systems;

- b. Establish cross-cutting national action plans dedicated for combatting corruption across governmental institutions in order to enhance transparency and efficiency in the public sector;
- c. Enhancing the capacity of the judiciary, prosecution service and law enforcement agencies to combat corruption, including through providing continued training with adequate resources for implementation of laws;
- d. Establishing fully equipped, empowered and independent accountability institutions, which are capable to investigate crimes of corruption, including sophisticated transnational crimes, in an independent and impartial manner;
- e. Mobilizing all relevant national mechanisms to fight corruption in close cooperation with media, religious institutions and civil society, while ensuring that victims and all those involved in reporting, investigating and prosecuting corruption are protected from any intimidation and harm.
- f. Establishing accessible, visible and independent channels for reporting corruption as well as clear procedures that enable all individuals and groups to claim rights violated because of corruption and to demand redress;
- g. Integrate human rights into the policies and activities of agencies working to fight corruption, and other relevant stakeholders including NHRIs, civil society and media;
- h. Promote civic engagement and social accountability through participation of civil society and media in carrying out responsible awareness-raising campaigns on the economic and social costs of corruption directed at politicians, government officials, business sector and the population in general;
- i. Expand political and normative agenda on anti-corruption to development plans by integrating anti-corruption policies in service delivery and other sectors;
- j. Strengthen collaboration between international efforts in the fields of anti-corruption through greater normative and policy coherence while following a human rights approach;
- k. Concrete follow-up on the recommendations of this Seminar, including by establishing an OIC intergovernmental working group (IGWG) to actively explore innovative ideas and initiatives to strengthen the existing international framework to prevent corruption and to end impunity. The IGWG may also explore developing coherent and transparent mechanisms under the OIC and the UN auspices for mutual legal assistance on issues of corruption and stolen legal assets.
- l. Integrate the role of technology in promoting increased transparency, accountability, accessibility and citizen participation. Also, use cyber space/digital governance including data-driven digital transformations and data quality management and analytics to track financial flows and their sources to detect, analyze, predict, and therefore deter and prevent corruption.

Urged all States to introduce strong anti-corruption legalisations and step-up efforts to address the injustices and other negative consequences caused by corruption, with the main purpose of ending impunity for corruption offences. Recovering and returning confiscated assets and illicit financial flows, in accordance with UNCAC, can contribute to effective resource mobilization, poverty eradication, sustainable development and the enjoyment of all human rights, particularly for the developing countries.

Called upon the international community to translate the global focus on human rights protection and SDGs, which has been a central issue for international cooperation, into concrete, measurable actions on the ground to effectively address the issue of transnational corruption. Also encouraged States to cooperate with international partners to reinforce efforts and resources to assist in implementing integral measures that end corruption, enhance accountability, and contribute to the promotion and protection of human rights.

Appreciated the leading and commendable role played by Pakistan in highlighting the scourge of corruption and its impact on human rights of all at the national and international levels and emphasized the need to develop collaborative linkages among all Member States and IPHRC for eradicating corruption in accordance with Islamic teachings and relevant international laws.

OIC-IPHRC

THEMATIC STUDIES



GENDER EQUALITY, GENDER EQUITY AND GENDER JUSTICE: AN ISLAMIC AND HUMAN RIGHTS PERSPECTIVE

Amb. Ilham Ibrahim Ahmed and Dr. Raihanah Abdullah

Adopted by the 15th IPHRC Regular Session - April 2019

INTRODUCTION:

Looking from historical and contemporary perspectives, women all around the world, have overcome enormous challenges to attain their current status and rights. However, as we continue to assess the situation, there are still areas where women's rights continue to be violated as they remain oppressed, underestimated and discriminated due to their gender, subjected to unequal treatment as compared to men and consequently raising a discourse of gender equality. Gender Equality is considered a new discourse as it is not found in the classical fiqh discussions. It is in consonance with the current focus on human development and the feminist debate. Based on the concept of the United Nations 2001, gender equality is understood as 'equal rights, responsibilities and opportunities of women and men and girls and boys'. Hence, it can be defined as the state of having the same rights, status and opportunities as others, regardless of one's gender.¹

The importance of achieving gender equality should not be taken lightly. One main reason is that gender equality is a key element to achieve justice, specifically gender justice, which is another concept that resonates resoundingly in the teachings of Islam. According to many Eastern and Western jurists and scholars, one of the objectives of the Quranic revelations of Islam is to achieve justice by ameliorating and improving the position of women.² Through the teachings of Quran and Sunnah, Islam has provided detailed instructions to men and women in multiple areas by assigning specific roles to both genders to suit their natural abilities and characteristics.

In order to achieve gender justice, a required ingredient or pre-condition is the existence of gender equality. As justice is integral to achieve world peace (Riffat Hassan, 2011), this means that peace cannot be realized without having to achieve gender equality between men and women and boys and girls.³

The prevailing gender inequality and injustice are due to the misconceptions and stereotypes that women are inferior and considered as second class to men. These misunderstandings and stereotypes were caused for many reasons, among them are the influences of social customs and traditions in ancient and medieval times⁴. As gender equality is the sin qua non to achieve gender justice, it is therefore of high importance to ensure that today's society fully grasps the notion of gender equality, gender equity and gender justice in order to clear all the misconceptions and therefore achieve peace around the world.

AN ISLAMIC PERSPECTIVE:

Despite clear Islamic injunctions, contribution of Muslim women in history and continued efforts to ensure that women should not be seen as equal to men, certain Muslim societies, continue to see women participation limited to their traditional roles. In some contexts, the Islamic injunctions related to , witnessing to contracts and inheritance in Islam in

¹ Gender Equality. (n.d) Dictionary.com Unabridged. Retrieved April 3, 2018 from Dictionary.com website <http://www.dictionary.com/browse/gender-equality>

² See David S. Powers. (2011). Law and Custom in the Maghrib, 1475 – 1500: On the Disinheritance of Women in the Development of Islamic Law and Society in the Maghrib Qadis, Muftis and Family Law. Ashgate Publishing Limited. Cornwall, Great Britain, page 4.

³ John C. Raines and Daniel C. Maguire (2001). Theory of Justice in Islam. What Men Owe to Women: Men's Voices from World Religions. Suny Press, page III.

⁴ (John L. Esposito, 1975; Cecelia L. Ridgeway, 2011; Sonia Palmieri, 2013)

which one man is equated to two women, were misinterpreted to claim that men are superior to women as 'proof' of the gender inequality phenomena. This further raised the fundamental question of the equality or inequality between men and women.

According to studies, the deterioration of women's status and rights in these Islamic societies apparently has no connection with their Islamic nature. Instead, the phenomena is widely believed to be due to the predominant patriarchal and traditional societies dominated by male authorities and honor5 who intend to dominate women and to find any possible pretext to suppress women.6 To understand the Islamic point of view in this particular event, God has decreed in verse 13, Surah Al-Hujurat:

يٰۤاَيُّهَا النَّاسُ اِنَّا خَلَقْنٰكُمْ مِنْ ذَكَرٍ وَّاُنْثٰى وَجَعَلْنٰكُمْ شُعُوْبًا وَّقَبٰٓئِلَ لِتَعَارَفُوْا اِنَّ اَكْرَمَكُمْ عِنْدَ اللّٰهِ اَتْقٰىكُمْ اِنَّ اللّٰهَ عَلِيْمٌ خَبِيْرٌ

"O mankind! We have created you from male and female and made you people and tribe that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Verily, Allah is All-Knowing, All-Aware"

According to the verse above, Islam rejects all forms of discrimination such as social, racial, cultural, economic and political and places fear of God for distinction between virtues and vice. Islam offers an egalitarian way of life to mankind in congruence with the Islamic Law. Had men been inherently more superior to women in all aspects, it would be redundant for women to compete with men in order to achieve the highest form of taqwa.

As He has created men and women using the same components and substances,7 God views both creations as equal. 8 Both genders are given the same human spiritual nature and carry equal moral and religious duties (Jamal Badawi, 1995) which makes women, too, are entitled to equal opportunities like men for the actualization of their human potentialities (Riffat Hassan, 2011). Through verse 13 of Surah Al-Hujurat, the principle of 'al-Musawa' is acquired (Akhmad Satori and Sulaiman Kurdi, 2016). The term 'al-Musawa' is defined as equal before God despite any differences in his or her race or culture.9 He has created mankind from the best of moulds,10 making their status equal to each other in terms of form, nature and constitution. He gave both genders beauty and dignity while each gender is given indispensable roles by God in order to achieve His ultimate purpose of creating mankind, that is, to worship Him.

The concept of gender equality in Islam is further supported by the fact that mankind, both men and women, have been designated to be vicegerents on earth. Both genders are honored and celebrated in Islam. God mentioned in verse 70 of Surah Al-Isra':

وَلَقَدْ كَرَّمْنَا بَنِي اٰدَمَ

"And We have certainly honored the children of Adam"

Together, they make up the human species where the fact itself provides a sense of equality and worth. Both have responsibilities to provide justice and compassion to the world in order to establish social orders. By doing so, each person will equally be rewarded by God based on his or her efforts as mentioned in verse 97 of Surah Al-Nahl:

مَنْ عَمِلْ صٰلِحًا مِّنْ ذَكَرٍ اَوْ اُنْثٰى وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيٰوةً طَيِّبَةً وَلَنَجْزِيَنَّهُمْ اَجْرَهُمْ بِاَحْسَنِ مَا كَانُوْا يَعْمَلُوْنَ

"Whoever does righteousness, whether male or female, while he is a believer - We will surely cause him to live a good life, and We will surely give them their reward [in the Hereafter] according to the best of what they used to do"

⁵ Jane I. Smith (1979). Women in Islam: Equity, Equality, and the Search for the Natural Order. Journal of the American Academy of Religion. Oxford University Press. Vol 47 (4): 517 – 537.

⁶ Amira Mashhour (2005). Islamic Law and Gender Equality: Could There Be A Common Ground? : A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt. Humans Right Quarterly. Johns Hopkins University Press, vol. 27(2); 562596-

⁷ Surah Al-Hujurat, verse 13.

⁸ Dr Farid Younos. (2002). Tahwid: The Islamic Worldview and Vision. In Gender Equality In Islam, Bloomington, United States of America, page 12.

⁹ M. Imdadun Rahmat. (2003). AlQuran dan Nilai-nilai Keadaban (AlQuran and the Values of Civilisation) in Islam Pribumi: Mendialogkan Agama, Membaca Realitas (Native Islam: Dialogue of Religion, Reading Reality)

¹⁰ Surah Al-Tin, verse 4.

In essence, the fundamental human rights are so deeply rooted in human nature that denying and violating these rights tantamount to degradation or negation of which makes a person human.

By regarding women as inferior to men, women may be denied to exercise their fundamental human rights. Riffat Hassan (2011) explained that fundamental human rights to life include respect, the right to thrive, of recognition of individual merit, to develop one's own aesthetic sensibilities, and most important one in this discussion, is the right to seek and be treated with justice and equity.

In Islam, justice comprises the concept of recognizing the need to equalize those who are in need and that all mankind are equal. However, it doesn't necessarily mean absolute equality of treatment. Women have been gifted with different constitution physically and mentally compared to men, which is why their natural roles differ from that of men. Yet, different roles do not necessarily indicate different worth. Men and women play integral roles not only towards the religion and community, but also towards each other. The difference in qualities possessed by both genders are complimentary to each other in order to attain the relative perfection of being a human being.

The Status of Women Before the Arrival of Islam

Indeed, it is a universal view among historians that historical circumstances throughout the past have often worked to the disadvantage of women. The situation was found to have occurred in different parts of the world such as the Greeks, Romans and Arabs societies. In the past, these societies had treated women poorly, mainly because of the belief that women were inferior to men.

In ancient history, the laws of the Greeks and Romans did not provide any privilege nor protection for women. The Greek society treated women as slaves and personal belongings, used to satisfy the sexual desires of men. Women were kept at home, stripped off their rights for education as they were thought to be fit only to do household chores (Pauline Schmitt Pantel, 1992).

The Romans, on the other hand, had full custody of their women. Women could easily be sold or driven out of their homes. When Roman women marry, they would be forced to cut ties with their families and were at the mercy of their husbands (Bertrand Russell, 1945). They would lose their rights in inheritance as well only because they were transferred to another kin.¹¹ Back then, people had misguidedly believed that women were not eligible for education too (Joachim Herrman and Erik Zurcher, 1996).

The women in Greek and Roman society weren't the only ones who went through gender inequality and injustice. The Islamic traditions has characterized the historical transformations that occurred during the first century of Islam in terms of a dichotomy between Jahiliyyah (before Islam) and the times of submission to God (after Islam) where the Jahiliyyah period denotes the state of affairs prior to the emergence of Islam.

During the period of Jahiliyyah, the Arabs had deprived women from their rights in various aspects such as the rights in marriage, education, inheritance, property and also the allowance to engage in civic duties. Female babies were seen as a disgrace to the families and were buried alive to avoid them from shaming the families. Being fearful of poverty, often they were considered as burden due to their lack of potential for mobility and individual strength compared to males (John L. Esposito, 1975). This was confirmed in verse 8, Surah Al-Takwir:

"وَإِذَا الْمَوْءُودَةُ سُئِلَتْ"

"And when the girl (who was) buried alive is asked"

¹¹ W. Robertson Smith. (1903). Kindred Group and Dependents in Kinship & Marriage in Early Arabia, Beacon Press, Boston, page 66.

According to ancient history of pre-Islamic Arabia, marriage was seen as a business transaction between the family of the groom and of the bride. The bride was a productive piece of property whom the groom brought from her family.¹² During the Jahiliyyah period, women could be captured, forced into marriages and treated like chattels.¹³ If a pregnant woman is divorced, she would be allowed to be taken by another man with the consent of her former husband. Not only was the right to divorce belong solely to the husband, this portrays the fact that marital rights remained so even after a divorce (W. Robertson Smith, 1903). In inheritance, women in Medina were excluded as they did not take part in wars unlike men do. Even worse, women themselves were seen as inheritance back in the days.¹⁴

The Status of Women after the Arrival of Islam

Islam was seen as a modernizing force¹⁵ when it was first brought to light. It emerged in the seventh century in the Arabs.¹⁶ As Islam began to expand, the status of women and girls gradually improved. Through the Quran and Sunnah of Prophet Muhammad P.B.U.H., Islam has advocated and supported gender equality, equity and justice between men and women. Compared to before, women's position was uplifted as their rights and privileges were recognized and secured.

With the arrival of Islam, female babies were not frowned upon anymore. Instead, they are considered as equal blessings as male babies. Anas Ibn Malik R.A. had said that the Prophet Muhammad P.B.U.H. said:

*"Whoever brings up two daughters, he and I will come side by side in the Day of Judgment."*¹⁷

As mentioned in the Quran, it is our duty to worship God.¹⁸ Worshipping God also means that it is our duty to adhere to His rules and accepting His laws for complete guidance, rules and laws which are stated in the Quran. Hence, the sole basis for superiority of a person over another is simply piety and righteousness, that is, through their efforts in worshipping God. Verse 35 of Surah Al-Ahzab was decreed as such:

إِنَّا الْمُسْلِمِينَ وَالْمُسْلِمَاتِ وَالْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ وَالْقَائِنِينَ وَالْقَائِنَاتِ وَالصَّادِقِينَ وَالصَّادِقَاتِ وَالصَّابِرِينَ وَالصَّابِرَاتِ وَالْخَائِشِينَ وَالْخَائِشَاتِ وَالْمُتَصَدِّقِينَ وَالْمُتَصَدِّقَاتِ وَالصَّابِغِينَ وَالصَّابِغَاتِ وَالْحَافِظِينَ وَالْحَافِظَاتِ وَالذَّاكِرِينَ اللَّهَ كَثِيرًا وَالذَّاكِرَاتِ أَعَدَّ اللَّهُ لَهُمْ مَغْفِرَةً وَأَجْرًا عَظِيمًا

"Verily, for all men and women who have surrendered themselves unto God, and all believing men and believing women, and all truly devout men and truly devout women, and all men and women who are true to their word, and all men and women who are patient in adversity, and all men and women who humble themselves before God, and all men and women who give in charity, and all self-denying men and self-denying women, and all men and women who are mindful of their chastity, and all men and women who remember God unceasingly: for [all of] them has God readied forgiveness of sins and a mighty reward."

¹² Nayer Hanorvar (1988). Behind the Veil: Women's Rights in Islamic Society. Journal of Law and Religion, 6 (2), .355368-

¹³ Ibid, pages 73 – 102.

¹⁴ Surah Al-Nisaa' verse 19.

¹⁵ Amira Mashhour (2005). Islamic Law and Gender Equality: Could There Be A Common Ground? : A Study of Divorce and Polygamy in Sharia Law and Contemporary Legislation in Tunisia and Egypt. Humans Right Quarterly. Johns Hopkins University Press, vol. 27(2); 562596-

¹⁶ Noor Mohammad. (1985). The Doctrine of Jihad: An Introduction. Journal of Law and Religion, 3(2), pages 381- .397

¹⁷ Narrated by Muslim. (1761). Page 469.

¹⁸ Surah Al-Imran, verse 3.

As a matter of fact, it has been stated in verse 124 of Surah Al-Nisaa':

وَمَنْ يَعْمَلْ مِنَ الصَّالِحَاتِ مِنْ ذَكَرٍ أَوْ أُنْثَىٰ وَهُوَ مُؤْمِنٌ فَأُولَٰئِكَ يَدْخُلُونَ الْجَنَّةَ وَلَا يَبْغُونَ فِيهَا حِسَابًا

"If any do deeds of righteousness, be they male or female, and have faith, they will enter paradise and not the least injustice will be done to them."

Both men and women are given equal social responsibilities where they are required to spread goodness and refrain from doing the forbidden. Putting gender aside, mankind is expected to do just and are responsible for their moral actions in both good and bad deeds.

Verse 71 of Surah Al-Taubah mentioned:

وَالْمُؤْمِنُونَ وَالْمُؤْمِنَاتُ بَعْضُهُمْ أَوْلِيَاءُ بَعْضٍ يَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ وَيُقِيمُونَ الصَّلَاةَ وَيُؤْتُونَ الزَّكَاةَ وَيُطِيعُونَ اللَّهَ وَرَسُولَهُ أُولَٰئِكَ سَيَرْحَمُهُمُ اللَّهُ إِنَّ اللَّهَ عَزِيزٌ حَكِيمٌ

"The believing men and believing women are allies of one another. They enjoin what is right and forbid what is wrong and establish prayer and give zakah and obey Allah and His Messenger – Allah will have mercy upon them. Indeed, Allah is Exalted in Might and Wise"

Apart from their spiritual and social responsibilities, men and women are also entitled to educational rights. Prophet Muhammad P.B.U.H. has mentioned to 'seek knowledge from cradle to grave'.¹⁹ From the hadith, there is no mention of gender preferences and thus it is the duty of both genders to seek, obtain and practice the knowledge that they have acquired in order to become the best version of themselves, else their minds would become stagnant. Knowledge provides a person with consciousness and helps the person with his or her spiritual growth (Dr Farid Younos, 2002). Islam has also provided men and women equal opportunities in employment. The Quran has stated both men and women in verse 195 of Surah Al-Imran:

فَأَسْتَجَابَ لَهُمْ رَبُّهُمْ أَنِّي لَا أُضِيعُ عَمَلَ عَامِلٍ مِنْكُمْ مِنْ ذَكَرٍ أَوْ أُنْثَىٰ ۖ بَعْضُكُمْ مِنْ بَعْضٍ

"Never will I suffer to be lost the work of any of you, be male or female. You are members, one of another"

In this verse, the word used to describe employment is amal. Majority of the Muslim scholars have interpreted this as a way to perform goodness for employment. Should there be gender equality for both men and women to play their roles in employment and political aspects, they are able to provide different perspectives and resources that would usually not be considered. This is a vital step as it provides monitoring which can assist the implementation of peace agreements.

There are also limitations in employment which do not exclude either gender where neither are allowed to engage in unethical transactions, unfair prices and irresponsible actions towards their employers or employees.²¹ As it is, both men and women are entitled to own what they have each earned in accordance with Surah Al-Nisaa', verse 32:

لِلرِّجَالِ نَصِيبٌ مِمَّا كَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِمَّا كَسَبْنَ

"For men is a share of what they have earned, and for women is a share of what they have earned"

¹⁹ Al-Bukhari. (1981). Sahih al-Bukhari, trans. Muhamad Muhsin Khan, vol. 1, Book of Knowledge, Islamic University, Madinah.

²⁰ Cohn, Carol, Helen Kinsella and Sheri Gibbings. (2004). Women, Peace and Security Resolution 1325. International Feminist Journal of Politics, 6(1), University of Minnesota, page 136.

²¹ Dr Farid Younos. (2002). Gender Equality in Islam, page 45.

Women do not only earn rights to own property given to them, they are also allowed to seek their own property before and after marriage. Not only that, Islam has raised the standards of women by giving them rights to inherit property just as men do. God has decreed that both genders are entitled to inheritance as stated in verse 7 of Surah Al-Nisaa':

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا

"For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share"

This is the gender equality that Islam portrays in the aspects mentioned above where both genders are equal before God.

At the same time, Islam has provided different rights that are entitled to specifically men or women to fit and suit their roles and responsibilities. For example, men are given the rights to become a wali during marriage, the right to divorce his wife through the pronouncement of talaq, and the permissibility to practice polygamy. Regardless, as a religion of faith and justice, Islam has also provided strict conditions to these rights in order to prevent injustices. The pronouncement of talaq in Islam can only be limited to three times as mentioned in verse 230 of Surah Al-Baqarah;

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدُ حَتَّىٰ تَنْكِحَ زَوْجًا غَيْرَهُ ۗ فَإِنْ طَلَّقَهَا فَلَا جُنَاحَ عَلَيْهِمَا أَنْ يَتَرَاجَعَا إِنْ ظَنَّا أَنْ يُؤَيَّمَا حُدُودَ اللَّهِ ۗ وَبِأَنَّكَ حُدُودُ اللَّهِ يُبَيِّنُهَا لِقَوْمٍ يَعْلَمُونَ

"And if he has divorced her (for the third time), then she is not lawful to him until (after) she marries a husband other than him. And if the latter husband divorces her (or dies), there is no blame upon the woman and her former husband for returning to each other if they think they can keep (within) the limits of Allah. These are the limits of Allah, which He makes clear to people who know"

For polygamy, men are only allowed to marry more than a women should he be able to provide and be fair to his spouses²² while in topic of inheritance, the Quranic verses of inheritance also contribute as a distinctive component that proves how Islam uplifts the status of women . God has provided fixed legal shares for both men and women as mentioned in Surah Al-Nisaa verses 11, 12 and 176. In Islamic inheritance, the legal share of inheritance depends on the degree of kinship.

In certain situations, the inherited portion for women would be half of that for men under the exception of the parents.²³ For example, should a person dies and leave only his son and daughter, the son will receive two-thirds of the inheritance while the daughter receives a third of the portion.²⁴ Islam treats the topic of inheritance in considerable details and at great lengths. The legal shares determined in Islam are suitable to the socio-economic roles that men play as they have the responsibility to provide for his family. While in the matter of witnessing, the number of men required is lesser as compared to women.²⁵ According to historical context, the issue with the number of witnesses is originally used for business transactions.

As regards to women's rights, Islam has provided women the right to receive mahar, nafkah and mata'. All these rights are not admissible to men. In Islam, marriage is a distinguished social contract.²⁶ Islam has dignified women in three vital categories in the social context which are the roles that they play as a daughter, a wife and as a mother (Jamal Badawi; 1995; Dr Farid Younos, 2002). Before Islam, the right to divorce belonged only to the husband. Hence, to be fair, the same opportunity is given to women. If a woman presents strong reasons for divorce, she may do so through the request of fasakh or al-khul.²⁷

²² Surah Al-Nisaa, verse 3.

²³ Allamah Muhammad Hussein al-Thaba Thaba-ii. (1962). Surah Nisaa in Al-Miizan fi Tafsir al-Quran, Vol. 4, Muasasah al-A'la, Beirut. Lubnan. Page 214.

²⁴ Ibid, page 208.

²⁵ Surah Al-Baqarah, verse 282.

²⁶ Dr Farid Younos. (2002). WomenCan Seek Divorce, in Gender Equality In Islam, page 83.

²⁷ Ibid, page 84.

INTERNATIONAL HUMAN RIGHTS PERSPECTIVE:

Gender Equality affects the lives of both men and women in a society. In the late twentieth century, gender equality has become a major issue on the global agenda (Ronald Inglehart and Pippa Norris, 2003). Besides family matters, one of the contested sites of discrimination that attracts the public eye is the inequality and injustice that occurs within the political, economic and educational contexts.

As an international organization that maintains international order, the United Nations have established strong mandate to deal with the issues of gender equality and gender justice. The United Nations Educational, Scientific and Cultural Organization (UNESCO) has defined gender equality as equal rights, responsibilities and opportunities of women and men and girls and boys.

The term 'gender equality' is internationally well-known where it implies that the interests, priorities and needs of both men and women are taken into consideration.

Sadly, it is noted that the effectiveness of gender mainstreaming has been associated with more failures than gains²⁸ in promoting gender equality. One particular reason for this event is due to the different understanding of gender equality among Muslim jurists. While there are others who view gender equality as a basic principle of Islam which rejects gender discrimination. Other Muslim jurists see it as a modernized concept which is incompatible with the Islamic discourse. The reason for the latter is because the jurists understood gender equality as 'gender sameness' whereby women are given equal and same rights as men in all aspects.

The difference in understanding the concept of gender equality among Muslim jurists is not without basis. Based on her research in Malaysia, Rebeca Foley (2010) has distinguished between the terms equity and equality which were said to be used as strategies to find the correct interpretation of Islam. The term 'equity' is used to indicate a difference on a basis of fairness where the rights of men and women are conceptualized as being different but of the same value. 'Equality', on the other hand, departs from the more dominant discourse on women's rights and argues for the complete equality between both genders.

This particular concept, without doubt, does not match certain Islamic discourses. Should the term gender equality be focused on the term identical or sameness, women too may also end up sacrificing their rights just as men do. Hence it is imperative to interpret the Quranic verses dealing with human rights in a holistic approach in proper social and historical contexts in order to prevent gender inequality and injustice (Raihanah Abdullah, 2016; Niaz A. Shah, 2006).

Though there are many different views where the terms gender equality and gender equity are said to be interchangeable, the ideas are basically found to be more or less the same. However, in today's situation, the term 'gender equity' seems more fitting especially for many Muslims who share the above view. This is to avoid confusion and misunderstanding of the purpose of gender equality. Needless to say, although the term 'gender equality' has mostly been understood worldwide and is used in various legal policies, it is notable that there are a number of Muslims who prefer the term 'gender equity' and tend to understand the concept of gender equality better by using the said term rather than the term gender equality itself.

According to Jamal Badawi (1995), the term 'equity' is a more accurate term compared to 'equality', his reason being that full equality of human beings are beyond doubt before Allah S.W.T. and should not be mistaken with role differentiation in the spirit of complementarity and cooperation.²⁹ One of the distinct differences between equitability and equality that was found is that the first one is more concerned with justice and fairness while the latter assumes rather rigidly that justice and fairness are a product of the concept of 'equality', where it is seen as a synonym to 'sameness'.

²⁸ Elizabeth Bryan and Jessica Varat (Eds) (2008). Promoting Gender Equity in Developing Countries: Lessons, Challenges and Opportunities. Woodrow Wilson International Center for Scholars. Washington DC.

²⁹ Jamal Badawi (1995). Gender equity in Islam Basic Principle, American Trust Publications,

By promoting the term gender equity, it advocates the fair treatment of men and women where it recognizes the differences between men and women, and also focuses on access and opportunities. Thus, gender equity means that men and women should be fairly treated and should valorize and encourage rights, benefits, obligations and opportunities for all. Women and men are not restricted to develop their personal abilities and make choices without the limitations imposed by stereotypes. Gender equity does not mean that women and men have to be identical, but that their rights, responsibilities and opportunities do not depend on whether they were born female or male.

To attain the goals of gender equity is certainly not impossible. There have already been many organizations and institutes that have provided us with legal policies and conventions to assist attaining the goals of gender equity. In 1979, an international legislation that is equivalent to a bill of human rights made exclusively for women in regards to gender equality known as the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was established.

CEDAW has provided several legislations that reflect the purpose of equality and equity. Article 3 of CEDAW states the requirement of States for full development and advancement of women 'for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality of men.'³⁰ Article 4(1) has requested the States to 'adopt temporary special measures' in order to enhance the 'de facto equality between men and women' whereby these measures would be stopped only when the objectives of equality of treatments and opportunities have been achieved.³¹ Even more, Article 9 requires States to permit women equal rights as men to obtain, change or retain their nationality³² while finally, Article 15 helps ensure women to be given equality with men before the law.³³ Other than CEDAW, there is also the Beijing Declaration and Platform for Action 1995 which has been placed to guide work at national level.

Although CEDAW has not provided a definition of gender equality, it provides a thorough definition of discrimination against women as "... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality for men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."³⁴ From the definition, CEDAW obviously covers aspects of direct and indirect discrimination, equality of opportunities as well as formal equality, including disadvantages discrimination that impairs or nullifies the enjoyment of women's human rights.

Despite progress made by the OIC Member States towards gender equality and women empowerment over the past decades, women continue to experience inequalities and deficiencies in terms of (i) low literacy and labor participation rates (ii) high maternal mortality and morbidity rates, (iii) inadequate laws to prevent and prosecute domestic violence; and (iv) feminization of poverty, which continue to pose serious threats to the well-being of these societies. Also, many women and girls continue to experience vulnerability and marginalization due to multiple forms of discrimination and lack of access to resources throughout their lifecycle. The fact that many OIC member countries have been suffering from gender inequality at varying degrees,³⁵ gender related issues have been incorporated into the political agenda of the Organization of Islamic Cooperation (OIC) through the establishment of the OIC Plan of Advancement of Women (OPAAW). OPAAW promotes women's participation in decision-making by ensuring political, social, economic and cultural representation of women at all levels of decision-making as well as providing them equal opportunities in education. OPAAW also acts to provide protection of women from all sorts of violence.³⁶

³⁰ Article 3, CEDAW. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article3>

³¹ Article 4, CEDAW <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article4>

³² Article 9, CEDAW. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article9>

³³ Article 15, CEDAW. <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article15>

³⁴ Convention on the Elimination of All Forms of Discrimination against Women, United Nations Entity for Gender Equality and the Empowerment of Women. Retrieved on the 02.04.2018 through <http://www.un.org/womenwatch/daw/cedaw/>

³⁵ State of Gender in OIC Countries: Prospects and Challenges (2016).

Statistical Economic and Social Research And Training Centre for Islamic Countries, Organisation of Islamic Countries, 11 through <http://www.sesric.org/files/article/556.pdf>

³⁶ https://www.oic-oci.org/subweb/woman/6/en/docs/final/6wom_opaaw_en.pdf

Both OPAAW and CEDAW share some commonalities which include emphasis on equal opportunities and equal participation in social, cultural and political life for men and women.

A review of CEDAW and OPAAW shows that eradicating all forms of discrimination against women is a key objective for both. Indeed CEDAW Article I provides a comprehensive definition of discrimination that applies to all the Convention's text. It indicates that discrimination against women includes any discrimination or different treatment, exclusion, or constraint that is gender-based and that may result in or aim at diminishing the recognition of women as equal to men, taking off from women's human rights or affecting their access to their political, economic, social, cultural and civic or any other rights, or that may prevent women from exercising their fundamental rights and freedoms, irrespective of their marital status.

The OPAAW, calls on Member States to consolidate "equality" and combat discrimination between male and female in all fields, with a view to promote and cement the culture of non-discrimination against women. It also includes combating violence and eradicating discrimination in all its forms, into one single objective and calls upon the Member States to strive to curb the occurrence and effect of violence on women and to adopt measures, strategies and national legislations to face up to the phenomenon of domestic violence and restrain crimes against women, in addition to prohibiting and combating violence endured by women.

OPAAW sees equality as having to do with positive equal participation in life and opportunities to partake in the building of society, in a balanced way, such as to ensure continuity and prosperity for the human species. It stresses equality in the right to enjoy appropriate living conditions and dignity. Hence the demand to Member States' governments to enact laws and regulations that are considerate of a woman's rights (as a youth, as a spouse, a mother, a divorcee, a single person, a widow or an elderly) in a healthy way of appreciation inasmuch as her own interest is part and parcel of the interest of her family, her society, her country and the world at large.

Article 3 of CEDAW calls for action to ensure women's development and advancement such as to enable them to provide for themselves and for their dependents. Article 10, too, demands that no obstacle should exclude women from education based on gender, race or religion, being considered as a major element to facilitate earning one's life and combating poverty. Article 11 calls for equal rights for men and women in salaries, social security, health protection and work conditions, all of which are considered as contributors' in the fight against poverty. OPAAW, considers combating poverty as one of its key objectives. The plan calls for a stand against poverty and for empowering women through multiple measures including increasing women's revenues through equal pay at work, enhancing and applying strategies that acknowledge women's increasing value, extending additional support to families, building women's capacities and skills, educating women and raising their awareness of the existing pension and savings schemes, along with other measures aimed at lifting the burden of poverty off the shoulders of women and helping them achieve a life in dignity that motivates them to participate effectively in their societies and communities.

CEDAW evokes the need to consolidate women's participation, through granting them the right to vote, to elect, to be candidates, accede to public offices, participate in political parties, organizations and trade-unions at an equal footing with men. OPAAW, also considers raising women's participation in decision-making, both locally and nationally, as one of the major objectives it seeks to attain. It refers indeed to the need to upscale women's participation in all decision-making bodies and to ensure their full and equal participation in the political process, along with benefiting women of increased professional training sessions in all fields so as to ensure their advancement and effective participation in all spheres of life.

Under CEDAW Article 10 & 12 State parties are committed to eradicating discrimination against women in education and health care. OPAAW also establishes the duty of providing equal opportunities for women through the benefit of quality education, health care and substantial participation, as a fundamental objective, as it requires the Member States to adopt the necessary policies and programs to notch up the level of education for women and girls through the provision of advanced educational programs and through efforts to spread education and training, combating illiteracy and equally preventing dropping out from school for both males and females in addition to consolidating the preparation and training of male and female teachers based on international standards and ensuring greater opportunities for continued education.

According to David L. Kirp, Mark G. Yodof and Marlene S. Franks (1986), the term 'justice' means enhancing choice for individuals, securing fair process rather than outcomes for the community. Certain writers such as John C. Raines and

Daniel C. Maguire (2001) had narrowed down the scope of gender justice, saying that gender justice can be achieved only when men help women in domestic duties, and accept a fair competition in the access to means of existence.³⁷ This shows that the term 'gender justice' may cause limitations to define the purpose and goals of gender equality.

In terms of definition, Anne Hege Grung (2015) believes that the use of 'gender justice' instead of 'gender equality' makes it more apparent that the premises for the evaluation of equality are interchangeable in advance and concludes that the power of definition is open for negotiation.³⁸ At the same time, she also mentioned that 'gender justice' is used alongside gender equality in the documents of UN. She explained that the word 'justice' can be defined objectively or subjectively, where the interplay between these two ways of definitions provide space for individuality and difference yet still includes the political aim of equality. Regardless, 'gender equity' is seen more suitable to be used instead of 'gender justice' as the latter is used side by side with gender equality and not interchangeably, as it is with the case between gender equality and gender equity.

CONCLUSION & RECOMMENDATIONS:

As a conclusion, by making use of the legal policies provided and eliminating 'harmful practices' against women such as violence and discrimination, further actions can be enhanced to achieve the target of gender equity such as strengthening gender equity in professions and careers, encouraging women participation in political areas and many more. Gender equity is necessary in order to obtain peace around the world.³⁹ As Muslims, we must understand that gender equity and justice are among the core principles of Islam. Without them, women are highly exposed to discrimination. Therefore, it is the responsibility of everyone in any society to spread and promote gender equity.

It is recommended that the OIC and its specialized organs and institutions may:

Build high-level political commitment and ownership from Member States for the OIC and international transformative initiatives on gender equality and women empowerment including by repealing or amending discriminatory laws, as and where required.

- Adopt gender-sensitive, rights-based and inclusive national action plans, laws, and policies that respect, protect and fulfil the human rights of women and girls in Member States. Such measures may include, reserved quotas and other incentives to strengthen women's representation in political processes, all government institutions, economic enterprises and social organizations;
- Cognizant of prevailing low literacy rates in Member States, it is imperative to enhance investment in women's' and girls' education as one of the most potent ways to reduce poverty and promote sustainable development. The Member States should endeavor to allocate at least 5 percent of their respective Gross Domestic Product to education with positive discrimination for skill oriented vocational trainings to women and girls including science and technology to enable women and girls to actively participate in economic, social and cultural development on equal footing;
- Close data gaps by investing in national statistical capacity to systematically collect, analyse and use gender sensitive indicators and sex-disaggregated data in policy, program design and monitoring frameworks that will help governments in preparing and implementing informed policies and plans for the sustainable development of their societies;
- Benchmark progress on (i) assessment of national legislative developments concerning women rights in the Member States; (ii) assessment of the role and contribution of the civil society and media in the advancement of women's rights in Member States; (iii) revision of OPAAW to bring it in conformity with the relevant international human rights instruments and to create linkages with the 2nd OIC-TYPOA; (iv) adoption, review and effective implementation of laws that criminalize violence against women and girls, as well as comprehensive, multidisciplinary gender sensitive preventive, protective and prosecutorial services to prevent all forms of violence against women and girls by Member States;

³⁸ Anne Hege Grung.(2015). Background, Aim and Focus. Gender Justice in Muslim-Christian Readings: Christian and Muslim Women in Norway: Making Meaning of Texts from the Bible, The Koran and the Hadith. Brill, page 5.

³⁹ United Nations Sustainable Development Goals. Goal 5:

Encourage the Member States to avail expertise of relevant UN and OIC institutions including IPHRC in capacity building and training of policy makers for formulation of gender sensitive policies and programs for greater involvement of women in the fields of political, social, economic and cultural development;

- Assist the Member States to undertake concrete steps including legislative policies to create enabling environment and ensuring women's full and equal participation in decision-making including in conflict resolution, peace-making and peacebuilding processes that will ensure sustainable progress;
- Importance of gender equality and avoiding stereotyped role of women is a process that needs to be addressed at all levels through appropriate training and education. Member States may integrate women empowerment and importance of family into their Human Rights Education plans at all levels;
- Engage religious leaders and scholars in public advocacy and consensus building to challenge social taboos, change mind set and mobilize support for women related issues.
- Engage men and boys as agents and beneficiaries of change in the achievement of gender equality and the empowerment of all women and girls as allies in the elimination of all forms of discrimination and violence against women and girls, as well as in the full, effective and accelerated implementation of gender sensitive policies and programs.

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RIGHTS OF MIGRANTS FROM ISLAMIC AND HUMAN RIGHTS PERSPECTIVE

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I. INTRODUCTION

A. Definition and Concept:

Throughout centuries, living conditions which humankind, in particular the Islamic geography, has faced compelled them, voluntarily or involuntarily, to leave their hometowns and to head off to another destination having a different culture, in other words, to migrate. Particularly, collective migrations, which were experienced sometimes, ended an era and opened a new one within the history, and it, sometimes, left lasting impressions by determining or altering the destiny of that new destination.

The concept of migration, named as “Hijra” in the Islamic history, is a concept which almost all prophets sometimes confronted with their own tribe and sometimes alone¹. For these reasons, it is considered useful to explain in the beginning of our study, some technical terms, which will be used in the text.

In the first place, the concept of “migration” does not have a generally-accepted definition², but it may be explained as follows: movement of a person either across an international border (international migration), or within a state (internal migration) for more than one year irrespective of the causes, voluntary or involuntary, and the means, regular or irregular, used to migrate³. It is observed that with respect to the doctrine of Islam, lexical meaning of “hijra” refers to “abandoning, leaving, deserting, ending the relation and migrating”⁴.

“Migrant” refers to a person who has left his/her own country on his/her own will and migrated to another country in order to maintain a more comfortable life⁵. According to the United Nations, while there is no formal legal definition of an international migrant, most experts are generally accepted that a person who migrated -voluntarily or unwillingly- to foreign country or international area, regardless of the reasons, types and manners⁶. This approach was adopted independently from the reason of migration and the status of migrant. In this respect, the International Organization for Migration includes the refugees in the category of migrants⁷. However, according to this international organization, while each one of the refugees is accepted as a migrant, it must be underlined that each migrant is not accepted as a refugee.

In the 2007 Factbook of the Organisation for Economic Cooperation and Development (OECD), the concept of “migrant” is defined as a person who changed his/her place of residence, took a residence permit for generally one year or more or was recorded in the registry office and aiming at residing in that country for a period much longer than a particular period⁸. In case of forced migration, the concepts of “refugee” and “asylum-seeker” are used⁹. These concepts are

¹ Ekşi, Ahmet, Abant İzzet Baysal University, Faculty of Theology Journal, Spring 2019, Volume 7, Issue 13, p. 221.

² International Migration and Human Rights, Global Migration Group, October 2008, p. 7

³ https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network/glossary_search/migration_en, Access to website: 12 August 2020, Turkish Language Association, Turkish Dictionary, definition of migration as follows: persons or societies' heading off or migrating from some place to another or from a place of residence to another on account of economic, social and political reasons (Turkish Historical Society Publishing House, Ankara 1998).

⁴ Ekşi, page. 222.

⁵ Ergül, Ergin, Deportation, Removal and Extradition (Sınır Dışı Etme, Geri Gönderme ve Geri Verme), January 2012, Ankara, p. 23.

⁶ <https://refugeesmigrants.un.org/definitions>, Access to website: 12 August 2020.

⁷ <https://www.iom.int/who-is-a-migrant>, Access to website: 14 February 2020.

⁸ OECD, OECD Factbook 2007, p. 244.

⁹ Ergül, s. 19.

different in terms of their meaning in the international law arena. Accordingly, in Article 1 of the 1951 Convention on the Status of Refugees, the United Nations defines the concept of refugee as “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who is unable or, owing to such fear, is unwilling to return to it.”

According to the Glossary on Migration prepared by the IOM, the concept of “asylum seeker” is defined as: “An individual who is seeking international protection. In countries with individualized procedures, an asylum seeker is someone whose claim has not yet been finally decided on by the country in which he or she has submitted it”¹⁰.

In the context of these two concepts, the person who is forcibly obliged to migrate becomes an asylum seeker following the guarantee provided by the host country. After that guarantee becomes official, he/she becomes a refugee and will have the rights of a refugee. Although the concepts of refugee and asylum seeker are defined as noted above according to the international law, it is observed that there are conceptual differences among the countries¹¹. Accordingly, a generally accepted definition cannot be made in respect of these terms. For these reasons, the conceptual definitions are mostly left to domestic legislations.

B. The First Great Migration in Islam: Hijra:

The Hijra of the Prophet Mohamed Peace be upon him and the Constitution of Al-Madinah are the two major Islamic references on the issue of migration, as it will be discussed in this study. However, the concept of migration has been extensively developed in Islamic Jurisprudence by various Muslim scholars in light of the later development in Islamic societies and beyond. Islamic Jurisprudence categorizes matters related to migration based on the five provisions of Islamic law under which migration may be ‘obligatory’, ‘forbidden’, ‘desirable’, ‘disliked’ or ‘permissible’¹².

Migration can be an obligation upon anybody who is able migrate under given circumstances. Allah Almighty says: {When the angels seize the souls of those who have wronged themselves, scolding them, what do you think you were doing? they will reply, we were oppressed in the land. The angels will respond, was Allah’s earth not spacious enough for you to emigrate? It is they who will have Hell as their home—what an evil destination! Except helpless men, women, and children who cannot afford a way out. It is right to hope that Allah will pardon them. For Allah is Ever-Pardoning, All-Forgiving} Surat Ani-Nisa, Verses 97-99-. According to these verses, Allah orders those who are oppressed in their homeland to emigrate in order to protect their faith and to be able to live a free life from oppression and to be empowered as a pure slave to Allah. Furthermore, the issue of migration in Islam is also linked to the Islamic perspective that all lands belong to Allah, and human beings are sworn in for its reconstruction and improvement. Therefore, migration is sometimes a necessity in the pursuit of the task of succession over the land of Allah, as stated in the verses above: “was Allah’s earth not spacious enough for you to emigrate?”

Almost all prophets in the Islamic history confronted with the practice of “hijra” (migration). Generally, the societies or tribes to which they were sent forced them to do so. Just like other prophets, Prophet Muhammad (peace be upon him) also had to migrate from Makkah to Medina in 622 together with those who had faith in him on account of increasing pressure and violence towards them. This was the most important migration, which is one of the most significant fact in the Islamic history and which is known as “Hijra”¹³.

¹⁰ https://publications.iom.int/system/files/pdf/iml31_turkish_2ndedition.pdf, Access to website: 14 February 2020

¹¹ According to the Turkish law, a foreigner coming from European countries and requesting international protection is called a refugee, while those coming from outside the Europe are called asylum seeker. For detailed definition, see: Article 3 of the Regulation on Procedure and Principles to be Applied to Isolated Foreigners taking refugee in Turkey or requesting residence permit from Turkey in order to take refuge in another country, to the Foreigners coming to our borders for collective asylum and to the Possible Population Movements

¹² “Manhaj Assalikin”, Abd al-Rahman al-Saadi, Dar al-Watan Edition: The first: 1421 AH-2000 AD The second: 1423 AH-2002 AD Number of parts: 1

¹³ Görgeç, Gülsüm, Hijra in the Context of Quran Criteria (Kuran Kistasları Bağlamında Hicret), Master Thesis, Malatya, 2019, s. 52-54.

Upon the Prophet Muhammad's hijra from Makkah to Medina, a new period started in the Islamic history. That incident was not only a change of place, but also a turning point in the spread of Islam. For this reason, there are many verses in the Quran, which mention about the dignity and honour of hijra and muhajirs¹⁴.

The hijra incident had many consequences. Muslims, who were subjected to torture and persecution due to pressure of polytheists in Makkah, gained strength and formed a state under the leadership of the Prophet Muhammad (peace be upon him). Following the hijra, Prophet Muhammad (peace be upon him) announced the establishment of the Islamic state and commenced diplomatic relations. The first constitution of the state (the Constitution of Medina) was enunciated and treaties were made with the neighbouring tribes. Prophet Muhammad tried to complete all formalities for the organization of the state after 'hijra'. That was indicated by the fact that armed units were sent around in order to ensure the safety of life and property before the first anniversary of hijra. While in the period of Makkah, patience was recommended against mischief of unbelievers and their actual obstructions, however, the situation changed in the period of Medina and the right of retaliation was afforded to the Muslims. These points indicate that the incident of hijra constituted the basis of the Islamic state that would strengthen within a short period and would constitute the reasons of new formations in the history¹⁵.

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When mentioning about the incident of hijra, the notions of "muhajir" and "ansar" must also be pointed out. The word muhajir refers to "those who migrated"¹⁶. In the incident of hijra, it was used for the Muslims from Makkah who escaped from oppression and persecution and migrated from Makkah to Medina and Abyssinia¹⁷. The word "ansar" was derived from the stem "nasr" which means "helping". In the history of Islam, it was used for the Muslims from Medina who provided great help for the Prophet Muhammad (peace be upon him) and "muhajirs" by means of accommodating them in their houses and protecting them¹⁸. In Surat Al-Hashr (599/), the following is indicated concerning the Muslims from Medina: "And those who, before them, had homes (in Al-Medina) and had adopted the Faith, love those who emigrate to them, and entertain no desire in their hearts for things given to the (latter), and give them (emigrants) preference over themselves, even though they were in need of that. And those saved from the covetousness in their own souls, they are the ones that achieve prosperity." They are directly and indirectly mentioned in 9 different places of the Quran.

a. Constitution of Medina (Mawakhat-e Medina) and Human Rights Development of Migration

Following the hijra, firstly a fellowship agreement was made between the Ansars from Medina and Muhajirs from Makkah. This agreement was made for the establishment of Medina Islamic State on religious, political and economic grounds. Since the relevant agreement was made for the purposes such as ensuring friendship between Muhajirs and Ansars and forming an Islamic community based on a common socio-cultural mentality; it constituted the preliminary preparation of the Constitution of Medina¹⁹.

Following that agreement, a constitution was signed also including the Jews living in Medina together with Muhajirs and Ansars. Apart from ensuring cooperation of Muhajirs coming from Makkah, the Constitution also aimed at ensuring cooperation against the attacks that could come from Makkah²⁰. Moreover, that constitution is the first written Constitution of the Islamic history, which has reached until today²¹.

14 At-Taubah 9100: "And the foremost to embrace Islâm of the Muhâjirûn (those who migrated from Makkah to Al-Medina) and the Ansâr (the citizens of Al-Medina who helped and gave aid to the Muhâjirûn) and also those who followed them exactly (in Faith).

Allâh is well-pleased with them as they are well-pleased with Him. He has prepared for them Gardens under which rivers flow (Paradise), to dwell therein forever. That is the supreme success"

15Özel, Ahmet, <https://islamansiklopedisi.org.tr/hicret#2-fikih>, Turkish Religious Foundation Encyclopedia, access date: 16 February 2020

16Saydam, Abdullah, <https://islamansiklopedisi.org.tr/muhacir--osmanli>, Turkish Religious Foundation Encyclopedia, access date: 17 February 2020

17Görgeç, s. 64.

18Algül, Hüseyin, , <https://islamansiklopedisi.org.tr/ensar>, Turkish Religious Foundation Encyclopedia, access date: 17 February 2020

19 Özkan, Mustafa, Constitution of Madina, Ankara, 2002, p. 3536-

20 Özkan, p. 53.

21 Yaman, Ahmet, Being a Minority in the Islamic Society (Islam Toplumunda Azınlık Olmak), Journal of Presidency of Religious Affairs 234. Issue, June 2010, p. 5.

The Constitution has consisted of 47 articles. Living conditions of all tribes which signed the constitution and their relations with each other were mentioned in the content of the constitution. In particular, in the first 11 articles, the name of each tribe was mentioned, and it was noted that they would comply with the articles of the constitution. As it is observed, the rights of the Muhajirs who migrated were recognized by the Medina Constitution, and it was noted that they had to comply with the constitution.

We observe that apart from being an agreement ensuring an order between the tribes living in Medina and Muhajirs coming from Makkah, the Constitution contains many fundamental human rights. In this scope, it was accepted under Articles 12 and 15 of the constitution that Muslim tribes living in Medina (Ansars and Muhajirs) were brothers to one another and they were in cooperation with each other. Accordingly, it is also set out under these articles that the Muhajirs who migrated after the incident of hijra and Ansars were brothers and they had to benefit from the same rights and support each other.

According to Article 25 of the constitution: "And the Jews of Banu 'Awf shall be considered as one political community (Ummat) along with the believers- for the Jews their religion, and for the Muslims theirs, be one client or patron." Under that provision, freedom of religion and conscience was also afforded between the tribes. It was noted that all tribes living in Medina (Muslims and non-Muslims) would be provided with freedom to practice their respective religions.

In accordance with the principle "Of course, whoever is found guilty of oppression or violation of treaty, shall himself suffer the consequent trouble as also his family, but no one besides" set out under Article 31 of the Constitution, the principle of "individual criminal responsibility" is indicated. That provision was an important step in respect of human rights within a period based on tribes. Article 37 of the constitution stipulated that all tribes living in Medina had equal conditions. Article also set out that all tribes would comply with the decisions taken and they would help each other in case of war. It was also noted that no tribe would commit any crime against the other.

Another important matter is the principle of "equality before law" within the context of human rights. It is stipulated under Article 42 of the Constitution that disputes shall be resolved by the same authority²². According to Article 46 of the Constitution "Those who acquire unlawful gains shall only harm to their own will" Under this provision, it was provided that the gain must be legitimate and lawful and the property rights of others must be respected. Accordingly, "the right to property", one of the most important elements of human rights was regulated under that constitution.

Article 47 of the Constitution made references to the issues of personal immunity and prohibition of discrimination. According to the provision "And this prescript shall not be of any avail to any oppressor or breaker of covenant. And one shall have security whether one goes out to a campaign or remains in Madina, or else it will be an oppression and breach of covenant," it was provided that no one shall be subjected to discrimination and also, the guarantee and exception to the right to life were regulated. The last articles of the constitution contained undertakings indicating that the tribes living in Medina would comply with the covenant.

It is observed that the Medina Constitution regulates relations between Muslims (Ansars and Muhajirs) and relations between Muslims and non-Muslims. In this scope, the relations between Muslims, in other words, the relations between Ansars and Muhajirs also became the subject matter of this agreement. Accordingly, the Medina Constitution²³ which is considered as the first written constitutional text demonstrates the importance of the rights afforded to and the respect demonstrated to the Muhajirs, who forcibly migrated following the hijra. In this regard, in accordance with the Islamic doctrine and principles, the importance given to the migrants' rights and respect for human rights are better understood within the provisions of the Constitution of Medina.

b. Some Other Important Migrations in the History

Within the historical process, apart from the incident of Hijra, the migration which left a trace in the world history and

²² Ayengin, Tevhid, Islam and Human Rights, Istanbul, 2017, p. 80.

²³ For different views on this matter, see Akarsu, Murat, The Constitutionality of the Constitution of Medina (Medine Sözleşmesi'nin Anayasallığı), International Human Studies, Vol. 1, Issue 2, 2018.

which caused re-bordering of the states is the “Migration of Tribes”, the first migration that comes to mind. The Migration of Tribes started from Middle East to Europe, and then to African continent²⁴. On account of various reasons, the Turkish communities migrated to west, east, north and south. The migration wave initiated by the Turks started before Christ and continued after Christ. The migration of Turkish tribes to the west in the IV century after Christ started the Migration of Tribes, one of the biggest migrations of the world. As a result of the conflicts between tribes and Turkish communities, the tribes started to migrate to the west ²⁵. Accordingly, the Migration of Tribes started in Europe. Apart from changing the borders of the countries and falling the empires, the most important consequence of the migration of tribes is that it is ending of the first age and starting of the middle age. As it is observed, the migrations caused opening and closing of an era, apart from their impact on deserted places or residential places.

After Christopher Columbus crossed the Atlantic Ocean and discovered America in 1492, a new migration wave started which would change the political balance of the world. Apart from America, Australia and New Zealand were discovered by the British and Dutch. These new territories discovered by the Europeans are called “New World” continents. Intensive migrations were experienced from Europe to America, particularly by the British, Portuguese and French people. The number of colonies increased to 13, which laid the foundations of the United States of America²⁶. While the Migration of Tribes caused opening of a new age, the political order of the world took its final form following the discovery of America. Another important migration movement is that the Ottoman Empire safely accepted the Jews who were exiled from Spain. After Castilla and Leon Queen Isabella I and Aragon King Ferdinand II got married, two great powers were united. Subsequently, Islamic rule in Spain weakened, and Spanish Inquisition established in 1478 ordered the execution of thousands of Jews²⁷. Following the fall of the Emirate of Granada, more difficult days started for both the Jewish community in Granada and other Jews in Spain. On 31 March 1492 Isabella I and Ferdinand II issued Alhambra Decree on the ground that the Jews “attempted to dissuade good Christians from their own holy belief”. According to that decree, the Jews were asked to leave Spain within a short period, namely 4 months. It was also noted in the decree that those who did not comply with the decree would be sentenced to death penalty. Upon these developments, Bayezid II took the Jews exiled from Spain by means of Alhambra Decree under his protection. He sent the Ottoman fleet under the commandship of Kemal Reis to Spain and ensured the safe arrival of 150.000 Jews to the Ottoman territories²⁸.

In second half of the 20th century, Europe, from which people migrated to other places between 1800s and 1950s, needed labour force in order to eliminate destructive effects of the Second World War and to establish a new order. To this end, it opened the doors for the migrants. For example, Germany which was gravely defeated in the World War II, received many workers from Italy, Spain Greece and Turkey as migrants²⁹.

Another migration wave which affected the whole world is the “Arab Uprisings” that started in 2010. The crisis starting in Tunisia on 17 December 2010 after a young person who was a peddler burnt himself also spread to Egypt, Libya, Syria, Bahrain, Jordan and Yemen. After internal disturbances in some countries, a new migration wave initiated. The people who left their countries due to internal conflicts were in the search of countries where they could migrate³⁰. On account of conflicts which started in April 2011 and still continues in Syria, migratory waves were experienced. More than 10 million Syrian people had to take refuge in the countries such as Turkey, Jordan and Lebanon³¹.

24 Akkaya, Bahadır, International Migration Law and Turkey’s Migration Strategy, Master Thesis, 2019, p. 18

25 Akkaya, p. 18.

26 <https://www.history.com/topics/colonial-america/thirteen-colonies>, Access to website: 11.09.20

27 https://en.wikipedia.org/wiki/Spanish_Inquisition, Access to website: 11.09.20

28 <http://www.olaganustukanitlar.com/150-bin-yahudiyi-kurtaran-osmanli-padisahi-ii-beyazid/#:~:text=Bir%C3%A7ok%20ba%C5%9Far%C4%B1ya%20imza%20atan%20il,g%C3%BCvenle%2C%20Osmanl%C4%B120%topraklar%C4%B1na%20ula%C5%9Fmas%C4%B1n%C4%B120%sa%C4%9Fam%C4%B1C59%Ft%C4%B1r>, Access to website:11.09.20

29 Council of Europe, Study on “The changing face of Europe – population flows in the 20th century”, page 20, <https://rm.coe.int/1680494249>, Access to website: 18.09.20.

30 Koser,Khalid, Migration, Displacement and the Arab Spring: Lessons to Learn, <https://www.brookings.edu/opinions/migration-displacement-and-the-arab-spring-lessons-to-learn/>, Access to website: 18.09.20.

31 Turkey took approximately 3.5 million asylum seekers under temporary protection. Having established temporary accommodation centers, Turkey provides fundamental human rights needs such as education for all children, including pre- school, medical services in the same manner with Turkish citizens and places of worship for foreigners.

Before dwelling on the reasons of migration, it is firstly useful to focus on the types of migration. Indeed, migration has been classified into many categories³². Three main categories will be mentioned concerning classification. As the first classification, the concepts of internal and external migration are noted. Internal migration is the incident of migration experienced within the country. External migration is defined as migration from one country to another. Another classification is that migration may be divided into two categories as voluntary and forced migration³³. If the migration is on the relevant person's own will, it is voluntary migration. If the migrant has to go from one place to another due to his/her living conditions, forced migration is at issue. Finally, it is divided into two categories, as regular and irregular migration. Regular migration is made in line with the rules and regulations defined within the scope of migration movement, but the irregular migration does not comply with these procedural acts.³⁴

In the light of this information, it is useful to look at the factors which cause migration that is as old as the history of mankind. These factors, which continue to be relevant until today, constitute the basis of international and general principles.

a. Conflicts and Wars

One of the most important reasons of migration around the world, and in particular, Islamic geography, are considered as wars and regional chaos. Indeed, people who were forcibly obliged to migrate from their own hometowns in order to maintain a more appropriate life. The incident of migration which has many examples in the history on account of war and regional chaos forced the humankind to migrate include serious human rights violations experienced after the Second World War. As a matter of fact, under Article 14 of the Universal Declaration of Human Rights, which was adopted on 10 December 1948, "right to asylum" is regulated as a fundamental human right.

Arab Uprising caused collective migrations on account of internal disturbances in Iraq and Syria. This caused the migrants to head off to other countries and become refugees or asylum seekers. Due to internal disturbances in Syria since 2012, many human rights including in particular the right to life, one of the most fundamental rights, became endangered; and collective migrations have taken place, and is still on-going.

b. Denial of Basic Rights and Fundamental Freedoms Including Growing Intolerance Leading to Religious, Ethnic And Communal Persecution

Another reason of the migration arises from political reasons related with war and regional disturbances. Particular reasons are ethnic and regional pressures, insurrection, occupation and border changes. The migrant who headed off from his own country to another country due to these reasons takes the status of refugee or asylum seeker³⁵. Indeed, this reason of migration falls within the category of obligatory migration.

It is observed that the incident of "Hijra" related with religious reasons was experienced by almost all prophets. Although, prophet Noah made great efforts for his tribe to have faith in Allah, he migrated by a ship together with those who believed in him. Prophet Shuaib who was sent to the Madyan tribe warned his own people as they were falsifying measurements and weighing³⁶, his own people excluded him from his home town³⁷. "Great Migration" or "Hijra" performed by Prophet Muhammad (peace be upon him), explained in detail earlier, was accepted as a reason of the migration on religious purposes in respect of Islamic history.

³² Migration definition, <http://www.simiroma.org/Baggio/TS109/Classification%20Baggio%20EN.pdf> ,

<https://emergency.unhcr.org/entry/44937/migrant-definition> , Access to websites: 13.09.20

³³ International Migration and Human Rights, p. 10, Mani, Semiha Melis, Status of Migrant in the Private Law of the States and Regulations concerning Migrants (Devletler Özel Hukukunda Göçmenlerin Statüsü ve Göçmenlere ait düzenlemeler), Master thesis, Ankara, 2009, p. 26.

³⁴ Bozkurt, Kutluhan, Migration Law within the scope of European Union policies and regulations (Avrupa Birliği Politikaları ve Düzenlemeleri Kapsamında Göç Hukuku), Istanbul, 2018, p. 23.

³⁵ Töre, Nazlı, International Migration Law (Uluslararası Göç Hukuku), Ankara, 2016, p. 51.

³⁶ Al-A'raf 785/

Today, Muslims who are subjected to occupation and denial of rights migrate in order to live in accordance with their faith. The most important example of this situation are the Muslims living in the Indian Occupied Kashmir³⁸, Rohingyas of Myanmar, Occupied Palestinian Territories³⁹ and Xinjiang region of China⁴⁰.

c. Widening of Economic Disparities Within and Among the Nations

Economic grounds are one of the most important reasons of migration. As a matter of fact, the reason leading people to migrate to meet their basic needs including anxiety concerning employment. The person who is employed as a social concept will better ensure his/her prosperity and social peace. Otherwise, his/her productivity will decrease and he/she will suffer from adaptation problem. For this reason, in order to live in better economic conditions and to maintain a better quality of life, the person may migrate to another country⁴¹.

The best example of this situation was experienced after the Second World War suffering from a great loss after the war, Germany accepted the workers coming from other countries as from 1955 in order to eliminate the deficiency in labour force⁴². Today, Muslim and Syrian people were forced migration to Turkey⁴³ and to other European countries due to internal disturbances in Syria, because of apart from escaping the civil war, the purpose of improving living standards and finding a job.

At this point, it is necessary to touch upon the mass migration recently received by Turkey on account of the internal disturbance experienced in Syria. Indeed, Turkey was faced with a major test concerning migration by opening its doors to the asylum seekers coming from Syria. By “the Directive no. 62 on admission and accommodation of the citizens of the Syrian Arab Republic coming to Turkey for the purpose of mass asylum and of stateless persons residing in Syrian Arab Republic” issued by the Prime Ministry in 2012, the Syrian asylum seekers who came to Turkey were granted “temporary protection” and they were allowed to stay in Turkey⁴⁴. Till the present day, Syrian asylum seekers’ basic needs such as accommodation, food, health and education have been and still are met within the scope of temporary protection⁴⁵. In this respect, as it has done in the past, Turkey opens its doors to asylum seekers or refugees who requests its aid and provides them with the necessary assistance in accordance with the Islamic doctrine and values.

d. Natural Disasters, Ecological and Environmental Degradation

As a result of natural disasters which occur outside the people’s will and desire (earthquake, drought, volcano, flood, landslip, erosion), people have to migrate in order to survive and maintain a better life⁴⁶. Indeed, increase of average temperature of the earth, release of gases affecting ozone layer, air pollution, extension of chemical substances have become global problems. Accordingly, the concept of climate refugees has come into existence⁴⁷. Epidemics may also be involved under this category⁴⁸.

³⁷www.insanansiklopedisi.org.tr, Access to website: 13 March 2020

³⁸ See for details <http://www.na.gov.pk/uploads/content/OIC%20Report%20on%20Kashmir.pdf>, Access to website: 14.09.20

³⁹ See for details, <https://www.unrwa.org/palestine-refugees>, Access to website:18.09.20

⁴⁰ <https://news.un.org/en/story/20191054311/12/>

⁴¹ Töre, p. 50.

⁴² Akkaya, p. 10.

⁴³ <https://www.unhcr.org/tr/en/refugees-and-asylum-seekers-in-turkey>, Access to website: 18.09.20.

⁴⁴ Article 91 of the Law on Foreigners and International Protection provides, insofar as relevant, as follows:

“Temporary protection may be provided for foreigners who have been forced to leave their country, cannot return to the country gthat they have left, and have arrived at or crossed the borders of Turkey in a mass influx situation seeking immediate and temporary protection.”

⁴⁵ Çiçekşögüt, Adem, Status of the Displaced Syrians in Turkey from the Perspective of the International Migration Law (Uluslararası Göç Hukuku Perspektifinde Yerinden Edilmiş Suriyeliler’in Türkiye’deki Statüsü), Journal of the Kırıkkale University’s Faculty of Economics and Administrative Sciences, 2017, Volume no. 6, Issue no. 2, page 13.

⁴⁶ See for details about linking between enviromental change and migration, IOM World Imigration Report 2020, <https://www.unhcr.org/tr/en/refugees-and-asylum-seekers-in-turkey>, Access to website: 19.09.20.

⁴⁷ Bozkurt, p. 21.

⁴⁸ Töre, p. 50

II. RIGHTS OF MIGRANTS IN THE LIGHT OF INTERNATIONAL AND NATIONAL DOCUMENTS, AND ORGANISATIONS

Although the concept of migration dates back to ancient times of history, a solution was sought at international level after two world wars. Indeed, following the collective migrations experienced, the states started to perform studies for understanding the social phenomenon of migration and seeking solutions to manage it. In this scope, by the decision of the League of Nations which was established after the First World War, High Commissioner for Russian Refugees was established. As a result of the studies carried out, the High Commissioner attempted to find solutions for problems of Russian refugees such as their legal status and employment⁴⁹.

Due to increases in the collective migrations, the Convention Relating to the International Status of Refugees was initiated in 1933 with respect to the issue of migration firstly handled by the League of Nations in an exclusive manner. Only 8 countries signed the convention. However, some of the countries which signed the convention made reservation in respect of some articles⁵⁰. Although this convention did not have an impact at international arena as a small number of countries signed it, it formed a basis for international texts prepared in the coming years. As a matter of fact, it is observed that fundamental rights of refugees are indicated in the text of this convention. In particular, the prohibition of removal was indicated in this text for the first time.

In the subsequent period, Jewish refugees escaping from Nazi government in Germany caused a crisis in the international community. In this scope, the League of Nations initiated a Provisional Arrangement concerning the Status of Refugees Coming from Germany in 1936 and the Convention concerning the Status of Refugees Coming from Germany in 1938. These two conventions were not exhaustive when compared with the Convention made in 1933 as regards the rights they afforded. They were only related to situation of the refugees coming from Germany⁵¹.

The United Nations which was established after the Second World War also has the duty to carry out studies in order to determine the status of the persons who migrated after the war and to solve their problems. In this context, International Refugee Organization was established in 1948. The duties of the International Refugee Organization included carrying out activities concerning all fields of the refugees' lives such as making records concerning them, determining their status, their returning to countries of origin or their placement in a new country⁵². Apart from them, the UN High Commissioners for Refugees were established by the International Organization for Migration which was later incorporated in the UN. Detailed information concerning them will be mentioned in the following paragraphs of the study. In the first place, the 1951 Geneva Convention, which has the characteristics of a constitutional provision at the international arena for the rights of migrants, will be handled.

A. 1951 Geneva Convention on the Determination of the Legal Status of Refugees and 1967 New York Protocol Relating to the Status of Refugees

Since the problem of refugees was not solved following the Second World War, and a new international document was needed for the definition of the notion of refugee; on 28 July 1951 the UN Convention relating to the Status of Refugees was signed under the guidance of the UN High Commissioner for Refugees. The Convention entered into force on 21 April 1954⁵³.

The notion of "refugee" is defined in Article 1 of the Geneva Convention, which has a particular importance in the international arena. However, for the purpose of making a distinction between the notions of migrant and refugee, a number of limitations were noted in the definition of refugee. Article 1-a/2 of the Convention is as follows: "As a result of

⁴⁹Büyükcılık, Mürvet Ece, Development of Refugee Law and Social Rights of Refugees in Turkey (Mülteci Hukuku Gelişimi ve Türkiye'de Mültecilerin Sosyal Hakları), Master thesis, p. 11

⁵⁰For 1933 Convention Relating to the International Status of Refugees, see: League of Nations, Convention Relating to the International Status of Refugees, 28 October 1933, League of Nations, Treaty Series Vol. CLIX No. 3663, <http://www.refworld.org/docid/3dd8cf374.html> (Access date: 13 March 2020)

⁵¹ Akkaya, p. 5051-.

⁵²<http://www.refworld.org/docid/3ae6b37810.html>, Access to website: 13 March 2020

⁵³ UNCHR, Handbook, p.3.

events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

According to this article, the notion of refugee is limited to the events occurring before 1 January 1951. It is also considered that he/she must have a well-founded fear of being persecuted. Moreover, it is also noted in the article that the persecution may arise from the reasons of race, religion, nationality, membership of a particular social group or political opinion. It is also maintained in the text of article that the requirement of being outside the country of his nationality and being unable or unwilling to avail himself/herself of the protection of that country is sought.

Moreover, subparagraph B is also explained as follows in addition to these requirements in Article 1 of the Convention: *“B.(1) For the purposes of this Convention, the words “events occurring before 1 January 1951” in article 1, section A, shall be understood to mean either:*

(a) “events occurring in Europe before 1 January 1951”; or

(b) “events occurring in Europe or elsewhere before 1 January 1951”, and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention.”

Pursuant to this provision, the States were afforded the right of choice while signing the Convention. Within this scope, the States were provided with the opportunity to grant refugee status either to those who came from Europe or to those who came from Europe or elsewhere⁵⁴.

The Convention in question sets out the fundamental rights of refugees and establishes the minimum procedures to be applied in that regard. Within this scope, the fundamental rights of refugees were laid down in this Convention containing provisions on establishment of refugees’ legal status, their employment and their right to benefit from welfare services as well as regulations on their identity papers and travel documents, applicability of fiscal charges to them and their right to transfer their assets to another country where they have been admitted. Detailed explanation on the rights in question will be provided under the 3rd Section below⁵⁵. The most important one of the above-mentioned rights, which still sparks debates at the international level, is the principle of “non-refoulement” set out in Article 33 of the Convention. Even though this provision is of a general nature, the exceptions to it were also provided for in the Convention⁵⁶. After 1951, the Office of the United Nations High Commissioner for Refugees (UNHCR) established within the United Nations (hereinafter, “the UN”) has closely monitored treatment of refugees by intervening in several refugee crisis that have taken place. Within this scope, the Hungarian refugees who sought asylum in Western Europe, the Chinese refugees in Hong Kong, the Algerian refugees coming from Morocco and Tunisia in connection with Algeria’s fight for independence and lastly, the refugee problems which emerged in Africa due to civil wars in countries for gaining independence revealed that the temporal and geographic limitations set out in the Geneva Convention gave rise to inconsistencies⁵⁷.

⁵⁴ In Turkish practise, the descriptions made within the context of the Geneva Convention and the New York Protocol were firstly regulated by “the Regulation on the principles and procedures applicable to individual foreigners who seek asylum in Turkey or who request a residence permit from Turkey for the purpose of seeking asylum in another country, to foreigners who arrive at the Turkish borders for collective asylum and to possible population movements” dated 30 November 1994. Furthermore, the Regulation in question was the first domestic instrument governing the status of those who came to Turkey from outside of Europe for the purpose of seeking asylum. Later, the need for a new law arose with the increase in the number of asylum seekers coming to Turkey from outside of Europe and escalation of the instances of mass migration. Within this scope, “the Law on Foreigners and International Protection” was drafted and it was enacted and brought into force on 4 April 2013.

⁵⁵ <https://www.ohchr.org/Documents/Publications/FactSheet20en.pdf>, page 4.

⁵⁶ For detailed analysis on the subject, see the 3rd Section, pages 29-31.

⁵⁷ Büyükçalık, page 43.

Upon the call of the UNHCR, on 4 July 1967 the text of the Additional Protocol to the Geneva Convention of 1951 was drafted. By the text in question, “events occurring before 1951” and “fleeing from Europe” requirements were lifted. Even though the text in question was drafted as an additional protocol, it was separately opened for the States’ signature and its applicability is subject to ratification by the States. Accordingly, the aforementioned two Conventions, which were signed by a high number of States, are of great importance at the international arena for securing refugees’ fundamental rights.

B. International Organisation For Migration (IOM)

Following the displacement of approximately 11 million persons from the Western Europe as a result of the destructive impact of the Second World War, the International Organisation for Migration (IOM) was established in 1951 by 132 States with a view to finding a solution for the migration wave which began in the search of another place to live. The objective of the Organisation was established as providing assistance for the increasing operational difficulties in migration management, making migration related matters more comprehensible, encouraging social and economic development by means of migration and promoting migrants’ human dignity and welfare⁵⁸. In other words, the aim of the Organisation is to ensure that the migration movement takes place in an orderly and humanitarian manner and that the States exchange the necessary information on migration, cooperate with each other and provide an incentive in this regard⁵⁹.

Even though the Organisation was initially established as an independent international organisation, it was incorporated into the UN in 2016 and presently, it functions as a subsidiary institution. Currently, the Organisation has 173 Member States and 8 Observer States including several Muslim States⁶⁰. For example, the International Migration Organisation (IMO) continues its activities in Turkey. Even though the IMO opened its first office and initiated its activities in Turkey in 1991 in order to deal with the Iraqi refugees who came to Turkey as a result of the First Gulf War, it was considered appropriate for Turkey to join the IMO by the Law no. 5260 dated 25 November 2004 which was brought into force on 19 July 2010 by the Council of Ministers. As seen, Turkey’s membership of the IOM became official in 2004 and the joint works of the IOM and Turkey, including the drafting of the Law on Foreigners and International Protection and establishment of the Directorate General for Migration Management attached to the Ministry of Interior, have been carried out as from 2004 until present. In the aftermath of the Van earthquake of 2011, the IOM initiated its emergency intervention programs in Turkey. In the course of the civil war in Syria and the Mediterranean Crisis of 2015, the IOM continued its activities in Turkey. The IOM has its central office in Ankara and sub-offices in Istanbul and Gaziantep⁶¹.

C. United Nations High Commissioner for Refugees (UNHCR)

Following the establishment of the UN, it was decided to set up the UNHCR by the decision of the UN General Assembly in 1951 due to the fact that the International Refugee Organisation (IRO) established for the purpose of dealing with the migration and refugee problems proved insufficient⁶². The mandate of the UNHCR, which was initially set up for a period of 3 years, was extended and resumed as the world-wide migration problem could not be solved. By its decision of 2003, the UN General Assembly extended the UNHCR’s mandate “until the refugee problem is solved”, namely, until the issue is brought to an end. The UNHCR functions as a subsidiary body established by the UN General Assembly under Article 22 of the UN Convention. Therefore, it is an institution with international legal personality⁶³. The Statute of the Office of the United Nations High Commissioner for Refugees, adopted by the UN General Assembly on 14 December 1950, is the main text of the Commissioner's Office. It performs its functions and activities in accordance with the Statute in question.

⁵⁸<https://www.iom.int/mission>, Access to website: 29.03.2020

⁵⁹For the 12 objectives where the IOM established its strategies for refugees’ rights, see also <https://www.iom.int/mission>, Access to website: 29.03.2020.

⁶⁰https://www.iom.int/sites/default/files/about-iom/members_observers_en.pdf, Access to website: 29.03.2020. ⁶¹<https://turkey.iom.int/iom-turkey>, Access to website: 08.04.2020

⁶² <https://www.unhcr.org/afr/excom/unhcrannual/3ae68c968/report-united-nations-high-commissioner-refugees.html>, see §10, Access to website: 15.09.20.

⁶³<https://www.unhcr.org/3b66c39e1.html>, Access to website: 29.03.2020.

As stated in the introduction part of the Statute, the UNHCR's fundamental aim is to solve refugees' problems throughout the world, to ensure their international legal protection and to either facilitate their voluntary repatriation or settlement in a safe third country. Its second aim is to determine the refugees falling within the scope of its field of activity⁶⁴.

In Article 6 of the Statute, the persons falling under the category of refugee were set out. The Statute further extended the definition of refugee in a manner that it also encompassed its definition in the Geneva Convention of 1951. Within this scope, regardless of any geographic or personal limitations, those who are forced to leave their country for fear of being persecuted for reasons of race, religion, nationality or political opinion also fall under the category of refugee. Therefore, the Statute is of a universal nature.

In Article 8 of the Statute, the duties of the UNHCR were defined. When these definitions are examined, it is seen that the important duties of the UNHCR are as follows⁶⁵;

- Promoting through special agreements with Governments the execution of any measures calculated to improve the situation of refugees and to reduce the number requiring protection;
- Assisting governmental and private efforts to promote voluntary repatriation or assimilation within new national communities;
- Promoting the admission of refugees not excluding those in the most destitute categories, to the territories of States;
- Obtaining from Governments information concerning the number and conditions of refugees in their territories and the laws and regulations concerning them.

The UNHCR offers three solutions to enable refugees (including stateless persons) to maintain their lives. Within this framework, the solutions offered by the UNHCR are voluntary repatriation, settlement in a third country and local integration. The UNHCR carries out the necessary works in accordance with these options. The most important point that should be emphasised is that the UNHCR handles its works related to refugees' rights within the context of human rights. Indeed, the fact that the UNHCR handles the subject in this manner imposes obligations on the States and contributes to provision of permanent solutions.

D. Conventions, Reports and Commissions Prepared by the Council of Europe and the European Union

Even though the Geneva Convention of 1951 is accepted as a milestone in the European continent, the searches for solution of the refugee problem has continued outside the Convention in question. Within this scope, the Council of Europe and the European Union (hereinafter, "the EU") have introduced several regulations concerning migrants and refugees. Firstly, the European Convention on Human Rights (hereinafter, the European Convention), which is the fundamental instrument of the Council of Europe, has introduced certain protective arrangements for migrants, asylum seekers and refugees. One of the most important of these protective arrangements is the mechanism of protection against expulsion of an asylum seeker or a refugee. In this connection, the European Court of Human Rights (hereinafter "the Court") rules on the applicants' allegations as to violations of "the prohibition of torture" under Article 3 of the European Convention, "the right to liberty and security of person" under subparagraph (f) of Article 5 thereof, "the right to freedom of movement" under Article 2 of the Additional Protocol No. 4 to the European Convention and the provisions

⁶⁴<https://www.unhcr.org/3b66c39e1.html>, Access to website: 30.03.2020.

⁶⁵ For detailed information on the UNHCR's other duties, see <https://www.unhcr.org/3b66c39e1.html>

against expulsion orders under Article 1 of the Additional Protocol No. 7 to the European Convention⁶⁶.

The Steering Committee for Human Rights (CDDH) of the Council of Europe has also set up a working group on "Migration and Human Rights" and informed the public opinion about the subject by the detailed reports drawn up by intergovernmental legal professionals⁶⁷.

On the other hand, the Treaty of Rome, namely the foundation act of the EU which was firstly established as the European Economic Community in 1957, included no regulation as to common migration and asylum policies. Similarly, it is observed that the Single European Act of 1987 did not include any regulation in that regard, either. The first steps regarding the asylum and migration policies were taken in the Schengen Agreement signed in 1985. Within the scope of the Agreement in question, the checks in the EU's internal borders were gradually abolished and the right to freedom of movement was secured. However, this right was conferred on merely the citizens of the EU and efforts were exerted to take steps for merely implementation of a common procedure (entry, exit, asylum, etc.) with respect to the persons coming from outside of the EU. Nevertheless, this issue was left to the discretion of the States⁶⁸.

Specific regulations concerning refugees were included in the Dublin Convention which was signed in 1990 and which stated that the Contracting States reaffirmed their obligations under the Refugee Convention of 1951 and the New York Protocol of 1967 with no geographic restriction of the scope of these instruments and that they also agreed to cooperate with the UNHCR. The regulations in question concerned which State would be responsible for assessment of an application for asylum made within the EU and it indicated the responsible States by introducing a detailed limitation.

While the EU Member States' initiatives for harmonisation of the asylum policies and practices may be described as political initiatives which were not initially binding, it can be said that this situation changed after the Maastricht Treaty and particularly, as from the year 1999. Thereafter, the States exerted efforts to set up the Common European Asylum System taking as basis the application of the Refugee Convention of 1951 to the fullest extent. The Treaty of Maastricht, which was signed in 1992, included asylum and the policies of asylum as the common field of interest for the Member States. The Treaty of Amsterdam of 1997 made certain amendments to the Treaty of Maastricht. Within this scope, policies related to visas, asylum, migration and persons' freedom of movement were readdressed. By the Treaty of Amsterdam, which entered into force in 1999, the preparations for setting up the Common European Asylum System were initiated. Within this framework, several instruments in the form of regulations and directives were brought into force.

The fundamental structure of the Common European Asylum System began to be established by the adoption of the Dublin II Regulation, which was signed in 2003 and which amended the Dublin Convention of 1999, the Council Directive

⁶⁶ Some of these judgments are as follows:

- In its judgment of *Hirsi Jamaa and Others v. Italy* [GC] (no. 27765/09), the Court found a violation against Italy on the ground that the Coastguard teams patrolling the open seas had sent the vessels, which had two hundred asylum seekers on board, to Libya without receiving their requests for asylum.
- In its judgment of *Sharifi and Others v. Italy and Greece* (no. 16643/09), the Court found a violation of Article 3 of the Convention in conjunction with Article 4 of the Protocol No. 4 to the European Convention on the ground that the Afghan nationals, who had been arrested at the border of Italy where they had illegally reached via Greece, had been returned to Greece without allowing them to apply for any procedures. *Kebe and Others v. Ukraine* (no. 12552/12) and *MA and Others. Lithuania* (no. 59793/17) judgments are also of a similar vein.
- When the Court receives an application, it may indicate to the respondent Government certain interim measures under Rule 39 of the Rules of Court until the examination of the case. The Court indicated interim measures in a number of cases concerning migration, including placement of minors in detention. The respondent Government's failure to comply with the interim measure indicated by the Court under Rule 39 of the Rules of Court amounts to a violation of Article 34 of the Convention (*Mamatkulov and Askarov v. Turkey* [GC], nos. 46827/99 and 46951/99 §§ 99-129; see also *MA v. France*, no. 9373/15).
- In its judgments of *Cruz Varas v. Sweden* and *Vilvarajah v. the United Kingdom* dated 20 March 1991 and 30 October 1991 respectively, the Court held that the persons whose application for asylum had been rejected were under the protection of Article 3 of the Convention.

⁶⁷ For detailed information, see <https://www.coe.int/en/web/human-rights-intergovernmental-cooperation/human-rights-development-cddh/migration>, Access to website: 30.03.2020.

⁶⁸ Töre, page 38.

laying down the minimum standards for reception of asylum seekers, and the regulations concerning the criteria for receiving refugee status, temporary protection, and identity papers and travel documents to be provided to refugees. In addition to these procedural regulations, instruments including provisions on security are also a part of the Common European Asylum System. The regulation on the EURODAC system enabling identification of asylum seekers' fingerprints and several regulations on border security such as FRONTEX have been introduced⁶⁹. Thus, subsequent to the Treaty of Amsterdam, safeguards for freedom of movement were provided and decisions were made as regards asylum and migration related matters in accordance with the EU's principles of freedom, security and justice⁷⁰. Accordingly, the issue of migration and asylum was removed from the Member States' responsibility and included in the EU's area of responsibility, and a five-year period was envisaged for each Member State to implement the decisions made.

By the Charter of Fundamental Rights of the EU, which was adopted in 2010, the right to asylum was set out among fundamental rights and principles. Therefore, according to this regulation, citizens of non-EU countries who are in the EU countries will have the rights set out in the Charter (residence, travel and work) even if they are not EU citizens. Lastly, the Dublin III Regulation was adopted in 2013. In accordance with the Regulation in question, more transparent criteria were introduced as regards persons applying for asylum and amendments were made as regards assessment of their applications⁷¹.

E. Other Important Conventions Regarding Migration

In addition to the above-mentioned protocols, conventions and processes, many conventions of universal and regional nature which provided safeguards for refugees and asylum seekers were signed as a result of increasing focus on issues related to migration.

It is observed that in general, the UN has always been a pioneer in the field of multilateral conventions. Within this scope, the Convention for Prevention and Punishment of the Crime of Genocide dated 1948, the International Convention on the Elimination of All Forms of Racial Discrimination dated 1965, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights both dated 1966, the Convention on the Elimination of All Forms of Discrimination Against Women dated 1979, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment dated 10 December 1984 and the Convention on the Rights of the Child dated 1989 were signed. While these conventions are not entirely migrant-themed, certain fundamental rights and freedoms included in their contents are of a universal nature and therefore, the rights in question are also enjoyed by migrants, refugees and asylum seekers. In this respect, while explaining the fundamental rights and freedoms specific to migrants under the 3rd Section, the conventions in question will also be mentioned where relevant.

Some of the international conventions remained regional in nature. In this scope, on 27 March 1994 the "Arab Convention on Regulating Status of Refugees in the Arab Countries", which had been prepared with respect to the issues of immigrants and refugees was signed⁷² by the League of Arab States⁷³. In the preface of the Convention, the Member States confirmed the provisions of the 1951 Geneva Convention, the 1967 Protocol relating to the Status of Refugees and the 1992 Cairo Declaration on the Protection of Refugees and Displaced People. The most important feature of this convention is that the definition of refugee is more widely mentioned when compared with the international

⁶⁹ Büyükçalık, page 54.

⁷⁰ Bozkurt, page 107.

⁷¹ Töre, pages 40-41.

⁷² <https://www.refworld.org/docid/4dd5123f2.html>, Access to website: 18.09.20.

⁷³ https://en.wikipedia.org/wiki/Arab_League, Access to website:19.09.20

conventions and protocols⁷⁴. As a matter of fact, the persons persecuted on account of their ethnic origin are mentioned in the first paragraph of the first article. The second paragraph stipulates that any person who unwillingly takes refuge in a country other than his country of origin because of the occurrence of natural disasters or grave events resulting in major disruption of public order shall be considered as a refugee.

Besides, the conventions signed within this scope are the Caracas Convention on Diplomatic Asylum and the Caracas Convention on Territorial Asylum both dated 28 March 1954, the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa dated 10 September 1969 and the Council of Europe Framework Convention for the Protection of National Minorities dated 1995 and the Council of Europe Convention on Action Plan against Trafficking in Human Beings⁷⁵.

In December 2018, and in recognition of the important role of well-managed migration towards sustainable development of nations today, the international community made a significant step forward by adopting the 'Global Compact for Safe, Orderly and Regular Migration' as a starting point for the countries to reassess their national migration policies to combat child and forced labour, human trafficking, exploitation and abuse in the context of migration.

This new Global Compact, which was adopted in an international Intergovernmental Conference held in Marrakesh, Morocco on 10-11 December 2018, and formerly endorsed by the UN General Assembly in the Resolution No: A/RES/73/195/, dated on 19 December 2018⁷⁶, clearly reflected a substantial change in the international approach toward the complex issues of migration; from a negative view of migrants and migration in which the security concerns and the logic of national sovereignty overshadow the will of international cooperation, to a positive human rights approach under which migrants are perceived as holders of human rights and agents of developments in the countries of destination.

In line with the spirit of this new Global Compact, it must be highlighted that migration is a source of innovation, diversity, prosperity and sustainable development of societies. In today's globalized world, safe and orderly migration is a beneficial tool to address labor market needs of many industrialized/developed countries, which are confronting problems of either declining/ageing population or shortage of professional expertise. In doing so, migrants contribute to the economic growth and socio-cultural diversity of destination countries.

III. GENERAL PRINCIPLES OF THE HUMAN RIGHTS OF MIGRANTS

In line with the international human rights agenda, efforts were exerted to secure a number of rights and freedoms for migrants, asylum seekers and refugees in order to provide them with a better life. Indeed, as human beings, migrants have inalienable, non-assignable, universal and natural rights. In other words, irrespective of where an individual goes, he/she is entitled to these rights under all circumstances and conditions. As a matter of fact, Article 2 of the International Covenant on Civil and Political Rights prescribes that everyone may enjoy the fundamental rights and freedoms recognised in the Covenant irrespective of whether they have any citizenship bond with the country concerned.

⁷⁴ Article 1

For the purposes of this present Convention, a refugee means:

Any person who is outside the country of his nationality or outside his habitual place of residence in case of not having a nationality and owing to well-grounded fear of being persecuted on account of his race, religion, nationality, membership of a particular social group or political opinion, unable or unwilling to avail himself of the protection of or return to such country. Any person who unwillingly takes refuge in a country other than his country of origin or his habitual place of residence because of sustained aggression against, occupation and foreign domination of such country or because of the occurrence of natural disasters or grave events resulting in major disruption of public order in the whole country or any part thereof.

⁷⁵ Töre, pages 37-38.

⁷⁶ The UNGA Resolution, which includes the full text of the "Global Compact for Safe, Orderly and Regular Migration" is available here: https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/195

⁷⁷ Al-Anbiya, 21/92.

In the history of Islam, the concepts of refugees and asylum seekers presented some differences. For this reason, explaining the varying situation before touching upon fundamental rights and freedoms will enable a better understanding of the subject-matter.

Within this framework, if a Muslim person is to migrate to another Muslim country, he/she should enjoy the same rights with the citizens of the country in question. Indeed, as per the verse from the Quran which reads “Verily, this community (Ummah) of yours is a single Ummah, and I am your Lord, so worship me”⁷⁷, the understanding of “the unity of the Ummah” was adopted by the Islamic law⁷⁸. For this reason, a Muslim who migrated to another Muslim country could enjoy the same rights and freedoms.

On the other hand, in the Islamic law, non-Muslims residing in Muslim countries were categorised under different groups. Non-Muslims who crossed the borders of a Muslim country without permission were called “the harbi”⁷⁹. The harbi were not entitled to any rights within the Muslim country as they did not obtain any permission or entered into any pledge of security (aman). However, non-Muslims who agreed to pay a certain amount (jizyah) for their assets and who recognized the sovereignty of Islam were called “the dhimmi”⁸⁰. Having fulfilled these conditions, the dhimmi were then regarded as citizens of the Muslim country where they stayed and hence enjoyed all the rights and freedoms.

Lastly, persons who came to a Muslim country temporarily with no intention of becoming a citizen were called “the musta’min”. A pledge of security could be entered into with the musta’min. As long as the aman remained in force, the security of lives and assets of the musta’min would be protected. The musta’min were allowed long term stays unless their residence was restricted by the Muslim country where they stayed. The musta’min were subject to the provisions of the Islamic law during their stay despite not being citizens⁸¹.

Accordingly, a migrant who migrated from one Muslim country to another enjoyed the same rights and freedoms in that country as required by the understanding of the unity of the Ummah. If non-Muslims came to the country without the purpose of citizenship or residence, they could enjoy the provisions of the Islamic law in the Muslim country by entering into a pledge of security.

In the course of the period from past till present, the States’ unitarian structure coming into prominence, the effects of the interstate wars and of the nationalistic movements and the development of the positive and international law compelled the States to replace the understanding of the unity of the Ummah with the understanding of sovereignty of the States within their own borders. With respect to individuals, the nationality and citizenship bond came to the forefront. Therefore, at present time, if a person wishes to migrate to a Muslim country, he/she is subject to the status of migrant, asylum seeker or refugee irrespective of whether he/she is a Muslim or a non-Muslim.

Lastly, the right of asylum is worth mentioning before proceeding to the fundamental rights. Indeed, this right, which is recognised by the international law, has been acknowledged as a fundamental human right in accordance with Article 14 of the Universal Declaration of Human Rights which reads, insofar as relevant, as follows: “Everyone has the right to seek and to enjoy in other countries asylum from persecution.” However, this right was not mentioned in the Geneva Convention of 1951 or other regional instruments regarding fundamental human rights which were issued subsequent to the Universal Declaration of Human Rights⁸².

Having made these general assessments, migrants’ fundamental rights and freedoms may be categorised as follows:

⁷⁸ Yeter, Hasan Servet, *The Musta’min in the Islamic Law*, Istanbul 2002, page 35

⁷⁹ Özel, Ahmet, <https://islamansiklopedisi.org.tr/harbi-gayr-i-muslim>, Access to website: 15.09.20.

⁸⁰ Yaman, Ahmet, *Turkish Religious Foundation Encyclopedia*, <https://islamansiklopedisi.org.tr/zimmi#3-osmanlilarda>, Access to website: 15.09.20.

⁸¹ Yeter, page 50

⁸² Töre, page 172. Article II(1) of the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa provides that the Member States of the Union must receive asylum seekers to the extent allowed by their respective legislations.

A. Respect for The Right to Life and Physical Integrity of Migrants

The right to life constitutes the foundation of human rights and it is prerequisite to the existence of the other rights. Therefore, the right to life is sacred. Accordingly, it is the first right guaranteed under several international instruments on human rights.

In Islam, the right to life is the most important one among the sacred rights⁸³ and it is inviolable. Within this framework, the security of life and assets of everyone, whether Muslim or non-Muslim (the *Musta'min* or the *Dhimmi*), who resides in an Islamic country is guaranteed⁸⁴. Even at time of war, a Muslim State must ensure foreigners' security of life⁸⁵. The importance of the right to life is enshrined in the following verse from the Quran: "We ordained for the Children of Israel that if any one slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he slew the whole people." Furthermore, it is indicated that no human being can be murdered without a justified reason by the following Hadith of our Prophet Muhammad: "The one who unjustly kills a non-Muslim citizen shall never smell the fragrance of Heaven even though it can be smelled at a distance of forty years."⁸⁶ Also, the following verse from the Quran points out to the right to life: "Do not take life - which Allah has made sacred - except for just cause"⁸⁷.

When the international instruments on human rights are examined, it is seen that they all enshrine the right to life as the first inalienable and inviolable right. Within this scope, the right to life is laid down in Article 3 of the UN Universal Declaration of Human Rights, in Article 6 of the International Covenant on Civil and Political Rights and in Article 2 of the European Convention on Human Rights. Similarly, the International Court of Justice and the European Court of Human Rights, which are international courts, have pointed out in their judgments that the right to life is a core right and that the States have the negative obligation to not take life and the positive obligation to protect the right to life⁸⁸.

The right to life is also enshrined in the revised OIC Declaration of Human Rights. Article 2 of the declaration also provides that it is the States' responsibility to guarantee the right to life. In this context, it is essential for every state to protect the right to life of migrants who move to another country with their own will in order to establish a new life and also of the asylum seekers or refugees who are forced to migrate. While their destination countries have an obligation to protect the right to life of individuals who have the migrant status, they also have an obligation to carry out effective investigation by taking necessary measures in the case of any interference to be made with this right⁸⁹.

Moreover, torture, inhuman or degrading treatment which constitute a violation of physical integrity are also strictly prohibited. As Islam attaches great importance to rightful due, it prohibits torture which is a treatment against the physical integrity of an individual. Furthermore, it is observed in the Quran that torture and persecution are strictly prohibited with the verses that "Indeed, those who annoy Allah and His Messenger-Allah has cursed them in this world and in the Hereafter and has prepared for them a humiliating torment. And those who harm believing men and believing women undeservedly have certainly born upon themselves a slander and manifest sin."⁹⁰ and that "O you who have believed, be not like those who abused Moses"⁹¹. Moreover, with the hadith that "Whoever harms a *zimmi* (non-Muslim) will be my foe, and whoever is my foe will also be my foe on the Day of Insurrection", it is seen that the Prophet Muhammad prohibited any torture without making any discrimination between Muslims and non-Muslims.

With Article 7 of the International Covenant on Civil and Political rights indicating that "No one shall be subjected to

⁸³ Islamic Relief, *The Rights of Forced Migrants in Islam*, 2014, page 17.

⁸⁴ Konan, Belkis, *An Overview of the Ottoman State in Term of Human Rights and Fundamental Freedoms*, Journal of the Gazi University's Faculty of Law, Ankara, 2011, page 259.

⁸⁵ Yeter, page 101.

⁸⁶ Hatip, Abdülaziz, *Minority Rights in the Quran and the Sunnah, Human Rights in the Quran and the Sunnah*, (Kur'an ve Sünnette Azınlık Hakları, Kur'an ve Sünnette İnsan Hakları), Istanbul, 2014, page 192.

⁸⁷ Al-Isrâ, 17/33.

⁸⁸ Harris, D.j./O Boyle, O/Bates, E.P. Buckley, CM. *Law of the European Convention on Human Rights*, page 39. ⁸⁹ Töre, page 118.

⁹⁰ Surah Al-Ahzab 57, 58

⁹¹ Surah Al-Ahzab 33/69

torture or to cruel, inhuman or degrading treatment or punishment.” and Article 3 of the European Convention of Human Rights indicating that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”, torture and ill-treatment have been prohibited. As in the Islam doctrine, no exceptional circumstance has been given in this regard today.

In the same vein, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was adopted by the United Nations in 1984. In this Convention, the definition of torture, the measures required to be taken by states and the states’ obligations were regulated⁹². Moreover, with the Convention, it was envisaged that a Committee against Torture shall be established and related regulations were included. As a continuation of this Convention, Additional Optional Protocol (OPCAT) was adopted by the UN General Assembly in 2002⁹⁴. With this Optional Protocol, it was envisaged that a sub-committee and a national prevention mechanism shall be established.

On the other hand, European Convention for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment was signed by the Council of Europe in 1987⁹⁵. With this Convention, it was envisaged that an independent and impartial Committee (CPT) shall be established. This Committee draws up reports by means of making scheduled or non-scheduled visits to the hospitals, migrant accommodation centres, migrant camps etc. of the States Parties to the Convention. In line with these reports, the CPT gives advices to the states on the prevention of torture and aims to ensure inter-state cooperation with the Committee in the international arena.

In this regard, both in the Islamic doctrine and in today’s human rights documents, torture and ill-treatment have been prohibited without any discrimination. Accordingly, it has been prohibited that migrants, refugees and asylum seekers face such a treatment in their newly arrived countries. As for the right to life, with regard to the prohibition of torture and ill-treatment, states have a positive obligation to take necessary measures to protect migrants. Lastly, torture and ill-treatment have been prohibited –without any exceptions- in the OIC Declaration of Human Rights⁹⁶.

B. Non-Refoulement and Access to Justice

The right to deport an individual who migrated to another country or found asylum in another country to escape persecution was accorded to states by international law. However, this is not always the case and is subject to some exceptions.

On the other hand, with the international human rights documents, refugees were also given certain guarantees. The most prominent one of these rights is non-refoulement. In this scope, Article 33 of the Geneva Convention, which forms the basis of this principle, provides as follows: “No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” This right has now become a traditional international rule of law in terms of migrant law, and has been included in many universal and regional international texts⁹⁷.

⁹² <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>, Access to website: 27.04.2020.

⁹³ Under the UN, as also stated in Article 7 of the Rome Statute adopted in 1998, entitled “crimes against humanity”, it was regulated that where the acts such as murder, extermination, torture, enslavement, deportation, persecution are committed against any civilian population in a widespread and systematic manner, these shall fall into the scope of crimes against humanity. Similarly, under the Rome Statute, crimes against humanity were accepted within the jurisdiction of International Criminal Court. See more details, <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>, Access website: 27.04.20.

⁹⁴ <https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>, access to website: 27.04.20

⁹⁵ <https://rm.coe.int/16806dbaa3>, Access to website: 27.04.20.

⁹⁶ See for details regarding the explanation of studies for Cairo Declaration on Human Rights by OIC, https://www.oic-oci.org/topic/?t_id=23244&t_ref=13948&lan=en, Access to website: 15.09.20.

⁹⁷ Article III(1) of the Asian-African Convention on Refugee Principles dated 1966, Article 3 of the resolution of the UN General Assembly, adopted unanimously on 14 December 1967, Article II(3) of the Organisation of the African Unity Convention dated 1969, Article 22(8) of the American Convention on Human Rights dated 1969.

Article 3(1)⁹⁸ of the Convention Against Torture which was signed on 10 December 1984 extended the scope of individuals under the non-refoulement (prohibition of return) laid down in Article 33 of the Geneva Convention. In this context, if a person is to be subjected to torture in case of his/her deportation, she/he is protected under this Convention and his/her return is prohibited⁹⁹.

This prohibition is not absolute and also has some exceptions. As stated in Article 33(2) of the Geneva Convention, foreigners, who constitute a security threat within a country or who have committed serious crimes, cannot enjoy this right¹⁰⁰.

Articles 2 and 3 of the ECHR strictly prohibits the return of any individual who will face the risk of being subjected to a treatment in violation of the scope of non-refoulement. This is different from the risk of persecution, one of the main reasons set out in the 1951 Geneva Convention.

Article 3 of the ECHR contains one of the fundamental values of a democratic society and prohibits torture or inhuman or degrading treatment or punishment no matter how undesirable and dangerous a victim's behaviour is. According to Article 3, while a sound basis is shown to believe that there is a real risk that the relevant person will be subjected to torture or inhuman or degrading treatment or punishment in the country where she/he is returned, states' responsibility may be evoked for the deportation of this person¹⁰¹.

This internationally approved rule is also applicable in the Islamic doctrine. This is because, this protection arises from the doctrine of "a Muslim is a brother of another Muslim, so he should not oppress him, nor should he hand him over to an oppressor" (Bukhari). It is accepted by the Islamic jurists that this right applies to both Muslims and non-Muslims¹⁰². This is because, according to the non-Muslims pledge of security, this pledge continues to apply until reaching a safe place. Therefore, if a non-Muslim has no consent, his/her return is strictly prohibited¹⁰³.

On the other hand, within the framework of the Islamic doctrine, in regards to application to the court, foreigners also have the right to file a case provided that they comply with the legal remedies and conditions¹⁰⁴. In respect of the migrants' freedom to claim rights, according to Article 16 of the Geneva Convention: "1. A refugee shall have free access to the courts of law on the territory of all Contracting States. 2. A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to Access to the Courts, including legal assistance and exemption from *cautio judicatum solvi*. 3. A refugee shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence." It is seen that this regulation is similar to Islamic doctrine and values.

In migration law, one of the most important reflections of the principle of humanness is the provision of humanitarian living conditions. In this context, the needs of migrants, asylum seekers or refugees, such as nutrition, shelter and health services, which maintain the basic living conditions, must be met. This is because, these rights are recognized under the Geneva Convention and the International Covenant on Economic Social and Cultural Rights (ICESCR). This right has been accorded to everyone according to Article 11 of the International Covenant on Economic, Social and Cultural Rights entitled "right to living standard" indicating that "The States Parties to the present Covenant recognize the right of

⁹⁸ Article 3(1) of the Convention Against Torture: "No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

⁹⁹ Töre, page 181.

¹⁰⁰ Article 18 of the Charter of Fundamental Rights of the European Union guarantees the right to asylum with due respect for the principle of non-refoulement. Article 19 of the Charter envisages that "No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment"

¹⁰¹ ECtHR, *Salah Sheekh v. the Netherlands*, no. 1948/04, 11 January 2007, para. 135; ECtHR, *Soering v. United Kingdom*, no. 14038/88, 7 July 1989; ECtHR, *Vilvarajah and others v. United Kingdom*, no. 13163/87, 13164/87, 13165/87, 13447/87 ve 13448/87, 30 October 1991.

¹⁰² Islamic Relief, *The Rights Of Forced Migrants in Islam*, page 13.

¹⁰³ Yeter, 127.

¹⁰⁴ Yeter, page 117.

everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.” In Article 21 of the Geneva Convention, the right to housing and in Article 23 of the same Convention, the right to benefit from health services are regulated.

Under the ECHR, while the right to health and the right to housing are not clearly stated in the convention, they can be examined within the framework of Article 8 which guarantees the respect for private life. In regards to migration, the issues of health or housing may also be examined within the framework of Article 3 of the ECHR in cases where they come into existence as medical needs, which prevent deportation, and the member states are faulty as they did not provide shelter when they were obliged to do so in accordance with the law¹⁰⁵.

Similarly, in the Islamic law, the state has the duty to meet the need of a person who is in need. This is because Islam orders assistance and benevolence to those in need ¹⁰⁶.

Accordingly, there is a great burden on states to meet the basic needs of migrants, especially asylum seekers and refugees. This is because, it is very difficult for individuals coming from another country to meet their most basic needs within the new boundaries. For this reason, Islam, which orders to help those in need, also orders to extend a hand to this group in a difficult situation without making any discrimination.

D. Non-Discrimination

One of the rights that forms the basis of human rights is the prohibition of discrimination. Indeed, in accordance with the concept of human rights, it is the use of any vested right arising from the fact of being a human, regardless of sex, skin color, language, religion, race, political and other opinions, national and social origin, wealth, birth or any other difference. Thus, this prohibition has been regulated in most of the fundamental human rights texts.

When the fundamental human rights texts are taken into account, the prohibition of discrimination is regulated in Article 2 of the Universal Declaration of Human Rights and in Article 14 of the ECHR. Also, it is observed that this prohibition is included in more specifically drafted texts. In this regard, in Article 1 of the UN Declaration on the Elimination of Discrimination Against Women, the issue of equality between women and men is addressed. Similarly, in Article 2 of the UN Declaration on the Elimination of All Forms of Racial Discrimination, a provision concerning the prohibition of discrimination is regulated in an exhaustive manner.

In the Islamic law, discrimination between Muslims and non-Muslims is strictly prohibited. In this scope, the *musta'min* (foreigners having residence permit in an Islamic country) have the same rights and freedoms as the Muslims living in the same country, regardless of any difference. Similarly, in terms of the pledge of security (*aman*), no discrimination is made on the grounds of language, religion, race or skin color. In the Quran, in accordance with the verse that “And among His signs is the creation of the heavens and the earth, and the diversity of your languages and your colors. Indeed in that are signs for those of knowledge”¹⁰⁷, it means that while humans are created in different tribes, languages, colors and so on, these differences do not make anybody superior than another because of these different characteristics¹⁰⁸.

Another issue required to be addressed here is “Islamophobia¹⁰⁹”. This is because, unfortunately, the foundations of this phenomenon which has numerically increased in certain parts of the world arise from the fact that people are subjected

¹⁰⁵ Handbook on European law relating to asylum, borders and migration, 2014, pages 195, 200.

¹⁰⁶ Yeter, page 111

¹⁰⁷ Surah Ar-Rum 30-22

¹⁰⁸ Islamic Relief, page 15

¹⁰⁹ See detailed information about Islamofobia, OIC-IPCHR Study On: “Countering Islamophobia: An Unfinished Business”, <https://oic-iphrc.org/en/-/data/docs/studies/388003.pdf>, Access to website:16.09.20.

to discrimination due to their beliefs. When it comes to its generally approved definition, it completely rejects Islamic religion in terms of religion, life style, social society and culture¹¹⁰. In other words, the term of “Islamophobia” contains hostility, hatred, groundless fear of Islam and Muslims, discrimination and violence¹¹¹.

Islamophobia has a very close relationship with migration. As a matter of fact, in the places to which refugees migrated for work opportunities, living a more prosperous life or escaping persecution, their way of living their own cultures led concerns about Muslims who started to live in the western societies. Thus, a reaction came into existence against Muslims, especially in the western countries, as migrant Muslim communities reflected their own cultural phenomenon, lived their own faith and a rapid increase was observed in terms of population. Unfortunately, it is observed that this situation has recently amounted to hate speech and threatened social unity. Hence, results of the all issues caused human rights violations¹¹². Thus, migrants, refugees or asylum seekers should not face any discriminatory attitude or behaviour, even if they have different skin colors, languages. Also, states have a positive obligation in this regard.

E. Freedom of Religion and Beliefs

In the Quran, with the verse of “there shall be no compulsion in the religion”¹¹³, freedom of belief has been granted to non-Muslims. Within this scope, no one can be forced to a religion, or to a certain belief. There are many examples of this in the Islamic societies throughout history. As mentioned in Part I, according to Article 25 of the Constitution of Medina, the religions of all tribes (Muslims and non-Muslims) living in Medina shall be respected as a reflection of freedom of religion and conscience. On the other hand, thousands of Jews fleeing from Spain in the 15th century took refuge in the territories of the Ottoman State and maintained their own beliefs there. Throughout history, Muslims and non-Muslims have tried not to interfere in each other's religious life in the Islamic societies.

Today, the freedom of religion and conscience is also protected by international documents. In this scope, Article 18 of the UN's Universal Declaration of Human Rights provides that: “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” Likewise, this right is also regulated in Article 18 of the International Covenant on Civil and Political Rights. In the light of these regulations, it can be said that the elements of this right include the right to believe or not to believe, the freedom of worship, freedom of manifesting and teaching religious belief and freedom of religious education and training¹¹⁴. In regards to migrants, unfortunately, freedom of religion and conscience is not explicitly mentioned in today's texts. However, each state is obliged to take the necessary measures to accord this right to an individual within its own boundaries of sovereignty and prevent its violation, in accordance with the international human rights documents above and the principle of equality.

F. Obligation with Respect to Economic, Social And Cultural Rights

Migrants have many rights in the context of economic, social and cultural rights, Particularly, rights to education, travel and work, which are more basic rights of the migrants, will be addressed.

In this scope, with Article 26 of the Universal Declaration of Human Rights indicating that “everyone has the right to education”, it is noted that the right to education is a basic human right without any discrimination. On the other hand, the right to education is also regulated in Article 7 of the UN Declaration of the Rights of the Child, in Article 28 of the Convention on the Rights of the Child and in Article 13 of the International Covenant on Economic, Social and Cultural Rights. In the light of these regulations, it is set forth that education is a basic right and everyone has this right. Likewise,

¹¹⁰ Şeref, Ebru, Islamophobia, Conceptual and Sociological Approach, Master Thesis, 2010, Ankara, page23

¹¹¹See for details Ergin, Ergül, OIC-IPCHR Study on: “Islamophobia and Counter-Terrorism Strategies”, <https://oic-ipchr.org/en/data/docs/-studies/818084.pdf>, page 1, Access to website: 16.09.20.

¹¹² Ergül, OIC-IPCHR Study on: “Islamophobia and Counter-Terrorism Strategies”, page 6.

¹¹³ Surah Al-Baqarah 2/256.

¹¹⁴ Töre, page 144.

in accordance with the provisions of Article, it is stated that in education, no discrimination shall be made to any group on the basis of the principle of equality.

Apart from these Articles, the right to education is also regulated in Article 22 of the Geneva Convention. This Article provision includes some regulations indicating that migrants are provided with the same rights as the citizens with respect to primary education, that the issues such as recognition of university diplomas and accreditation, exemption from duties and charges should be facilitated¹¹⁵.

Moreover, in the Islamic law, the musta'min enjoyed the right to education in the same way as the dhimmi. This situation stemmed from the fact that a person had the right to improve himself¹¹⁶.

As regards the right to work, in accordance with Article 23 of the Universal Declaration of Human Rights noting that; "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. Everyone has the right to form and to join trade unions for the protection of his interests, the right to work is set forth as a basic human right without any discrimination." the right to work is set forth as a basic human right just as the right to education without any discrimination. Similarly, in the context of this right, Article 6 of the International Covenant on Economic, Social and Cultural Rights includes a similar regulation. Article 17 of the Geneva Convention regulates the right to work in terms of refugees. Under this provision, state accords refugees the right to wage-earning employment. Likewise, Article 18 of the Covenant regulates the issues of self-employment and engaging on one's account in professional occupation.

The right to work was also accorded to the musta'min in the Islamic law. They were accorded the right to trade on matters permitted by Islam and to purchase and sell movable and immovable properties. Similarly, the rights of a foreigner with regard to the issues such as transferring money, making investment were guaranteed. Nevertheless, it was forbidden to carry out business with interest in the trade to be carried out by the musta'min. Likewise, their transactions were subject to the rules of the Islamic law even if these took place among themselves¹¹⁷.

In Article 13 of the Universal Declaration of Human Rights, it is regulated that "everyone has the right to freedom of movement and residence within the borders of each State." Likewise, this right is also regulated in Article 2 of the Protocol No. 4 to the ECHR. It is accepted that this right, which is regulated in Article 26 of the Geneva Convention in terms of refugees, shall be applicable to lawful refugees.

Thus, in the light of these regulations, lawful migrants have the right to freedom of movement and residence. In the Islamic law, the same right was accorded to the musta'min. In this scope, the musta'min had the right to change their places of residence. However, this did not cover Hejaz and Harem districts. Indeed, in accordance with the hadith of the Prophet Muhammad that "Remove polytheists from the Island of Arabs. Two religions cannot coexist in the Island of Arabs.," it was forbidden for non-Muslims to enter these districts.

Therefore, in the context of the rights explained above, it is concluded that the rights to education, travel and work which are basic human rights, and that they have been recognized for migrants in Islam from throughout its history up to the present, and states should also take necessary measures in case of the violation of these rights.

G. Right to Property

The right to property of migrants is essential and is regulated in Article 13 of Geneva Convention as "The Contracting

¹¹⁵ Töre, page 152.

¹¹⁶ Yeter, page 111

¹¹⁷ Yeter, page 109

States shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in same circumstances, in regards to the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.” Thus, condition of residing in that country is not sought for refugees to enjoy the right to property. Likewise, in Article 14 of the Convention, the right to intellectual and industrial property is regulated. Also, in this scope, every refugee can enjoy the protection accorded in the country where she/he has habitual residence.

Immunity (inviolability) of the right to property is one of the most important immunities in the religion of Islam. Any intervention that may be made in this right has been prohibited. In this scope, with Article 46 of the Constitution of Medina mentioned under Part I indicating that “Those who acquire unjust profit shall only harm their own selves”, respect for the right to property of others was required. Similarly, in accordance with the saying of the Prophet Muhammad in the Farewell Sermon that “your properties (...) are sacred and reverend”, it was underlined that the right to property was inviolable¹¹⁸.

In this context, the *musta'min* and the *dhimmi* have the right to protection of their own properties and also in this context, the said right of the *musta'min* or the *dhimmi* is under protection within the scope of the pledge of security¹¹⁹. In the light of the foregoing, the right to property has also been considered as one of the basic rights for migrants. In this scope, the issues as to how migrants can acquire property in the countries they went to have mostly been left to the internal functioning of states.

H. Respect for Private and Family Life and Family Reunification

In accordance with the Islamic law, the right to respect for private and family life is essential in terms of both Muslims and non-Muslims unless there is a violation of laws. Thus, the *musta'min* could enjoy the secrecy of private life and family rights in the same way as Muslims.

As for the scope of the confidentiality of private life, it is observed that it includes 3 elements. They are assessed within the scope immunity of domicile, freedom and confidentiality of communication and protection of personal belongings. In the Quran, in accordance with the verse that “O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin. And do not investigate each other's faults and privacies.”¹²⁰, confidentiality of private life is stated.

Furthermore, family is the foundation of society in the religion of Islam and the importance of founding a family is emphasized. In this scope, in the Quran, with the verse indicating that “If you fear that you shall not be able to deal justly with the orphans, then marry (other) women as may be agreeable to you, two or three or four.”¹²¹, founding a family is encouraged. Likewise, in line with the hadith of the Prophet Muhammad noting that “Marriage is my sunnah and whoever does not follow my sunnah has nothing to do with me. Because I will take pride in your great numbers before the nations.”, importance of the institution of marriage was emphasized. The right to marry is also applicable to the *musta'min* and the *dhimmi*¹²².

In accordance with Article 12 of the Universal Declaration of Human Rights stipulating that “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to protection of the law against such interference or attacks” confidentiality of private life has been required without any discrimination. Moreover, Article 16 of the same Declaration states that “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.”, the right to marry is regulated. Furthermore, in Article 8 of the ECHR, the right to respect for family and private life and in Article 12 of the ECHR, the right to marry are regulated.

¹¹⁸ Ayengin, pages 238-239. 1

¹¹⁹ Yeter, page 105

¹²⁰ Surah Al-Hujurat, 49-12. ¹²¹ Surah An-Nisa, 4-3.

¹²² Yeter, page 103. However, a *dhimmi* or *musta'min* man was not allowed to marry a Muslim girl.

Moreover, it is also necessary to highlight family reunification. This is because, there is a close relationship between family reunification and the migration phenomenon. As migrants live under more challenging conditions due to their living conditions, states have an obligation to protect and reunite families of migrants¹²³.

IV. CONCLUSION AND RECOMMENDATION

The phenomenon of migration, which is as old as the history of humanity, has been encountered nearly by all civilizations in history. Similarly, in terms of the history of Islam, this phenomenon encountered by many Prophets essentially gained importance with the "Hijra" of the Prophet Muhammed peace be upon him from Makkah to Medina. Accordingly, it was ensured that a new Islamic State was established, a new written Constitutional text emerged (the Constitution of Medina) and the foundations of the fundamental rights and freedoms for migrants included in the current international fundamental human rights were laid.

Thus, the impact of the Islamic doctrine and values on the rights of migrants listed in the current fundamental texts cannot be undermined. In the Quran, it was ordered to help those in need. In this scope, it is incumbent in the first place on states and then on people to respect and protect the fundamental rights of those who migrate to another country and endangering their own lives. Responsible states have conducted, and are still conducting, many studies in the context of migrant rights, in coordination with the international organisations. Solutions are still being sought for mass migration experienced especially in the Muslim geography. However, it should be stated that the absence of universal and written migrant rights' agreement or document reflecting the principles of Islam is today perceived as a shortcoming. In this regard, it is important to note the major step of including migrant and refugee rights in the revised OIC Declaration of Human Rights.

Furthermore, as we have addressed in Part III, in view of the fact that fundamental rights and freedoms have, in principle, foundations in the Islamic law, it is considered that new policies giving priority to tolerance and humanitarian principles of the Islamic heritage would be an appropriate response to the migrant and refugee crises experienced today.

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The Role of Judiciary in the Protection and Promotion of Human Rights

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I. INTRODUCTION

The concept of human rights is based on a fundamental understanding which envisages every person to enjoy certain rights regardless of their race, colour, sex, language, religion, political or other opinion, nationality, ethnicity or social origin, property, birth, or any other status. It must be noted that the meaning and the scope of human rights have dynamically evolved since their conception, which is a process that continues today. The ever evolving and changing needs of society can lead to a re-evaluation of human rights; thus, the formation of a new right or, sometimes, the restriction or expansion of the scope of a right.

Although human rights are as old as the history of humanity, the use of the term in the literature and modern constitutions dates to the 18th century. In an attempt to protect the rights and freedoms of persons from arbitrary practices of the absolute power and to establish legal authorities which can be referred to in case of a violation, these rights began finding their places in constitutions and form a part of constitutions today. The fact that human rights make up a substantial part of constitutions entails an important obligation on the part of states; that is, the state organs are required to undertake a key role in the protection and promotion of these rights. When formulating laws, the legislature must not try to introduce a regulation in contravention of these rights; the executive, in turn, must be mindful of these rights in their administrative acts and actions; and, lastly, any violation which might still arise despite all efforts must be corrected by favour of the judiciary.

In this sense, the judiciary plays an important role in the protection and promotion of human rights. In cases where there is a breach of an individual right or freedom in the context of a dispute brought before the judiciary, the latter will provide the necessary finding and redress. On the other hand, the role of the judiciary is not limited to that. The judiciary is also the power that interprets human rights in the cases brought before it. Thus, the judiciary can either expand or narrow down the scope of the rights through jurisprudence. One of the reasons why the concept of human rights is dynamic is the judiciary's flexible margin of interpretation with regard to the application of these rights.

For the judiciary to undertake an important role in the protection and promotion of human rights, it needs to have certain international standards. The principal requirement in this regard is that the judiciary must be independent and impartial. In fact, the main reason for the emergence of the concept of human rights is to limit the governmental power and to protect the individual against its arbitrary practices. Therefore, it would not be possible for the judiciary to act fairly in respect of the governmental power's acts and actions without ensuring the independence and impartiality of the judiciary. In order to achieve this guarantee, it is necessary to accord the judiciary and its practitioners both constitutional and statutory rights. Modern constitutions contain guarantees of this kind. Furthermore, there are international instruments laying down a variety of standards on the independence and impartiality of the judiciary so that the latter will be empowered to fulfil its role for the protection and promotion of human rights.

This study will examine the role of the judiciary and the special guarantees afforded to judges in the international instruments. The first part of the study will provide information as to what kind of provisions are encapsulated in the international instruments. The second part will focus on the role of the judiciary in the protection of human rights. Lastly, the third part will address the qualities and guarantees stipulated specifically for judges.

2. The Judicial Standards in the International Instruments

An independent and impartial judiciary is essential for the protection of human rights. The independence of the judiciary is intricately linked with the principles of separation of powers and rule of law, which also constitute the foundation of a democratic legal order. Indeed, these principles also set the boundaries for political powers. Given that the fundamental purpose of human rights is to protect the individual from arbitrariness of the public authority, the independence of the judiciary is considered as the

safety valve for this purpose. That is, a judiciary that is not independent from the executive and legislative powers will undermine the sense of justice and draw an image far from protecting the individuals, who are already vulnerable.

The other principle to be considered hand in hand with independence of the judiciary is its impartiality. These two principles are complementary to each other. Neither is it possible for a judiciary that is not independent to be impartial, nor can an impartial judiciary, even if it is independent, play an effective role in the protection and promotion of human rights. Because, the impartiality of the judiciary does not mean that judges are in a specially privileged position and act in an arbitrary manner. Impartiality signifies that judges should rule in accordance with the law and their personal conviction in the cases brought before them.

The independence and impartiality of the judiciary can be achieved through deployment of a set of both institutional and individual guarantees for practitioners. Such guarantees are not only laid down within the constitutions of almost every state but also addressed by international instruments. Therefore, with a view to ensuring judicial independence and impartiality, a set of guarantees have been introduced in relation to matters ranging from the appointment and personnel benefits of judges to the independence of the judiciary as well as its relationship with other branches of government, which are examined in detail below.

Hence, an independent and impartial judiciary will gain more flexibility of interpretation in the context of its duty to review the actions and affairs of the legislative and executive branches and it will be the chief guardian for the effective protection of human rights and freedoms. Furthermore, by keeping up with the changes in technology and social life, it will also be one of the essential factors in the promotion and improvement of the individual rights and freedoms. Coupled with the principle of separation of powers, the role of the judiciary established a presence for itself in international texts and practices. In conventions and treaties, it is usually addressed under the head of the right to a fair trial. In this regard, it is useful to note the reference documents of various international organisations in this field.

A. United Nations

There are various reference documents within the United Nations system on the role of the judiciary with regard to the protection and promotion of human rights. The primary reference documents in this context are given below.

i. Declaratory Norms

Universal Declaration of Human Rights¹

Adopted in 1948, the Universal Declaration defined the individual rights and freedoms that are inherent to all human beings as of birth; it declares that every human is equal before the law and no one may be subjected to torture, ill-treatment or degrading punishment. To this day, the Declaration maintains its function of guiding the international community's efforts towards protection and promotion of human rights. Article 10 of the Declaration acts as a guiding principle with regards the role of the judiciary².

ii. Treaty Norms

International Covenant on Civil and Political Rights³

The significance of Article 14 of the International Covenant on Civil and Political Rights of 1966 is noteworthy, as well as

¹ Adopted by General Assembly resolution 217 A (III) of 10 December 1948)

² "Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." Human Rights Committee, General Comment No. 32, Ninetieth session, Geneva, 9 to 27 July 2007. "The right to equality before the courts and tribunals and to a fair trial is a key element of human rights protection and serves as a procedural means to safeguard the rule of law.

³ Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976)

other universal rights contained therein. This Article guarantees individuals the chance to claim their rights before an independent and impartial judiciary⁴.

iii. Specific Standards on the independence of judges

The United Nations system accommodates several reference documents on the independence of judges. Some of the principal documents issued by the UN General Assembly and the Human Rights Council are as follows:

The Bangalore Principles of Judicial Conduct⁵

In the international sphere, the Bangalore Principles of Judicial Conduct contain the set of values that should determine judicial behaviour. These values, which are reflected in most codes of conduct, are: independence, impartiality, integrity, propriety, equality, competence and diligence. Grounds for removal based on a judge's conduct will normally be based on these principles. According to the documents, a judge shall behave based on the following values:

Value 1: Independence Principle

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Value 2: Impartiality Principle

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Value 3: Integrity Principle

Integrity is essential to the proper discharge of the judicial office.

Value 4: Propriety Principle

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Value 5: Equality Principle

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Value 6: Competence and Diligence Principle

Competence and diligence are prerequisites to the due performance of judicial office.

4. "Article 14: 1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." Article 14 is of a particularly complex nature, combining various guarantees with different scopes of application. The first sentence of paragraph 1 sets out a general guarantee of equality before courts and tribunals that applies regardless of the nature of proceedings before such bodies. The second sentence of the same paragraph entitles individuals to a fair and public hearing by a competent, independent and impartial tribunal established by law, if they face any criminal charges or if their rights and obligations are determined in a suit at law. In such proceedings the media and the public may be excluded from the hearing only in the cases specified in the third sentence of paragraph 1. Paragraphs 2 – 5 of the article contain procedural guarantees available to persons charged with a criminal offence. Paragraph 6 secures a substantive right to compensation in cases of miscarriage of justice in criminal cases. Paragraph 7 prohibits double jeopardy and thus guarantees a substantive freedom, namely the right to remain free from being tried or punished again for an offence for which an individual has already been finally convicted or acquitted. States parties to the Covenant, in their reports, should clearly distinguish between these different aspects of the right to a fair trial. This Article contains guarantees that States parties must respect, regardless of their legal traditions and their domestic law. While they should report on how these guarantees are GE.0743771- CCPR/C/GC/32 Page 2 interpreted in relation to their respective legal systems, the Committee notes that it cannot be left to the sole discretion of domestic law to determine the essential content of Covenant guarantees.

5 Adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25 2002 ,26-)

United Nation's Basic Principles on the Independence of the Judiciary⁶

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.
Qualifications, selection and training
10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

⁶ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 4032/ of 29 November 1985 and 40146/ of 13 December 1985 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration. Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.”

Commission on Human Rights resolution 2003/97/

“Integrity of the judicial system The Commission on Human Rights,

1. Reiterates that every person is entitled, in full equality, to a fair and public hearing by an independent and impartial tribunal, in the determination of his/her rights and obligations and of any criminal charge against him/her;

2. Also reiterates that everyone has the right to be tried by ordinary courts or tribunals using established legal procedures and that tribunals that do not use such duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals;

3. Further reiterates that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law;

6. Underlines that any court trying a person charged with a criminal offence should be based on the principles of independence and impartiality;”

Human Rights Council Resolution A/HRC/29/L.118

Recalling the Basic Principles on the Independence of the Judiciary, the Basic Principles on the Role of Lawyers, the Guidelines on

7 Adopted by a recorded vote of 31 votes to 1, with 21 abstentions on 23 April 2003

8 Adopted on 30 June 2015

the Role of Prosecutors, the Bangalore Principles of Judicial Conduct and the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the Resolution dated 30 June 2015 underlines the independence of judiciary and contains many principles to this end.

Principles Governing the Administration of Justice through Military Tribunals⁹

Article 12 of the Draft guarantees everyone the chance to claim their rights before an independent and impartial judiciary. According to the article the persons selected to perform the functions of judges in military courts must display integrity and competence and show proof of the necessary legal training and qualifications.¹⁰

B. Council of Europe

In its capacity as a regional body, the Council of Europe plays a key role in the protection and promotion of human rights and the independence of the judiciary. The Council has reference documents on the matter. There is no doubt that the European Convention on Human Rights is first and foremost, the document to which the member states of the Council adhere primarily. The right to a fair trial enshrined in Article 6 of the Convention has been interpreted and developed through the case-law and practice of the European Court of Human Rights. Moreover, there are various recommendations adopted by the Committee of Ministers, which is the decision-making body of the Council of Europe. The chief reference sources stemming out of this mechanism are the following:

i. Treaty Norms

European Convention for the Protection of Human Rights and Fundamental Freedoms¹¹

Article 6

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

ii. Other Standards

Recommendation of the Committee of Ministers of Council of Europe¹²

“The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe, Aware of the need to guarantee the position and powers of judges in order to achieve an efficient and fair legal system and encourage them to commit themselves actively to the functioning of the judicial system;

Judicial independence and the level at which it should be safeguarded

3. The purpose of independence, as laid down in Article 6 of the Convention, is to guarantee every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence.

⁹Adopted by the Sub-Commission on the Promotion and Protection of Human Rights in its fifty-seventh session, 2005

¹⁰“Principle No. 12: Right to a competent, independent and impartial tribunal

The organization and operation of military courts should fully ensure the right of everyone to a competent, independent and impartial tribunal at every stage of legal proceedings from initial investigation to trial. The persons selected to perform the functions of judges in military courts must display integrity and competence and show proof of the necessary legal training and qualifications. Military judges should have a status guaranteeing their independence and impartiality, in particular vis-à-vis the military hierarchy. In no circumstances should military courts be allowed to resort to procedures involving anonymous or “faceless” judges and prosecutors.”

¹¹ Rome, On 4 September 1950 https://www.echr.coe.int/Documents/Convention_ENG.pdf

¹²Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities; adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies

4. The independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law.
5. Judges should have unfettered freedom to decide cases impartially, in accordance with the law and their interpretation of the facts.
6. Judges should have sufficient powers and be able to exercise them in order to carry out their duties and maintain their authority and the dignity of the court. All persons connected with a case, including public bodies or their representatives, should be subject to the authority of the judge.
7. The independence of the judge and of the judiciary should be enshrined in the constitution or at the highest possible legal level in member states, with more specific rules provided at the legislative level.
8. Where judges consider that their independence is threatened, they should be able to have recourse to a council for the judiciary or another independent authority, or they should have effective means of remedy.
9. A case should not be withdrawn from a particular judge without valid reasons. A decision to withdraw a case from a judge should be taken on the basis of objective, pre-established criteria and following a transparent procedure by an authority within the judiciary.
10. Only judges themselves should decide on their own competence in individual cases as defined by law.

C. Inter-American System

Another regional institution in the field of human rights comprises of treaties signed and mechanisms established among American countries. In this context, the main reference documents on the judiciary are given below:

i. Treaty Norms

American Convention on Human Rights¹³

“Article 8. Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labour, fiscal, or any other nature.”

ii. Declaratory Norms

American Declaration of the Rights and Duties of Man¹⁴

“Article XXVI

Every accused person is presumed to be innocent until proved guilty. Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with preexisting laws, and not to receive cruel, infamous or unusual punishment.”

¹³ Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969

¹⁴ Approved by the Ninth International Conference of American States, Bogotá, Colombia, 1948

The Independence and Accountability Of Judges, Lawyers And Prosecutors 199 Inter- American Democratic Charter¹⁵

“Article 3:

Essential elements of representative democracy include, inter alia, respect for human rights and fundamental freedoms (...) and the separation of powers and independence of the branches of government. Article 4 (...) The constitutional subordination of all state institutions to the legally constituted civilian authority and respect for the rule of law on the part of all institutions and sectors of society are equally essential to democracy.”

D. African System

The African system is another regional human rights protection scheme, which may be regarded as a relatively new system by comparison. In the scope of this system, there are several treaties signed among states and mechanisms built, which can serve the purpose of protecting and promoting human rights.

i. Treaty Norms

African Charter on Human and Peoples’ Rights

Article 26

“States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.”

African Charter on the Rights and Welfare of the Child¹⁶

Article 17

“Administration of Juvenile Justice

(iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;”

ii. Specific Standards on the independence of judges

The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa adopted as part of the African Commission’s activity report at 2nd Summit and meeting of heads of state of AU held in Maputo from 4-12 July 2003¹⁷

“A. General Principles Applicable to All Legal Proceedings

Fair and Public Hearing

In the determination of any criminal charge against a person, or of a person’s rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body.

4. Independent tribunal (a) The independence of judicial bodies and judicial officers shall be guaranteed by the constitution and laws of the country and respected by the government, its agencies and authorities;

¹⁵Adopted by the OAS General Assembly at its special session held in Lima, Peru, 11 September, 2001

¹⁶ Entered into force 29 November 1999

¹⁷ Independence and Accountability of Judges P.201210-

5. Impartial Tribunal

(a) A judicial body shall base its decision only on objective evidence, arguments and facts presented before it. Judicial officers shall decide matters before them without any restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason.

E. European Union

The Charter of Fundamental Rights of the European Union was signed by the member states of the European Union. 18 Article 47 of this Charter concerns the right to a fair trial:

"Right to an effective remedy and to a fair trial (...) 9 Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

F. Asia-Pacific

Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region

The Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region (August 1997) has, as of now, been signed by 32 Chief Justices throughout this region. This Statement emphasises judicial independence, as well, by citing other reference documents:

"Judicial Independence

- 1. The Judiciary is an institution of the highest value in every society.*
- 2. The Universal Declaration of Human Rights (Art. 10) and the International Covenant on Civil and Political Rights (Art. 14(I)) proclaim that everyone should be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. An independent Judiciary is indispensable to the implementation of this right.*
- 3. Independence of the Judiciary requires that:*
 - (a) the Judiciary shall decide matters before it in accordance with its impartial assessment of the facts and its understanding of the law without improper influences, direct or indirect, from any source; and*
 - (b) the Judiciary has jurisdiction, directly or by way of review, over all issues of a justiciable nature.*

G. Commonwealth

There are two main sources concerning separation of powers and Judicial principles. First, Latimer House Guidelines for the Commonwealth on Parliamentary Supremacy and Judicial Independence was adopted on 19 June 1998 at a meeting of the representatives of the Commonwealth Parliamentary Association, the Commonwealth Magistrates and Judges Association, the Commonwealth Lawyers' Association and the Commonwealth Legal Education Association. Second, Commonwealth Principles on the Accountability of and the Relationship between the Three Branches of Government was agreed by the Law Ministers and endorsed by the Commonwealth Heads of Government Meeting in 2003. Both documents contain the set of values such as independence, impartiality and accountability etc. 19

18 Signed and proclaimed by the Presidents of the European Parliament, the Council and the Commission at the European Council on 7 December 2000

19 International Principles on the Independence and Accountability of Judges, P. 221226-

H. Other International Standards

In addition to the above-mentioned international instruments, there are several other texts underlining the role and independence of the judiciary. One of the most notable documents in this respect is the Universal Charter of the Judge, which was issued in 1999 by the International Association of the Judge:

The Universal Charter of the Judge²⁰

The Universal Charter of the Judge, an instrument approved by The International Association of Judges (IAJ). The association was founded in Salzburg (Austria) in 1953. It is a professional, non-political, international organisation, bringing together national associations of judges, not individual judges, approved by the Central Council for admission to the Association. The main aim of the Association, which encompasses 67 such national associations or representative groups, is to safeguard the independence of the judiciary. The charter adopted by the IAJ establishes that “[t]he independence of the judge is indispensable to impartial justice under the law. It is indivisible. All institutions and authorities, whether national or international, must respect, protect and defend that independence.”²¹

“General Principles

The judiciary, as guarantor of the Rule of law, is one of the three powers of any democratic State.

Judges shall in all their work ensure the rights of everyone to a fair trial. They shall promote the right of individuals to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in the determination of their civil rights and obligations or of any criminal charge against them.

The independence of the judge is indispensable to impartial justice under the law. It is indivisible. It is not a prerogative, or a privilege bestowed for the personal interest of judges, but it is provided for the Rule of law and the interest of any person asking and waiting for an impartial justice.

All institutions and authorities, whether national or international, must respect, protect, and defend that independence.

The Charter also contains the clarification of principles about the judges about submission to law, personal autonomy, impartiality and restraint, efficiency, outside activity, security of office, appointment, Civil and penal responsibility, Administration and disciplinary action, Associations, remuneration and retirement, support.²²

3. The Role of the Judiciary under Islamic Law

Justice is acknowledged by the Islamic law to be the foundation of the state and a building block of state government. Indeed, Al-Adl, meaning just and fair, is one of the names of Allah. It is a fact established by the fundamental sources of Islamic law, namely the Holy Qur’an, Hadith, ijma (juridical consensus) and qiyas (analogical reasoning), that justice is one of the building blocks of the order envisaged by the Islamic law.

In the Holy Qur’an, “And judge, [O Muhammad], between them by what Allah has revealed...” (Al-Ma’idah 49); “Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice.” (Surat An-Nisa 58); “O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives. Whether one is rich or poor, Allah is more worthy of both. So follow not [personal] inclination, lest you not be just. And if you distort [your testimony] or refuse [to give it], then indeed Allah is ever, with what you do, Acquainted.” (Surat An-Nisa 135); “Indeed, Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and

²⁰ Approved by the International Association of Judges on 17 November 1999)

²¹ First version of The Universal Charter of the Judge, approved by the International Association of Judges (IAJ) on 17 November 1999,.

The Charter was last updated in Santiago de Chile on 14 November 2017. See International Principles on the Independence and Accountability of Judges, p. 18, <https://www.iaj-uim.org/universal-charter-of-the-judge-2017/>

oppression. He admonishes you that perhaps you will be reminded.” (Surat An- Nahl 90); and “[We said], ‘O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your own] desire, as it will lead you astray from the way of Allah.” (Sad 26) are some of the verses that highlight the importance of justice.

It is further possible to see the understanding of justice under Islam in the practice and hadith of our Prophet Muhammad peace be upon him. For example, the Prophet said “When the ruler/judge issues a ruling, then exercises judgment (ijtihad); when he is right, he receives two wages (rewards), and when he is wrong, he still receives one wage (reward).”²³ Moreover, Muslims have reached a consensus (ijma) on the necessity of appointing judges who will rule in cases between people and arbitrators who will reconcile disputes.²⁴

While the judicial power was exercised directly by the khalifas (caliphs) themselves in the formative years of Islam, the function of qadi was subsequently instituted to perform this duty as the Islamic territory expanded. The profession of qadi was held in high regard in the Islamic law and certain guarantees and moral rules were laid down for qadis. In time, the office of the qadi became independent. Because qadis formulated their decisions on the basis of Sharia and customary law and these judgments are binding for everyone, including the rulers. Therefore, judicial independence became a valid principle in the Islamic law, as well.

It is also important in the Islamic law that the qadi is impartial. It was considered to be vital for the rulers and the foundation of the State to rule with justice and that qadis passed judgment without being under any pressure. When appointing Ali (ibn Ali Talib) to Yemen as a judge, the Prophet said the following as to how he should act in passing judgment: “When two litigants sit in front of you, do not decide till you hear what the other has to say as you heard what the first had to say; for it is best that you should have a clear idea of the best decision.”²⁵

According to the Islamic law, the judge should be always honest and set a good example. He should refrain from any conduct which might cast doubt on these qualities. The judge should also have competence and merit. As seen above, the universal nature of the criteria set out by the Islamic law is beyond doubt. It is observed that the principles reached by contemporary systems of law were already existing within the Islamic law and have been applied from past to present.

4. The Judicial Protection and Promotion of Human Rights

Constitutions provide a general framework of the state’s structure and regime, the state agencies’ powers, duties and relations with one other, and the rights and obligations of the state and persons. For this reason, it is useful to touch upon certain constitutional norms and principles when conducting an analysis on the role of the judiciary in the context of protection and promotion of human rights. Because these principles are closely related to human rights and the role of the judiciary.

It is extremely important that these norms and principles are properly determined, interpreted and adopted for the protection and promotion of human rights. Therefore, in this section, the relationship of these norms and principles with human rights and the role of the judiciary will be examined in detail.

A. The principle of separation of powers

The principle of separation of powers, which refers to the division of state power into various branches, is one of the major safeguards of an independent and impartial judiciary²⁶. It is an essential part of the principle of the “rule of law” that the political power does not abuse the power vested in it. Accordingly, both the ruler and the ruled must be bound by rules of law. The judiciary is the principal power that will ensure this binding effect. In cases where the political power

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23 Al-Bukhari, I'tisam 21.

24 MAHMUTOĞLU, Yakup, The Journal of International Social Research Volume 11, Issue 59, Year:2018

25 Abi Dawud, “Aqdiyah” 6; at-Tirmidhi, “Ahkam” 5

26 “There is no freedom if the power to judge is not separated from the legislative and the executive powers”, Montesquieu, (Spirit of the Laws).

imposes an interference against individuals, the judiciary reviews whether that interference complies with the law. The judiciary must be separate from the legislature and the executive branches so that it can review whether, and impose sanctions if, the legislature or the executive overstep the limits drawn for them by constitution and laws. Thus, the principle of separation of powers is the prerequisite of judicial independence.

The judiciary's independence from the other branches is only possible if both the legislature and the executive are prevented from pressuring the judiciary and these two branches comply with the judicial decisions.

A. Rule of Law

As it is well-known, one of the primary components of the rule of law is that the rulers are bound by rules of law and are accountable. Including the judiciary, none of the powers of government of the state may exempt itself from being bound by law. If any of the branches or the powers holding the branches breach the law, it is for the judiciary, once again, to identify the situation and provide redress.

This subject has been frequently discussed in the United Nations documents. According to the Report of the UN Secretary General dated 23 August 2004, concepts such as "justice", "the rule of law" and "transitional justice" are essential to understanding the international community's efforts to enhance human rights, protect persons from fear and want, address property disputes, encourage economic development, promote accountable governance and peacefully resolve conflict.²⁷

As defined by the Secretary-General of UN, the rule of law requires that legal processes, institutions and substantive norms are consistent with human rights, including the core principles of equality under law, accountability before the law, and fairness in the protection and vindication of rights.²⁸

B. Justiciability and Standing

Justiciability refers to the accountability of states for their actions. For all organs of the state, including the judiciary, where there is authority, there needs to be responsibility stemming from that authority. All persons and institutions holding the state power must use their authority to the extent vested in them by the legal order and be held accountable if they act otherwise.

Justiciability in the context of human rights refers, in case of a violation of a right, to the ability to apply to a court to seek redress for that violation and the courts' authority to rule on the matter. In this sense, a person who believes there has been a violation of one of his/her rights will be able to request, primarily, a court already established within the domestic law to find and offer redress for the violation. The decisions rendered by courts of law will be binding for everyone.

According to the UN, in relation to civil and political rights, it is generally taken for granted that judicial remedies for violations are essential²⁹. Among the measures which might be considered appropriate, in addition to legislation, is the provision of judicial remedies with respect to rights which may, in accordance with the national legal system, be considered justiciable.³⁰

C. The Emergence of Constitutional Courts

It is necessary to discuss the role of constitutional courts in the protection and promotion of human rights. The principal duty of constitutional courts is to review the compliance of laws with the constitution. This review also contributes indirectly to the protection of human rights. In fact, a portion of modern constitutions is dedicated to human rights,

²⁷ The rule of law and transitional justice in conflict and post-conflict societies, Report of the Secretary-General, 23 August 2004 p. 5

²⁸ <https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>

²⁹ General Comment No. 9: The domestic application of the Covenant

³⁰ General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)

thereby rendering them constitutional rights. That said, currently many states afford individuals the right of application to their constitutional courts if one of their rights has been violated. This application is important in several aspects. First of all, national authorities are in a better position to evaluate the social and cultural conditions with regard to protection of human rights. In this scope, constitutional courts enjoy the states' margin of appreciation in respect of the matters brought before them. Secondly, they act as a filter in the context of individuals' petitions to international mechanisms. Lastly, this right grants a country's citizens the opportunity to claim their rights which are enshrined in their own constitution before the court that is the protector of that country's constitution.

This right is accorded in many of the member states of the Council of Europe and some member states of OIC, for example, Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Georgia, Germany, Latvia, Liechtenstein, Malta, Montenegro, Poland, Serbia, Slovenia, Spain, Switzerland, North Macedonia, Slovakia, Turkey and Uzbekistan 31.

Constitutional courts represent a mechanism strengthening the connection between citizens and the state. Because, when there is a legal avenue for individuals to pursue against potential violations of rights by the legislative and executive branches, individuals will feel that they have a guarantee in terms of protection of their rights.

Constitutional courts play an important role not only for the protection of human rights but also for their promotion and improvement. The rights prescribed by a constitution are introduced or amended, in general, by the will of a constituent assembly or through ordinary means and in conformity with strict procedures. Since the concept of human rights is dynamic, it has to respond to changing needs of the society. This dynamism is provided by means of courts. On this point, the most important duty falls to the constitutional courts. Indeed, both during constitutionality review on laws and in cases brought before them via individual application, constitutional courts can interpret these rights, readdress certain notions, and further clarify the limits of the rights. Therefore, constitutional courts are considered as a faster and more effective mechanism for promoting and developing the human rights of individuals.

5. Qualities required for the Judiciary to Ensure Effective Protection of Human Rights

It is clear that the judiciary plays an important role in the protection and promotion of human rights. However, it should be noted at this very juncture that the judiciary needs to have certain properties to be able to play this role effectively. As mentioned above, the properties sought in the judiciary as a whole and the members of the judiciary have had an extensive coverage in international documents. On the basis of these international documents, instruments under Islamic Law and practices, along with national practices, it is considered that the judiciary should bear the following properties:

A. Independence

Everyone is entitled to have one's case heard before an independent and impartial judiciary. This element, which is one of the primary guarantees of the right to a fair trial, refers to the requirement of the judiciary branch to be independent from the legislature and the executive.

The judicial branch must also be freed from the pressure originating within itself, in addition to all other branches. Judges should have the freedom to decide only in line with the law and their personal conviction and free from any external or internal influence. The achievement of such independence depends on the application of the principle of separation of powers and the binding effect of judicial decisions on parties.

States should provide the necessary arrangements and guarantees in their domestic laws in accordance with these principles. Another element of judicial independence is to ensure that those guarantees are substantively placed within constitutions. Otherwise, any guarantees introduced via normal laws can easily be changed by the legislature. Judicial independence is also indispensable for an impartial system of justice. Another important duty in ensuring independence

31 5382009/ - Study on individual access to constitutional justice, Venice Commission report

of the judiciary falls to the persons who exercise the judicial function. In this scope, judges should not have connections, which may be deemed inappropriate, either with the parties to a case before them or the legislative and executive branches. Thus, judges should refrain from such behaviour that might cast doubt on judicial independence and, in this connection, abide by the high ethical standards.

Lastly, judicial independence is necessary for not only judges but every member of the society. People should have prior knowledge and trust in the fact that, in the determination of their cases, there are independent courts of law where they can claim or protect their rights and that judges with guarantees perform their duties in those courts. Hence, the independence of the judiciary will be supported by public trust, people will have an increased confidence in justice.

B. Impartiality

Impartiality means that judges (or jurors) do not have any interest or stake in a given case or any preformed opinions about the matter or the parties; therefore, they decide on the basis of their personal conviction in conformity with rules of law.

In the discharge of their duties, judges must always act in a way that preserves their dignity and the impartiality and independence of the judiciary. In their functions, judges are required to be free from any bias or favouritism and also avoid any behaviour which may undermine the parties' trust in this respect. Judges should refrain from making comments that may prejudice their impartiality or such conduct that may constitute grounds for recusation; they should not give the appearance of being partial or biased. Therefore, a judge must not display any behaviour during the performance of his function which might cast doubt on his impartiality in the eyes of the parties. Furthermore, the judge needs to be perceived as impartial by an objective third-party observer.

In the discharge of their duties, judges must rely on the rules of law and their personal convictions. In this way, they will contribute to the society's faith in justice and strengthen the legitimacy of the legal system.

Protecting the impartiality of courts is a duty that falls not only to judges but also states themselves. Therefore, it is necessary for states to penalise any exterior behaviour which might cast doubt on the impartiality of judges. Moreover, states must determine by law the grounds for recusation of a judge; thus, in case of doubt about a judge's impartiality, those grounds must be accessible and foreseeable.

C. Financial autonomy and sufficient resources

As is the case with other branches, the judiciary requires sufficient resources to fulfil its functions properly. In order to ensure the independence and effectiveness of courts in the short and long term, the judiciary should be allocated adequate resources capable of enabling judges and courts to satisfy the principles of the right to a fair trial and the standards provided by national constitutions and to perform their duties in an honest and effective manner in the interest of safeguarding the public trust in justice. The judicial system, which is a separate branch, should be funded sufficiently to provide for all the resources it needs so that it can meet these requirements.

The judiciary receives its resources from the national budget, which is typically determined by either the legislature or the executive. Although there is no inherent problem with the fact that the judiciary's budget is supplied by these branches, the latter have to take the judiciary's needs into consideration. On the other hand, the judicial budget needs to be prepared in such a way that this funding is far from political motives and least affected at times of crisis. Thus, courts will have no budgetary concerns in the cases they hear; they will be able to maintain impartiality and independence.

The resources required for the effective functioning of the judiciary must be provided by the state. Moreover, the personnel rights (benefits) of the persons wielding the judicial power should be secured. Judges are charged with resolving high-profile disputes, as well. Therefore, the personnel rights of judges should be formulated in a way that is fitting to their professional dignity and obviates any favours that may be bestowed upon a party in return for financial gain.

D. Appointment

The persons chosen for judicial function are to be honest and appropriately trained and qualified in law. There should be no discrimination in the selection of judges on the basis of race, colour, sex, personal beliefs or other reasons. In this scope, persons are expected to have the suitable qualities to be admitted into the profession of judgeship. The fact that a judge is equipped with the theoretical knowledge of law does not mean that s/he will merit the profession of judgeship; s/he also needs to bear such traits as honesty, credibility, and moral virtues.

In this context, states should create and put into force a set of objective criteria -predicated on honesty and merit- in the appointment of judges and these criteria should be observed in the appointments. Accordingly, a harmonious appointment procedure should be developed, which will allow for the evaluation of both the legal knowledge and skills and the character of the judges to be appointed.

The appointment of a judge must be carried out in an impartial and transparent manner, in accordance with criteria based on professional competence. The appointment of judges should not allow room for any doubt cast upon their independence or impartiality. In this sense, the appointment procedure should create a protective shield by laws for the tenure of the judge against any outside influence.

E. Conditions of tenure and promotion

As tenure is one of the fundamental conditions for protection of the independence of all judges, regardless of whether they are appointed or elected, the principles of independence and impartiality might be called into question unless judges enjoy the security of long-term tenure. The tenure, independence, safety, adequate remuneration, service requirements, pension and retirement age of judges are to be sufficiently guaranteed by laws. The guarantees provided for judges must protect a judge until retirement.

The promotion of judges, while it may procedurally vary depending on the system, must in substance be conducted on the basis of objective criteria. Thus, judges will be expected to foresee their prospects of promotion during the performance of their functions and to act accordingly. The security of tenure of judges constitutes a fundamental guarantee for maintaining judicial independence; therefore, the decisions regarding the promotion of judges must derive from the same objective criteria and transparency as their appointment.

F. Accountability

States may issue codes of ethics to determine rules of conduct for judges, and judges are under an obligation to adhere to those rules. These rules may concern core values such as independence, impartiality, integrity, propriety, equality, competence and diligence, as identified in the Bangalore Principles of Judicial Conduct.

Ensuring and maintaining the dignity of courts depends on the just application of the principle of liability within the scope of the law. However, in the application of this principle of liability, there is use in laying down regulations outside the procedures concerning the prosecution of other civil servants that will not prejudice the judicial activity. In this connection, the principle of judicial independence should always be borne in mind when assessing the liability of judges. As a general rule, judges may be subject to certain disciplinary sanctions or suspended from duty only in cases of serious misconduct, criminal offence, unfitness for duty that prevents them from fulfilling their functions, or conduct and behaviour that is incompatible with the profession of judgeship. However, these procedures must be followed in line with objective criteria and there must be no doubt as to the independence and impartiality of the decision-making bodies. In this scope, the decision-making authorities are required to develop objective standards with regard to not only suspension from duty but also any disciplinary sanctions which might potentially be imposed.

6. Conclusion

In conclusion, for ensuring effective protection of human rights, above-mentioned guarantees are not only laid down generally within the constitutions but also addressed by international instruments. Therefore, with a view to ensuring judicial independence and impartiality, a set of guarantees should be introduced in relation to matters ranging from the

appointment and personnel benefits of judges to the independence of the judiciary as well as its relationship with other branches of government, which are examined in detail above.

Additionally, the principles reached by contemporary human rights systems were already existing within the Islamic law, in which the justice is the foundation of the state and a building block of state government and have been applied from past to present. The development of the above principles is vital in terms of the promotion and the protection of the human rights.

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PROMOTION AND PROTECTION OF HUMAN RIGHTS WHILE COUNTERING TERRORISM

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I. INTRODUCTION

Human rights are defined as a set of prerogatives that belong to every person, simply because he is a human being in his relationship with other human beings and his community, enabling him to ensure respect for his dignity. The ultimate purpose of these rights is to ensure respect for human dignity, the essence of what it means to be a human being. They cover all areas of life, thus guaranteeing men the freedom to choose how they live their lives in an equal and dignified manner. Therefore, we need to promote and strengthen these rights.

Promoting these rights shall require the implementation of appropriate mechanisms to secure their effects for all, without any distinction. Therefore, enjoyment of human rights could not be effective without integrating them into the community development policies and programs. Accordingly, the ideal situation for promoting them would be a democratic environment or State concerned with the respect of fundamental rights and freedoms.

Human rights are ill-suited to a State of exception, a totalitarian State, and any form of similar governance because of what they illustrate, in terms of restrictions or limitations, to avoid mentioning denial of trivial rights.

Since the attacks of September 11 on the World Trade Center in the United States of America, terrorism, characterized by the denial of fundamental rights and individual and collective freedoms, has become one of the greatest threats to global security and peace.

Aware of this phenomenon's rising nature throughout the world, humanity is striving to find appropriate ways and means to eradicate it, thus ensuring global peace and security required to promote, protect, and defend human rights. Since it is characterized by violence, intimidation, and threat, terrorist acts are violative of human rights universal principles, as advocated by the international community through the United Nations and many other regional and sub-regional frameworks and institutional bodies.

In the face of the need to restore peace and security, so disrupted by the psychosis over terrorist acts, states as principal creditors of the right to a secure environment are often compelled to undertake counterterrorism measures. However, it has been shown that most counterterrorism measures consist of restrictions or limitations of basic human rights and fundamental freedoms.

Therefore, we are faced with a significant challenge to make sure that these measures are well- thought-out and free of abuse, which means that they should be efficient against the scourge we are dealing with and respectful of international human rights law, refugee law, and humanitarian law, as well. Otherwise, the efforts may cause injustices and frustrations, thus representing a major fertile breeding-ground for terrorism and radicalization.

So, how could human rights be promoted in the context of a greater need to combat terrorism? We are not claiming, through this study, to cover every aspect of the subject. Nor shall follow a dogmatic or philosophical approach. We will instead try and tackle the issue, with a view to contributing to the debates.

In this regard, within the framework of a preliminary conceptual approach, we suggest clarifying some core concepts (*PART I*) before shedding light on existing counterterrorism mechanisms as a review of worldwide efforts in countering terrorism (*PART II*). The final stage in our approach will be prospective, as we intend to identify a few counterterrorism mechanisms that take into account human rights promotion requirements (III).

PART I: CONCEPTUAL APPROACH

Although human rights do not pose any problems in terms of their definition, it is crucial for clarification purposes to provide details that could better complement the study (I). Today, unlike human rights, terrorism continues to be

challenging for humanity. As faced by the international community, these challenges concern the means of combatting terrorism and the concept's problematic nature, which require some conceptual details (II).

1- CONCEPTS OF HUMAN RIGHTS

As stated earlier, human rights are a set of prerogatives that belong to every individual, simply because he is a human being, in his relationship with other persons and the community he lives in. As a set of rules aimed at protecting the human being, with a history going far back in time, which includes humanity's experience of great tragedies, such as colonialism, world wars, use of atomic bombs, holocaust, and others, thus prompting the awareness about developing rules to help preserve and protect the human being from such tragedies. The efforts deployed have also helped address the existing cultural and philosophical differences at the level of these rights, universally recognized.

Article 1 of the Charter of the United Nations, signed in San Francisco on June 26, 1945, established as an objective, among other things, the need to "develop and foster respect for human rights and fundamental freedoms for all regardless of race, sex, language or religion."

Similarly, the Universal Declaration of Human Rights, dated December 10, 1948, came all the way to strengthen and consolidate the concept of human rights, as covered later by various international covenants and universal or regional instruments, whether binding or not, specific, or general, and affecting almost all aspects of human life, dealing with those rights, with a view to completing them.

Based on its universal, inalienable, indivisible, interdependent, and non-discriminatory nature, human rights make the essential foundation of any society seeking peace, harmony, and security. From this point of view, the efforts to promote these rights must permanently be geared towards ensuring their effectiveness, helping humans preserve their right to dignity. Indeed, human rights promotion includes implementing appropriate mechanisms to be integrated into policies, programs, or management plans necessary for meeting any State's development requirements.

Efforts to promote human rights should also include State and non-State actors' involvement, which need to be sufficiently equipped to raise awareness, educate, and provide the support necessary to enhance free access and enjoyment of human rights and fundamental freedoms. It is only at this cost that the State could guarantee peace and security for all.

2- CONCEPT OF TERRORISM

Terrorism is characterized today by the absence of a universal and consensual definition. Some have attempted to clarify the concept for it to be taken into account globally to achieve peace and security worldwide. Thus, according to the Larousse dictionary, terrorism is a "set of acts of violence (attacks, hostage-taking, etc.) committed by an organization to create a climate of insecurity, blackmail a government, satisfy hatred towards a community; a country, or system."³

According to the Convention of the Organization of Islamic Cooperation (OIC) on Combating International Terrorism, adopted on July 1, 1999, in Ouagadougou (Burkina Faso), terrorism means "any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan to terrorize people or threaten to harm them or imperiling their lives, honor, freedoms, security or rights or exposing the environment or any facility or public or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States".⁴

² Cf. The Preamble to the Universal Declaration of 10 December 1948: "Considering that the Member States have committed themselves to ensure, in cooperation with the United Nations, the universal and effective respect for human rights and fundamental freedoms".

³ Dictionary "Le Petit Larousse Illustré" 2016

⁴ See article 1 of the Convention of the Organization of Islamic Cooperation to Combat International Terrorism, adopted in Ouagadougou (Burkina Faso) on July 1, 1999.

As far as the Arab Convention for the Suppression of Terrorism is concerned, the term refers to: “any act or threat of violence, notwithstanding its objectives or intentions, which could be used as means to achieve an individual or collective criminal plan, aimed at spreading terror among people, instilling fear, harming or endangering their lives, freedom or causing damage to the environment, a facility or property, be it public or private, to occupy them or, jeopardizing a national resource.”

In the African context, the Organization of African Unity Convention on Preventing and Combating Terrorism, signed in Algiers, Algeria, on July 14, 1999⁵, defines terrorism as “any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

- intimidate, frighten, force, coerce or induce any government, body, institution, the public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles;
- disrupt any public service, the delivery of any essential service to the public or to create a public emergency;
- create general insurrection in a State...”;

For the European Union, terrorism is all and any “acts committed with the aim of seriously intimidating a population or unduly forcing public authorities or an international organization to do any act, or seriously destabilizing or destroying fundamental political, constitutional and economic and social structures of a country or an international organization.”⁶ As for the International Terrorism Research Centre (CRTI), the term “terrorism” shall mean all and any “illegal use of force against persons or property, intimidation or coercion of a government and the population to promote political, religious, or social change or progress.”⁷

In his epic report of March 2005 entitled “**In larger freedom**,” the Secretary-General of the United Nations said that terrorism is “any act intended to kill or seriously injure civilians or non-combatants, and which, because of its nature or the context in which it is committed, must have the effect of intimidating a population or compelling a Government or an international organization to act or abstain from action in any way.”

There are several definition attempts at the state level, as is the case in Mauritania, Tunisia, Niger, and Burkina Faso, knowing that such efforts only concern terrorist acts. These few examples and attempts have shed light on the complexity of identifying the concept in a consensual and universal manner to provide for appropriate legal treatment. At the United Nations, negotiations are underway to adopt a convention on terrorism with a universal standard definition that will enable states to adopt effective counterterrorism measures.

To date, all legal instruments relating to terrorism are characterized by the fact that instead of providing a unanimous definition, they only cover terrorist acts, whose analysis reveals that they are common law offenses in States' domestic legal system. As far as we are concerned, terrorism can be perceived as the use of force, violence, and illegal acts to provoke terror, fear amongst the general population or a group of people.

Terrorism is usually perpetrated by organized ideological groups that consider it as a matter of heroism. In all cases, as much as the perpetrators of terrorism are secretive and illegal, their actions remain unlawful, undemocratic, and anti-peace. It is the denial of enjoyment of human rights and fundamental freedoms. Terrorism can find its causes in all areas, knowing that these causes have varied over time and based on geopolitical context.

If it is a common fact that the whole fight against terrorism increased from September 11, 2001, it is also true that several

⁵ Articles 1 and 3 of the African Union's Convention to prevent and Combat Terrorism.

⁶ European Act on Terrorism dated 06 December 2001 as adopted by the Ministers of Justice

⁷ The Center is based in Israel and is very active in combatting terrorism.

precursor elements already existed before this date. Thus, under the pretext of colonization and desiring to struggle for liberation or simply for freedom, several acts that are now described as "terrorist" have been perpetrated by organized groups (Action Directe in France, ETA, Dev sol in Turkey, etc...). In this regard, the far-right groups from South Africa, Canada, the United States, and Germany, driven by migration and unemployment-related changes, have also perpetrated terrorist acts to bring about sweeping changes in the State's policy practices.

Overall, significant causes of terrorism include illiteracy, social injustice, poor governance and inequitable distribution of public resources, favoritism, unemployment, poverty and misery, humiliation, stigmatization, due to widespread globalization with its horde of new forms of crime (cybercrime, international arms trafficking, and so on).

Besides, there are practices in some individual States, like in the USA, which, since September 11, 2001, has been pursuing a foreign policy considered to be as source and cause of terrorism. Indeed, under the pretext of countering terrorism, the United States is assuming to be of right to promote, attack, or protect some States; and that for this reason, they could even form and equip armed groups to undermine, including through violence, the sovereignty, and rights of targeted communities. In this regard, the United States' attitude in the Arab-Israeli conflict can be a good illustration of such behavior.

As presented above, terrorism affects all aspects of life (social, economic, ideological, cultural, etc.) and geopolitical relations. Because of its impacts on humanity, efforts are being made at all levels to prevent it, if not to rededicate it. In the face of the devastating effects of terrorism, humanity has mobilized to counter the scourge, which has prompted the interest to consider the current situation of counterterrorism.

The above facts have shown that promoting human rights and fundamental freedoms and the fight against terrorism contribute to preserving and safeguarding human life and dignity. This ultimate purpose has helped campaign for and justify efforts deployed to promote human rights and combat terrorism.

SECTION II: GLOBAL COUNTER-TERRORISM ASSESSMENT

Because of the growing threat and disastrous consequences of terrorism, humanity is mobilizing to find appropriate solutions, methods, and mechanisms to prevent and eradicate the phenomenon.

This battle is taking place on all fronts, particularly in the field of human rights, our area of interest, knowing that several tools and mechanisms have been created to this end. They can be found both at global (1) and regional levels (2).

1- GLOBAL FRAMEWORK FOR COUNTER-TERRORISM

At the legal level and in correlation with international law, there are approximately sixteen conventions and instruments dealing with terrorism. However, instead, these instruments relate to terrorist acts and do not provide any universal definition of the phenomenon itself. The United Nations remains the consensual leader (a); along with the relevant conventions adopted under its umbrella, other international legal instruments have been framed to deal with terrorism, which are not less important in contributing to the fight (b).

a- COMBATING TERRORISM WITHIN THE FRAMEWORK OF THE UNITED NATIONS

The United Nations has a set of legal instruments to combat terrorism, taking into account the promotion and protection of human rights (i). Some bodies have been set up and empowered to take care of that purpose (ii).

i- UNITED NATIONS LEGAL FRAMEWORK FOR COUNTER- TERRORISM

The main target of these adopted instruments shall be to provide a legal framework for the counterterrorism struggle. In this regard, several mechanisms have been implemented, the most relevant of which are listed below⁸:

⁸ This is a non-exhaustive list, illustrating the multiplicity of conventions as a shred of evidence for the demonstrated will of the international community to combat terrorism universally.

- The Convention on the Prevention and Punishment of Crimes perpetrated against Diplomatically Protected Persons, including diplomats dated December 14, 1973;
- The International Convention against the Taking of Hostages dated December 17, 1979;
- The International Convention for the Suppression of Terrorist Bombings dated December 16, 1977;
- The International Convention for the Suppression of Financing of Terrorism, dated December 9, 1999
- The International Convention for the Suppression of Acts of Nuclear Terrorism dated April 13, 2005.

ii- THE UN INSTITUTIONAL FRAMEWORK FOR COUNTER TERRORISM

In its capacity as the principal custodian of peace and security, the United Nations has established bodies to help contribute to the promotion and protection of human rights in all circumstances. Such is the case of the Human Rights Council, for example. Besides, other bodies exist within the UN system, which are empowered to play a more specific role in combatting terrorism, including, for instance, the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, whose responsibility is to define and et promote best practices for the implementation of counterterrorism measures, with due regard to full compliance with human rights and fundamental freedoms requirements. Through his reports, he contributes to the widespread dissemination of these best practices intended to be used by States in their attempts to protect human rights while countering terrorism.

Another mechanism available within the UN System is the Committee against Torture and the Committee on the Elimination of Racial Discrimination that are treaty bodies involved in counterterrorism efforts with due to respect for human rights compliance.

At the institutional level, we can note the establishment of the Counter-Terrorism Committee by the Security Council of the United Nations (Resolution 1373) in 2001 as a response to the attacks of September 11, 2001. The Committee is composed of the members of the Council, assisted by some necessary professionals and experts. In 2006, the Member States gathered in the General Assembly meeting of the UN consented to the implementation of a common framework to combat terrorism. The said framework would be later called: "The United Nations Global Counter-Terrorism Strategy." Simultaneously, the UN General Assembly approved the Counter-Terrorism Task Force's establishment, which was later put in place by the Secretary-General in 2005.

In September 2011, the International Counter-Terrorism Centre was created to help promote international cooperation efforts in the fight against terrorism, thereby assisting the Member States in implementing the Global Counter-Terrorism Strategy. The Office of the said Task Force and the International Centre have been integrated into the new Counter-Terrorism Office. They have been seconded by the Department of Political Affairs of the United Nations Secretariat. This new Office was created in 2017. Its responsibility is to build close relations with the organs and bodies of the Security Council in the Member States, to consolidate existing partnerships, and initiate new ones, by all necessary means, including through frequent visits and regular participation of its staff in counterterrorism meetings.

b- COMBATING TERRORISM OUTSIDE THE UNITED NATIONS FRAMEWORK

In the United Nations System's footsteps, there are other mechanisms and conventions at the international level whose implementation can help contribute to addressing challenges related to terrorism. Several international legal instruments outside the United Nations framework are unique since they deal with a specific implementation scope. These instruments include, among others:

- The Convention for the Suppression of Unlawful Seizure of Aircraft signed at The Hague (Netherlands) on December 16, 1970;
- The Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed in Montreal, Canada, on September 23, 1971;
- The Convention on the Physical Protection of Nuclear Material signed at Vienna (Austria) on March 3, 1980;
- The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil

- Aviation, dated February 24, 1988, Montreal, Canada;
- The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, signed at Rome, Italy, dated March 10, 1988;
- The Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located in the Continental Shelf, dated March 10, 1988, in Rome, Italy.

2- REGIONAL FRAMEWORK FOR COUNTER-TERRORISM

Depending on the geographical sphere and context, several legal instruments have been entered into at the regional, sub-regional, or even Community levels to prevent or combat terrorism. These instruments include:

- The Arab Convention on the Suppression of Terrorism, adopted on April 22, 1988, in Cairo, Egypt, under the auspices of the Arab League;
- The OIC Convention to Combat International Terrorism, adopted in July 1999 in Ouagadougou, Burkina Faso;
- The OAU Convention on the Prevention and Combating of Terrorism, adopted in Algiers, Algeria, on July 14, 1999;
- The Convention of the South Asian Association for Regional Cooperation: SAARC) on the Suppression of Terrorism, Kathmandu, November 4, 1987;
- The Treaty on Cooperation in Combating Terrorism among States Members of the Commonwealth of Independent States (CIS), signed in Minsk on July 4, 1999;
- The European Convention for the Suppression of Terrorism, Strasbourg, France, January 27, 1977;
- The Convention of the Organization of American States for the Prevention and Punishment of Acts of Terrorism, dated February 1971;
- The Inter-American Convention against Terrorism, signed in Barbados on June 3, 2002.

Other regional bodies involved in the counter-terrorism struggle include the G5 Sahel. This sub-regional organization was created in 2014 due to an intergovernmental partnership arrangement involving Burkina Faso, Chad, Mali, and Mauritania. It aims to support economic and security cooperation in the Sahel, thus jointly addressing humanitarian and security challenges, including attacks by terrorist groups. In 2017, the G5 Sahel launched a military alliance, called the G5 Sahel Joint Force (FC-G5S).⁹

The operation mode G5 Sahel Joint Force is based on four pillars:

- combating terrorism, drug, and human trafficking;
- contributing to the restoration of State authority and the return of refugees and displaced persons;
- facilitating operations intended to help deliver humanitarian assistance and aids to vulnerable populations;
- contributing to the implementation of development strategies in the G5 Sahel region.

Against the background of a general mobilization based on the wishes expressed by the UNSG while presenting his report to the GA, inviting States to take appropriate actions to combat terrorism, several States enacted laws against terrorism from all parts of the world, and details can be found at the UN Counterterrorism Website.

SECTION III: PROMOTION OF HUMAN RIGHTS AND COUNTER-TERRORISM

As highlighted earlier, terrorism or terrorist acts have definite impacts on all aspects of human life. In their efforts to restore peace and security, States, moved by the need to combat this scourge, must undertake preventive or eradication measures. In most cases, such measures are implemented without any due regard to their commitments vis-à-vis the

⁹The G5 Sahel Convention, dated December 19, 2014.

international community, particularly in the field of human rights and fundamental freedoms. Thus, taking advantage of the fear created by the terrorist acts and under the pretext of restoring security, rulers and decision-makers in some democratic countries are now using anti-terrorism standards and practices to violate general principles of human rights. It is also an opportunity for some to have military budgets approved at the expense of economic and social sectors, let alone the pretext to neutralize political opponents and rivals. After a few examples of such practices detrimental to fundamental freedoms and disrespectful of human rights (1), we will follow up on the State obligations within the counterterrorism action framework (2).

1- MOST FREQUENT PRACTICES THAT VIOLATE HUMAN RIGHTS IN COUNTERING TERRORISM

In practice, instead of ensuring compliance with international human rights law as an obligation, States instead resort to methods and practices that violate human rights or restrict fundamental freedoms. These practices include, among other things:

- Summary Executions without due process of law. The practice of “shoot to kill” is a breach of the right to life. In many cases, the alleged perpetrators of terrorist acts are shot down beyond measure. This practice violates the right of all individuals to be tried and convicted, where necessary, through a fair trial, as well as many other rights, including the right to freedom of expression.
- The abandonment of fundamental principles, including in terms of extradition and asylum: the standard practice in this field is to extradite persons to places where they risk their lives in complete disregard of their recognized extradition rights. The same applies to the violation of the principle of refraining from returning refugees to their country of origin, where they may risk their lives /or face persecution.
- The principle of the presumption of innocence: this sacrosanct legal rule is very often violated in combatting terrorism in such a manner that the alleged perpetrators of terrorist acts are victims of accelerated trials or summary executions. In these processes, they will not be offered an opportunity to defend themselves through fairly- conducted trials.
- Violation of the right to a fair trial before a competent and independent court jurisdiction. Special courts can summarize this situation, which does not provide any safeguards for compliance with human rights requirements.
- Quasi-systematic violation of the right to life.
- Use of any illegal methods such as torture, arbitrary arrest and detention, harassment, and so on, with a view to avenge people or obtaining confessions in complete disregard to the commitments under relevant conventions dealing with torture and degrading punishments.
- Restriction on freedom of expression affects any access to this right, thereby depriving persons being prosecuted of their right to speak.
- Resorting to emergency laws, contradicting democratic principles.
- Violation of freedoms of expression, opinion, and religion.

All these practices and methods followed by States violate human rights requirements and constitute violations of the general principles set forth to protect human rights and ensure State compliance with their respective obligations under international human rights, humanitarian, and refugee laws. However, States are obliged to respect any of these rules.

2- STATES OBLIGATIONS TO PROMOTE AND PROTECT HUMAN RIGHTS WHILE COUNTERING TERRORISM

Because of violence, intimidation, and the general sense of fear it causes, terrorism has emerged as a significant threat to

democracy. As reaffirmed in the preamble of the resolution A/RES/60288/ of the United Nations Global Counter-Terrorism Strategy, "... terrorist acts, methods, and practices in all their forms and manifestations are aimed at destroying human rights, fundamental freedoms, and democracy, thus threatening the territorial integrity and security of States and destabilizing legitimately constituted Governments, and that the international community must take necessary steps to strengthen cooperation to prevent and combat terrorism." It is, therefore, considered to be the denial of human rights and fundamental freedoms.

Global awareness has forced the international community to find appropriate ways and means to prevent and eradicate the scourge, thus restoring world peace. Because of this, terrorism is being treated in different ways.

At the political level, efforts are being made to strengthen cooperation, intelligence, and collaboration among States. From the military and security point of view, more and more powerful military means are being engaged in the fight against terrorism worldwide.

At the legal level, pending the outcome of the negotiations being conducted to have a treaty related to terrorism, States are urged, through UN Security Council Resolutions 1267, 1373, and 1540, to prevent and combat terrorism and its financing, bearing in mind that the fight cannot be effective without due compliance with human rights and fundamental freedoms requirements. The UN Security Council reaffirmed this position in its Resolution No.1456 of 2003 in the following terms: "the eradication of terrorism requires from the States to comply scrupulously with their international obligations to defend and protect human rights and fundamental freedoms."

This means that combatting terrorism and promoting and protecting human rights must have the same goal of safeguarding human beings' life and dignity. It is the States' responsibility, as the leading player, to promote human rights and ensure the security of people.

According to UN Security Council Resolution No.1456 of 2003, "when taking steps to combat terrorism, States pay due attention to ensuring compliance with their respective obligations under international law, and the adopted measures must be in line with international laws, in particular, those related to human rights and refugees, as well as to humanitarian law."

Therefore, it is the responsibility of every State to, while addressing the legitimate national security concerns, bear in mind that: « the purpose of counterterrorism measures shall be rather to ensure the protection of human rights and democracy, than undermining the core values of our respective societies. » More specifically, State's obligations shall include the following: 10"

- To implement their international commitments subscribed to under international (Charter of the United Nations, UDHR, ICCPR, ICESCR) and regional human rights instruments (European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, American Convention of 1969, African Charter on the Rights of the Human and Peoples' Rights of 1981, the Charter of Fundamental Rights of the European Union of 2000);
- To take protective measures against torture and ill-treatment. This obligation derives from the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, prohibiting torture in all circumstances.
- To respect the right to life because, as provided for in article 6 of the ICCPR, "No one may be arbitrarily deprived of life" and which is in conformity with the sanctity of human life as so enshrined in the Holy Qur'an.
- To refrain from violating freedom of conscience and religion. Indeed, article 18 of the UDHR, Article 18 of the ICCPR, and article 8 of the African Charter on Human and Peoples' Rights place this right among

10Joint declaration by the High Commissioner for Human Rights, the Secretary General of the Council of Europe, and the Director of the OSCE Office dated 29 December 2001 with the framework of the fight against terrorism (V2 art 6). Several other instruments to which States are parties' campaign for the prohibition of torture. This is the case with Article 3 common to the Geneva Conventions of 1949 which prohibits any offense on life and physical integrity (torture, mutilation, etc.)

those which cannot be subject to any possible derogation, even in exceptional circumstances, including in the context of counterterrorism action.

- To implement in their geographical sphere, the right to a fair trial before a competent court jurisdiction, thus implementing the right to defense, as an integral part of the sacrosanct principles of criminal proceedings (the legal nature of offenses, sentences, and the non-retroactivity of criminal law), etc.
- To promote and protect human rights and fundamental freedoms by implementing the international and regional instruments to which they may be parties and taking appropriate steps to ensure their protection against any breaches, infringements, or violations. In this regard, democracy and good governance are the ideal conditions for the effective implementation of these rights. In particular, as far as terrorism is concerned, the UN Counter-Terrorism Strategy calls upon States to: "make every effort to establish and maintain an effective national criminal justice system based on the rule of law which ensures (...) that anyone involved in the financing, organization or perpetration of terrorist acts be brought to justice; based on the principle *aut dedere aut Judicare*, with due regard to compliance with human rights and fundamental freedoms requirements, and that such acts of terrorism be considered as serious offenses in the domestic laws and regulations..."

Nevertheless, some fundamental rights and freedoms may be subject to exceptional restrictions or limitations. This can only be possible if the restriction is not excessive or abusive and is justified by circumstances, such as the need to preserve peace and security and safeguard citizens' lives and health, thus ensuring national defense and law enforcement. These freedoms also include the right to privacy enshrined in article 17 of the ICCPR, which is recognized to every person without distinction. According to the Doctrine of freedom of movement, the same is valid, which may, if necessary, be restricted for security reasons.

The fulfillment of these obligations by States, under the supervision and coordination of the United Nations, will help provide an enabling environment for the implementation of an efficient anti-terrorist struggle, which could be respectful of human rights and fundamental freedoms, as well. However, the guarantee of such effects cannot be thought of in the absence of the assistance required from existing international and regional institutions and bodies.

CONCLUSION

As we can see, terrorism has disastrous consequences on the populations as long as terrorist acts are undertaken with no regard for their fate. It is a real threat to peace, security, stability, and human rights. Insofar as it is necessary to lead a decisive struggle against terrorism, it is even more vital to maintain the community's balance by promoting human rights. Therefore, each nation exposed to terrorism strive to find a solution best suited to its context to ensure peace and stability. As a consequence, we observe that there are as many anti-terrorism mechanisms as there are victim nations. This disparity of mechanisms has proved ineffective, as evidenced by the persistence of the terrorist phenomenon. Given the fact that terrorism is now a cross-border reality, it seems more objective to us to imagine integrated mechanisms seeking means for collective solutions at the regional and international levels. From this point of view, collaboration and cooperation among States seem to offer a glimmer of hope in terms of a solution to the terrorist threat.

However, the difficulty would persist if the deployed efforts could not lead to a concerted and standard definition of terrorism under an international convention. If such a legal framework includes a state-owned oversight or monitoring organ, it would have the advantage of considering human rights requirements in the response mechanisms.

The guarantee of human rights' effectiveness depends on the efficiency of the judicial system, which should be able to deal appropriately with the terrorist threat. A judicial system could secure the right to remedy and help avoid any repetition of violations. In this regard, a regional or international justice respectful of human rights and equipped with a convention defining terrorism and setting a clear framework for its process and treatment could be a solution to consider if we intend to ensure human rights promotion while countering terrorism.

As demonstrated above, most States are committed to promoting human rights due to their ratification of some relevant international instruments. This commitment implies in each State the obligation to implement them and, therefore, promote, protect, and defend human rights in all circumstances. Again, the responsibility is not mitigated even in a

terrorist context. Therefore, if terrorism is not an exception to the obligation to comply with human rights requirements, it stands to reason that efforts must be stepped up to bring States to strict compliance with their international commitments, thus advocating for the promotion and protection of human rights and fundamental freedoms.

An anti-terrorist struggle respectful of human rights could also favor negotiation, which has the advantage of exposing populations less to the terrible consequences of terrorism while taking into account the antagonistic or conflicting interests.

Under its Charter, the OIC is committed to promoting peace and stability to stimulate an appropriate development dynamic within its space. Targeting such objective should lead the OIC to focus on the promotion of true democracy in the Member States, which is not only considered to be an ideal framework to promote, protect and defend human rights in all circumstances, but also as a mode of governance which creates the least possible causes of terrorism.

As many of the OIC countries are confronted with the phenomenon, it is crucial to undertake suitable initiatives to establish an adapted legal framework, thus reforming the existing judicial system, strengthening, and equipping it for the effective handling of the terrorist threat. The OIC should also have an internal democracy evaluation system to encourage its members to improve governance, a source for strengthening human rights. Finally, the negotiation solution, which has proved all its worth, should be considered a track to be taken into account if we intend to eradicate terrorism while promoting human rights. In this regard, an integrated mechanism could be envisaged by the Organization of Islamic Cooperation.

As far as the Member States are concerned, they must be encouraged to respect and promote, within their respective territories, the civil, political, economic, social, and cultural rights of their populations. Naturally, this also entails for them to be able to freely enjoy their full sovereignty, as well as their right to self-determination. It is only at this cost that a counter-terrorism struggle, which is at the same time respectful of human rights, could lead to commendable outcomes.

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PROMOTION AND PROTECTION OF YOUTH RIGHTS IN OIC MEMBER STATES

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INTRODUCTION

Youth's rights can be termed slots not covered by international law, as much as it is the case with other segments of the population. Together, universally accepted human rights that cover every human being on the earth, regardless of age, gender, race, origin, social status, political views and any other label that may be associated with human beings, are nine groups of vulnerable people such as women, children, minorities, people with disabilities, people of different races. However, youth rights have also not been established by one or more of the UN's global conventions. Although the UN Convention on the Rights of the Child protects all persons under the age of 18 and all persons over the age of 18 are protected by local, national and global legal instruments, there are still a vulnerable group of people from childhood to adulthood. Youth is seen as a force for innovation and creativity, and as such, it remains a potential for driving policy change both at the social, economic and political levels. Representing 25% of the population of working age and thus participating in the development of the whole of humanity, face enormous difficulties and challenges. Youth often have difficulties accessing education, quality employment, social protection, and full access to civil and political rights. In short, the full enjoyment and effectiveness of their rights limit their potential. This situation is justified by the lack of a global legal instrument dedicated to this category of the population. By taking into account the enormous potential of youth, specific protection is needed to combat discrimination against youth and remove the obstacles preventing them from accessing their rights.

The World Program of Action for Youth (WPAY) 2010 marks the international community's awareness of the need to promote the involvement of youth by taking into account their aspirations and their specific needs.

In the 72nd UN General Assembly's speech, Lajčák underlined that today the highest number of youths in human history is 1.8 billion. After all, the development and progress of the majority of these youth adults face daily social, financial, and professional challenges. More than 70 million of these youth are unemployed, and 40% live in extreme poverty. Already in 2013, about 225 million youth in developing countries are unemployed, without education or training. The same estimates reveal that 1.8 million youth between the ages of 15 and 24 die each year for surmountable reasons, and 10.6% of them are illiterate. In 2011, the figures showed that 5 million youth live with HIV / AIDS, and about 2400 are contracting the disease each day. To this must be added the sexual assault on girls under 16 years of age.

These figures reveal the urgent need to better protect this population group in the image of specific regional organizations, as is the case of attempts in Africa, America, and even at the national level in some countries.

DEFINITION OF YOUTH:

Youth are defined according to different age limits by various organizations. The United Nations World Program of Action for Youth sets the age limit below 15 years and the age limit above 24, in accordance with the Ibero-American Convention on the Rights of Youth. The African Youth Convention is more open to expanding the elimination of youth and includes all people aged 15 to 35 in their definition of youth. Resolution 2250, accepted in 2015 by the United Nations Security Resolution, only concerns young adults aged 18 to 29. The European Council's strategy always takes a different view, including all youth aged between 13 and 30 in youth.

Therefore, there is a disparity in the definition of youth by geographic region, which constitutes a difficulty in taking into account this population group. In any case, it must be considered that youth, despite their specific characteristics, are taken into account in international human rights law. It constitutes a rights-holding group with the possibility of exercising them and claiming them.

For the purposes of this study, therefore, taking into account the social, economic, and demographic aspects as well as the biological, psychological, and social diversity of the OIC Member States, the following structure is proposed:

Children - up to 12 years old

Teenagers - 12 to 16 years old

Youth - aged 16 to 35, while the group of 30 to 35 years old should be considered as young adults. This will cover 18% of the world's population and an even more significant proportion in the

OIC Member States, its countries counting more than 30,000 countries. The total world population of youth is currently leaving the OIC countries. While the age groups defined in this study are for strategic purposes not to leave to the youth defined by each country, the study respects the age categories defined by one of the Member States, as it must be respected to join the OIC youth strategy.

Putting aside the issue of youth for many years or years to come, the world community must recognize that youth are the greatest source of peace and progress in the world. That youth face legitimate challenges that impede their development; identify and solve the same problems with the help of youth.

HISTORICAL BACKGROUND:

All conventions and efforts to strengthen the protection of particularly vulnerable members of society came after the acceptance of the Universal Declaration of Human Rights (UDHR) in 1948 as a result of atrocities against humanity around two world wars. However, attempts to legally protect children from abuse began to emerge in the early 20th century as a result of the massive participation of children in the workplace and the resulting injuries. Countries such as Germany in 1908 and Russia in 1910 began to create special courts to protect the rights of youth. However, these initial measures aimed to protect youth from physical harm and had not yet reached the stage of taking their social life into account.

Increased statewide efforts to debate youth rights began in the second half of the 20th century. On the one hand, the issue of human rights had been recognized, and another protection for different groups of people stemmed from the concept of the protection of human rights as a result of failure. However, the fact that baby boomers in the post-war Western world have reached adolescence and that young adults play a significant role in shaping a new layer of society - young adults. This group of youth began creating student revolutions in Europe and the United States to gain recognition. This has forced governments to recognize young adults as a force to be reckoned with and a resource to improve society by channeling youth energy into constructive initiatives. While this was done to prevent the rise in the crime rate and maintain social peace and rest, it served as a springboard for the global wave of youth initiatives.

The final act on the rights of youth of the twentieth century was the adoption of the World Program of Action for Youth, which includes 15 priority areas for action to defend the rights of youth. The United Nations has created the Secretary-General's Envoy for Youth (2013) and the Inter-Agency Network for Youth Development in the new millennium. At present, the United Nations and the world community have not yet created a specific instrument dedicated to protecting the rights of youth. As such, these rights remain under the protection of the UDHR and other instruments designed to protect human beings in general.

There is thus a legal void to be filled at this level. This means that the OIC countries can take the initiative as a region with the highest concentration of youth to create an instrument dedicated to protecting youth rights. In this quest to create a legally binding regional instrument, the OIC can draw on the experience of the African Youth Charter and the Ibero-American Convention on the Rights of Youth, as well as the long list of declarations, United Nations meetings, as well as State and non-State initiatives. In this regard, the speech of Shavkat Mirziyoyev, President of the Republic of Uzbekistan, served as a starting point for a number of an initiative that can move the field of human rights from a framework that combats the consequences of atrocities against humanity to an area that shapes the future of the world. The proposal made by Shavkat Mirziyoyev, Honorary Member, with the downside of the participation and recruitment of a large number of youth into terrorist organizations, was to formulate a United Nations International Convention on the Rights of Youth, which would define and guide the youth policies of countries around the world. As Mr. Mirziyoyev pointed out, addressing the problems of youth worldwide with globally coordinated strategies would shift counter-extremist efforts alongside other crimes committed by people under 30 and their problems to eliminate the causes in the first place.

The United Nations is not the only global organization dealing with youth rights. The International Labor Organization (ILO), UNICEF, the World Health Organization (WHO), and other United Nations branches have also conducted research

on this issue, which may be helpful in the mission of OIC countries.

Moreover, many non-governmental organizations carry out advocacy for the effectiveness of rights and youth and can, to this end, constitute a considerable resource.

It is worth remembering that even within the OIC, the Conference of Ministers in charge of Youth has made resolutions and recommendations useful for the effective management of the rights of youth. Therefore, international cooperation between UN, UNICEF, WHO, OIC and governments, non-governmental organizations, academic bodies, and sporting organizations is required to carry out the most important initiative of the modern world to the best expectations.

YOUTH IN THE OIC STATES

Like other geographical areas, youth from OIC countries make up the most significant part of the population and represent the greatest source of potential for power, progress, and development. Taking into account their rights with their specific expectations in mind is one of the most significant challenges that the OIC countries face all at once. Nearly one-fifth of the general population of OIC Member States was between the ages of 15 and 24, which represents about 25% of all youth in the world. This position should only become stronger by including one-third of the world's youth population in the OIC countries, representing 15.9% of the OIC population by the middle of this century. Therefore, the roadmap in youth issues for OIC countries is well past due.

The acceleration of the effectiveness of OIC programs in this area has been greatly stimulated by the creation of the Forum of the Islamic Conference for Dialogue and Cooperation (ICYF-DC), the affiliated institution of the youth of the OIC. As a driver of progress for youth, ICYF-DC promotes dialogue between young leaders of the future and current heads of government (Young Leaders Summit), creates solidarity among young Muslims and promotes financial literacy (CIC Youth Program), ensures the intellectual and creative development of Muslim youth (OIC Model programs and future Muslim thinkers), provides a platform for communication and cooperation between Western youth and Muslim youth (platform of the Global Youth Movement for the Alliance of Civilizations launched by ICYF-DC of the United Nations) and pursues the development of comprehensive and knowledge-based youth policy strategies in the Member States, aimed at the development of OIC countries (recommendations of 10 goals in 10 years, annual resolutions ICYF-DC in OIC CFM). Istanbul Youth Declaration adopted by the 2nd General Assembly of ICYF-DC (2014) and the Youth Recommendations entitled "10 goals in 10 years" adopted by the first-ever OIC Young Leaders Summit held 11-13 April 2016 in Istanbul - Youth Summit of the 13th session of the Islamic Summit Conference) and approved by the 13th Islamic Summit Conference, contributed to the work of ICYF-DC to define the primary needs of youth development in the OIC Member States. On the basis of these recommendations, ICYF-DC cooperated actively with the co-organizers of the 3rd Islamic Conference of Ministers of Youth and Sports in the preparatory meetings of the Ministerial Conference and held consultations with ISESCO (Member of the OIC Permanent Joint Committee on Youth). Business, established in accordance with the MoU mentioned above, signed in Kuwait in 2015) to reflect the views and positions of all parties concerned.

Countries have been classified into three groups at the global level based on their approach to youth issues in their constitutions. The first group includes countries that make no reference to the problems of youth in their constitutions. Among the OIC members, countries such as Afghanistan, Bangladesh, Indonesia, and five other countries have made this list, which means that they have no recourse in their constitution with regard to the problems of youth. The second group of countries that may include countries such as Bahrain, Egypt, Iraq, and seven other countries that do not highlight or define the rights of youth in their constitutions but provide in the main document a policy recourse of the youth. The third group of countries, which includes only Kuwait, Guyana, and Syria among the OIC member countries, has included the norms of youth rights and youth policy in their constitutions. This clearly shows that OIC member countries must start at the local level to provide the most significant proportion of their population with a final legal instrument to protect their rights.

As an international organization, the OIC has not yet presented a legally binding instrument that could serve as a basis for the constitutional changes in favor of youth that can legitimately be expected from its member countries. Therefore, there is a need and demand to learn the experience of the UN, African Youth Charter, and Ibero-American Convention on Youth Rights.

YOUTH RIGHTS AND CHALLENGE

By definition, the rights of youth are supposed to protect people in transitional periods of their lives and can therefore seem rather obvious even if few youth have access to them. Most fundamental rights, which are also covered by fundamental human rights, include affordable housing, meaningful employment opportunities, non-discrimination (especially in the recruitment process), education, health, participation in public affairs, and society's political life. Before being a great source of progress and peace, youth are energies that seek above all a direction to follow.

i) The formation of human capital through education and training is the main challenge of the OIC Member States, as one of its Member States presents a clear strategy and channels the necessary resources to create a skilled human capital from a fifth of its population or the void created in the minds and lives of youth by lack of education will be filled with extremist ideas and motivations. Currently, 82% of youth in OIC countries are literate, which is well below 90.9% of non-OIC developing countries. On top of that, this average hides significant disparities whereby while Uzbekistan and Azerbaijan may boast 99.94% literacy, only 23.52% of Nigerian youth are literate. In addition, enrollment rates in higher education are the lowest in the OIC countries. Considering that literacy is only the first stage of human capital formation and that youth are more or less useless for modern businesses unless they have a tertiary education, the OIC countries have a lot of ground to cover in the field of education.

ii) Problems related to education continue to stumble youth into employment. First, despite low enrollment in tertiary education, youth participation from OIC countries in the labor force is very low, and the latest figures suggest that it would have declined further from 45.9 % in 2000 to 44.4% in 2012. This fall is worrying but misinterpreted as a slowdown in activity and development. This percentage decline hides the nominal growth in the number of young employees outpaced by the increase in the total number of youth. The rapid pace of growth in the number of youth and the general population means that the OIC countries must accelerate the job creation mechanism of the economy to keep pace with population growth.

(iii) The problems mentioned above lead to other problems in youth's social life due to the lack of education and employment. First, education and employment are two of the most important factors that enable social mobility in societies. The lower the quality of the education provided, the fewer job opportunities presented, the higher the barriers to social mobility. Once youth are deprived of education and employment, they lose their ability to move from childhood to adulthood and may feel excluded from society. This can increase the number of delinquency. These problems combine to create social tensions and political unrest.

(iv) Last but not least, youth health problems, including dependence on harmful substances and their habits and mental health, are the main obstacles preventing youth from seizing this opportunity, even though society provides education, employment, social mobility, and inclusion. Although tobacco, alcohol, and drug abuse are less prevalent in OIC countries than in non-developed developing countries and developed countries because of their exposure to Islam and Muslim culture, the problem is far from existing. For example, 18.9% of young Egyptians have tried cannabis at least once in their lifetime. With regard to mental health, this issue should be taken very seriously as many of the OIC member countries have gone through wars in their recent history and continue to struggle after the war. Youth are at greater risk of suffering from various mental health problems as they move from childhood to adulthood. These disorders have a negative impact on development, quality of life, and youth's ability to participate fully in their community's life. Only 51% of OIC members can propose legislation on mental health, and 58% have a policy on mental health, given the turmoil experienced by youth, these figures are dismal.

If not properly exploited and channeled, this energy could become destructive and damaging to society, as was the case for thousands of youth who joined the extremist forces because of a financial burden, an ideological vacuum, the lack of opportunity for self-employment, and the educational vacuum. However, this energy can become a source of unprecedented progress once well channeled, as evidenced by the global community facing the rise of billionaires on the Internet or sports stars.

RECOMMENDATIONS

First and foremost, the objective of OIC as an international organization should be the creation of legally binding

instruments such as charters with the likes of the African Youth Charter (AYS) or the Ibero-American Convention on the Rights of Youth (ICRY). This document should define youth within the context of OIC countries and establish their inalienable rights. While some of the papers might repeat the UDHR and Convention on the Child's Rights, they will serve a purpose not addressed before. One of the main functions of the document should be binding member countries to amend their constitutions to include legal norms addressing youth rights or adopting a separate national legal document addressing the right of youth.

While AYC and ICRY are outstanding achievements that clarify youth rights within the concept of human rights, even they lack monitoring and enforcing mechanisms, which makes them ineffective. Upon establishing Youth Charter OIC needs to create measures to monitor the progress in the area of youth rights. UN has created a committee to oversee the application of its nine conventions in practice. Similarly, OIC could form a committee to oversee the application of the new charter on youth rights in its member countries.

This would allow OIC to share its experience and expertise in protecting one of the vulnerable layers of society with the global community. As is the case with regular teaching, OIC might as well end up with more expertise from this project than its own at the outset. Below are several issue-specific recommendations:

(a) Create an OIC Youth Action Program administered, organized, and implemented by a youth council composed of members of the OIC countries. The OCI PAY should establish regional offices in each member country to publicize its presence and put in place actions adapted to the main challenges faced by youth in certain countries. For example, while literacy programs may be a major focus in Niger, Guinea, and Benin, opportunities for higher education, scholarships, and sports programs may prevail in Uzbekistan and other countries. in Kazakhstan.

(b) create a platform to organize information on education and the labor market in OIC countries and non-OIC countries for OIC youth. Currently, one of the main drivers of unemployment and, at the same time, the main obstacle to the slowdown of private sector growth in the OIC countries in terms of the human skills provided by potential employees and demands made by the companies for the type of human resources needed. This platform will also help create non-formal education and training programs.

(c) establish non-formal training programs, internships, and skills in cooperation with local and international companies, sports organizations, and cultural centers.

d) create bridges for student exchanges between higher secondary education institutions and universities among the OIC countries linking them to educational institutions and administering exchange programs

(e) Foster the expansion of employment and private sector businesses by creating funds for young entrepreneurs. Risk behaviors should be encouraged as OIC youth and Muslim youth, in particular, are raised in an atmosphere of risk aversion.

(f) create drug awareness programs in all OIC countries by unifying efforts to combat the spread of drug use and aim at the total elimination of drug use and

(g) create high-tech hubs to ensure a healthy transition of high-tech jobs and jobs without the usual problems of technology dependence. In addition to the work/life balance, people currently struggle with a technology/life balance. Although there is no future without technology, youth should be aware of both the use and the misuse of technology.

(h) develop electronic materials and counseling for youth with mental health issues.

(i) continue and encourage the holding of the consultation frameworks, especially at the high level (ministerial conference) and consider the effective implementation of the recommendations and an accountability mechanism.

(j) Advocate with the Member States to carry out the necessary reforms to take into account the specific needs of youth.

(k) Raise awareness among funding institutions such as the IDB to prioritize actions related to the promotion and effectiveness of youth rights.

OIC-IPHRC

FIELD VISIT REPORTS



**REPORT OF THE OIC-IPHRC FACT FINDING VISIT
TO ROHINGYA REFUGEES' CAMPS IN
BANGLADESH TO ASSESS HUMAN RIGHTS
SITUATION OF ROHINGYA MUSLIM MINORITY IN
MYANMAR**

Adopted by the 13th IPHRC Regular Session - April 2018

INTRODUCTION AND BACKGROUND OF THE OIC-IPHRC MANDATE AND FACT-FINDING MISSION:

The Organization of Islamic Cooperation (OIC) Summit and Council of Foreign Ministers (CFM) mandated Independent Permanent Human Rights Commission (IPHRC) through various resolutions (Res 34/ -EX (IS), Res. EX-CFM/2017, Res 144-/IPHRC, and Res 444-/MM) with the task to examine the situation of the Rohingya Muslim minority in Myanmar. Accordingly, the Commission has placed this subject as a priority item on its agenda and regularly discusses the matter during its regular sessions. It also constituted a Working Group to examine the human rights situation in Myanmar, which has made multiple recommendations to the OIC Member States and international community to protect the rights of Rohingya Muslim minority.

IPHRC is also engaged in activities to raise awareness about the human rights violations committed against the Rohingya Muslim minority and has been raising the issue regularly during its participation at the international fora, including the UN Human Rights Council. It has issued multiple press releases on the issue at various occasions and continues to explore opportunities to cooperate with all concerned stakeholders to undertake joint actions to mitigate the worsening human rights and humanitarian situation on the ground.

As mandated by the CFM, since 2014, IPHRC approached the Government of Myanmar to provide access for a fact-finding visit to Myanmar to freely and objectively ascertain the human rights situation. In the absence of any positive response from the Myanmar authorities, IPHRC did explore alternative options to visit Rohingya refugees' camps in neighboring countries, such as Malaysia, Thailand and Bangladesh to investigate the allegations of human rights violations. Upon the invitation of the Government of the People's Republic of Bangladesh, the Commission decided to visit the refugees' camps of the forcibly displaced Rohingya Muslim minority in Cox's Bazar to interact with the victims and other stakeholders to get first-hand information on the state of human rights violations faced by them in Myanmar and to present a report on the subject to the CFM with concrete recommendations on possible ways to address it comprehensively. IPHRC extends its deep appreciation to the Government of Bangladesh for granting its delegation unfettered access and making necessary logistical arrangements to visit the refugee camps.

METHODOLOGY OF THE REPORT AND THE FACT-FINDING VISIT:

Since 2014, IPHRC endeavoured to gain direct access to the Rohingya communities in Rakhine State to investigate the human rights situation on the ground, however, due to non-cooperation of the Myanmar government, repeated requests to visit Rakhine State could not materialise. The substantive research for this report was carried out between October-December 2017, which included extensive review of legislation, available reports and historical records, academic literature, as well as review of photographs, videos and other documentation. This was followed by a fact-finding mission to Rohingya refugees' camps in Cox's Bazar in Bangladesh from 26- January 2018 where the delegation interacted with the refugees, civil society, Media and government functionaries to obtain first-hand information about the state of human rights in Myanmar.

The IPHRC delegation to Cox's Bazar included Dr. Rashid Al Balushi (Chairperson) and members Mr. Med Kaggwa, Dr. Raihanah Abdullah, Amb. Abdul Wahab, Mr. Mahmoud Afifi and Mr. Adama Nana. Besides officials from the OIC General and IPHRC Secretariats, Amb. Muhammad Zamir, member elect of IPHRC, also accompanied the delegation. The delegation interviewed dozens of Rohingya refugees displaced from Rakhine State, Myanmar, to Cox's Bazar, Bangladesh. All interviews were conducted in person on 4th and 5th January 2018. All interviewees were informed about the nature and purpose of the IPHRC fact finding mission as well as how the information provided by them would be used. Oral consent was obtained from them prior to the start of the interview and recording. No incentives were provided to interviewees in exchange for providing the information.

The Commission had to surmount the gigantic task of collating reliable data and information as the locus of human rights violations existed in the Rakhine State of Myanmar. Therefore, while compiling this fact-finding report, besides first-hand

information from the victims, witnesses and refugees who have fled from the Rakhine State to Cox's Bazar in Bangladesh, IPHRC has consulted and referred to the data reported by the independent human rights bodies and multiple UN Agencies working on the ground on both sides of the Myanmar/Bangladesh border as well as data provided by international non-governmental organizations (INGO) representatives, and other relevant stakeholders.

HISTORY OF THE ROHINGYA MUSLIM MINORITY IN MYANMAR

The history of Rohingya Muslims in the Rakhine State region of Myanmar goes back to many centuries. Multiple available historical records suggest that centuries of human migration and settlement helped evolve Rohingya ethnicity in Arakan region¹, presently called Rakhine. Indeed, Rohingyas of Arakan are not a race group per se developed from one tribal group or single racial stock, but they are a mixed people from various races and cultures. Initially, peoples of Indian origin, Bengalis, Arabs, Persians, Afghans, and Central Asians came mostly as agriculturalists, traders, and preachers, mingled with the local people and settled in Arakan. Since 7th and 8th century, Arab Muslim traders travelled to Arakan for business and also preached Islam to the locals.

During 15th to 17th century, south-eastern part of Bengal was intermittently under Arakan Kingdom rule, which allowed unhindered movement of people within the same kingdom. Bengalis (Muslims and Hindus), Burman, Mon, Persian, Mughal, Chinese, Portuguese, Dutch, Japanese, etc. settled in Arakan during the heyday of independent Arakan Kingdom. Hence, all foreign settlers settled by the Arakanese sovereigns before fall of Arakan Kingdom deserve the right of indigenous status. Arakan lost its sovereignty and independence to the Burmese invasion by the end of 1784. Again, the British occupied Arakan in 1826 after the first Anglo-Burmese War in 1824-26. The term Rohingya was first mentioned by famous linguist Francis Buchanan in his work published in 1800 "Comparative vocabulary of the languages of the Burma Empire" to denote some Mohammedans (Muslims) natives of Arakan. Other British historical records account that Muslims in Rakhine existed long before its annexation by the British in 1826.

Rohingyas who settled in Arakan/Rakhine after 1826 were also indigenized well before independence of Burma in 1948. The Government of Burma appointed a Commission of Inquiry on 15th July 1939, headed by Mr. J. Baxter, to examine the question of Indian immigration into Burma. The Commission report was completed in 1940 and included also information and statistics about the Muslim population in Burma. According to Baxter Committee Report, the percentage of Muslim population born in Arakan/Rakhine was 77% in 1931. The report also concluded that all historical records suggest that the Rohingyas were indigenous to Arakan/ Rakhine².

In the 1947 Constitution, as stated in Art 11 (iv), Rohingyas were given "National Registration Certificate" with full legal and voting rights, with guarantees of citizenship on the basis of having lived in the territory of Burma for at least eight out of previous ten years. During the period between 1948 to 1961, Rohingyas had access to higher education, total freedom of movement and livelihood in Burma. They took part in elections, got elected to Parliament and even became Ministers in the Burmese government beside being represented in various political, social, and educational institutions.

However, since the Burmese coup d'état on 2nd March 1962, the Rohingyas have been facing systematic discrimination and exclusion in all aspects of their livelihood, including revocation of their civil and political rights as well as severe restrictions on their access to education and economic opportunities. With the rise to power of Military Junta, a policy of "Burmanization" was implemented as an ultra-nationalist ideology based on the racial purity of the Bamar ethnicity and its Buddhist faith. In 1974, the Military regime drafted a new constitution, which paved the way for formulation of a new citizenship law to redefine criterion for citizenship, naturalization and revocation of citizenship.

Between 1978 and 1991, heavy-handed government campaigns pushed more than 200,000 Rohingya Muslims across the border to Bangladesh, though later under international pressure, the Military Junta had to accept their repatriation.

1 (Arakan was generally referred to as Roshang or Rohang in the Chronicles of Bengal and Tripura Kings. Arab and Muslim writers referred to Arakan as Rakhang or Arkhang).

2 Report on Indian Immigration into Burma by Commissioner James Baxter: http://www.netipr.org/policy/downloads/19390715_baxter-report.pdf

In 1982, the Military Junta issued another discriminatory Act, which denied citizenship rights to Rohingyas. It identified them as foreigners, thus denying them the recognition of their status as an ethnic minority group and rendered them stateless. This was followed by harsh discrimination against them in all aspects of their lives. At the same time, however, in contradiction with the Act issued by the Military, the Rohingyas were recognized as 'members of Myanmar Society' in a joint statement issued by Bangladesh and Myanmar in 1992, allowing repatriation of 236,599 displaced Rohingyas back to their homeland in Myanmar³.

DEVELOPMENTS IN THE SITUATION OF ROHINGYA MUSLIM MINORITY IN MYANMAR SINCE 2012:

Throughout the last decade, the Government of Myanmar has effectively institutionalized discrimination against the Rohingyas. According to World Bank estimates, Rakhine State has been Myanmar's least developed State with a poverty rate of 78 percent compared to the national average of 37.5 percent⁴. This situation of widespread poverty, poor infrastructure, lack of employment opportunities, decades of authoritarian rule and conflict in Rakhine have exacerbated the cleavage between Buddhists and Rohingya Muslims, which at times erupted into conflicts on religious lines. This complicated reality eventually led to major violence in 2012 and further sporadic outbreaks ever since. In order to mask its failure in developing Rakhine State, the government blamed the Rohingyas for the situation, which exacerbated the existing hate campaigns against Rohingya Muslims. Consequently, in June 2012, a renewed wave of religious violence against Muslims left more than 200 dead and close to 150,000 homeless in Rakhine, predominantly Rohingyas. Between 2012 and 2015, more than 112,000 Rohingyas fled, mostly, by boats to Malaysia.

Until 2015, the Rohingyas had been able to register as temporary residents with identification cards, known as White Cards, which the Military Junta issued to many Muslims, both Rohingyas and non-Rohingyas, in the 1990s. The White cards conferred limited rights but were not recognized as proof of citizenship. Rohingyas also continued to participate in all national and local elections till the general elections of 2010. In 2014 the Government of Myanmar held a UN-backed national census, its first in thirty years. The Muslim minority was initially permitted to identify itself as Rohingya, but after Buddhist nationalists threatened to boycott the census, the government decided that the Rohingyas could only register if they identified themselves as Bengali instead. Similarly, under pressure from Buddhist nationalists protesting the Rohingyas' right to vote in a 2015 constitutional referendum, the then-President Thein Sein cancelled the temporary identity cards in February 2015, effectively revoking their right to vote. Accordingly, in the November 2015 elections, which were widely touted by international monitors as free and fair, Rohingyas were neither allowed to participate as candidate nor even as voters. For the first time ever, no Muslims were elected to parliament in Myanmar⁵.

In 2016, Myanmar's first democratically elected government in a generation came to power that raised hopes of the international community for bringing peace and security to its most persecuted Rohingya community. However, this optimism faded soon as the situation of Rohingya continued to worsen with rise in communal tensions and increased targeted security operations by the security forces and extremist Buddhist militants against Rohingyas. Ms. Aung San Suu Kyi, the Nobel Peace Prize laureate and Myanmar's new de facto leader, has been reluctant to advocate for the rights of Rohingya Muslims for fear of alienating Buddhist nationalists, which could potentially pose a threat to the power-sharing agreement with the military. Despite overwhelming evidence of widespread violence and discrimination against Rohingya Muslims, Ms. Suu Kyi has avoided addressing or even condemning these violations. This is clearly seen as a political approach to safeguard her rule and newly acquired position in Myanmar.

To deflect international criticism and convey her desire to deal with the issue in a transparent manner, the Government of Myanmar established in August 2016 an Advisory Commission on ethnic strife led by former UN Secretary-General Kofi Annan. However, this positive development was soon overshadowed by the outbreak of violence. On 9th October 2016, the Myanmar military launched an intense crackdown, which they called "Clearance Operation" in the Rohingya villages

³ In April 1992, a Memorandum of Understanding (MOU) was signed between the Governments of Bangladesh and Myanmar, setting the terms of the repatriation program and allowing limited UNHCR involvement.

⁴ http://www.worldbank.org/content/dam/Worldbank/document/EAP/Myanmar/WBG_SCD_Full_Report_English.pdf

⁵ <https://www.theguardian.com/world/2015/nov/15/myanmars-muslims-win-no-seats-in-new-parliament>

to find the suspects involved in an attack against border posts in Rakhine State that killed nine police officers. The operation triggered an exodus of 87,000 Rohingyas to Bangladesh (UN estimates) and resulted in destruction of thousands of Rohingya homes besides torture and killing of innocent civilians. The extent and severity of human rights violations by the State security forces against Rohingya civilians in Rakhine State have been confirmed by various credible sources including independent media, international human rights organizations and the United Nations. The reported violations included torture, rape and extrajudicial killings of Rohingya Muslims as well as burning of their houses and mosques in Maungdaw Township and other villages in Northern Rakhine State. On 3rd February 2017, a UN report alleged that Myanmar's security forces have waged a brutal campaign of murder, rape and torture in Rakhine State. The report includes statements from victims and eyewitnesses that give harrowing details of unprecedented levels of violence, including burning people alive, raping girls as young as 11 and cutting children's throats⁶.

LATEST MILITARY OPERATIONS AND MASSIVE REFUGEE CRISIS SINCE 25TH AUGUST 2017:

As explained above, since 2012, the situation of Rohingya Muslims in Myanmar has worsened gradually over decades. Military campaigns in the past five years, notably in 2012 and 2016, resulted in the displacement of tens of thousands of Rohingya Muslims from their home towns. However, the military operation launched by the Myanmar Army on 25th August 2017 was unprecedented, which caused the worst ever wave of killings and forced displacement, to date. The unprecedented offensive was launched against the so called Rohingya terrorists, who on 25th August allegedly attacked 20 police outposts and an army base in Rakhine, which resulted in killing of 12 security officials. However, the response by the Myanmar army was both brutal and disproportionate, resulting in indiscriminate violence by State authorities against the wider Rohingya Muslim community, including mass killings, torture, rape and destruction of Rohingya villages.

During the first 19 days of this operation, about 400,000 Rohingya Muslims crossed into Bangladesh to save themselves from the escalating violence and mass killings waged by Myanmar military using gunfire, helicopters and rocket-propelled grenades against the civilian population. According to multiple reports, including by the international medical charity "Doctors Without Borders", at least 6,700 Rohingya were killed in the first month of attacks⁷. Allegedly, Myanmar's security forces also opened fire on fleeing civilians and planted land mines near border-crossings used by fleeing Rohingyas to Bangladesh. Observers and Media representatives on the ground and satellite images taken during this timeframe confirmed many razed Rohingya villages across northern Rakhine state⁸.

The magnitude of violence evoked overwhelming condemnation from the international community including the OIC and UN Member States, international human rights organizations and civil society actors. The UN High Commissioner for Human Rights described the atrocities as 'a text book example of ethnic cleansing' and Human Rights Watch called these as crimes against humanity⁹. The clashes and exodus, since then, have created what the UN Secretary-General Antonio Guterres called a 'humanitarian and human rights nightmare'¹⁰. Contrary to the claims of the Government of Myanmar, which blamed "terrorists" for initiating the violence, multiple UN and international human rights organizations' reports including the Report of the Advisory Commission of Mr. Kofi Annan (appointed itself by the Government of Myanmar) have repeatedly highlighted and stressed that "if the human rights concerns are not properly addressed, and if people remain politically and economically marginalized, it will provide fertile ground for radicalization, with people becoming increasingly vulnerable to recruitment by the extremists"¹¹.

Instead of paying attention to these well-advised reports, the Government of Myanmar remains in a denial mode and has not taken any concrete action to address the plight of its Rohingya Muslims. In the aftermath of the August 25th military

6 Report of OHCHR mission to Bangladesh:

<http://www.ohchr.org/Documents/Countries/MM/FlashReport3Feb2017.pdf>

7 <http://www.msf.org/en/article/myanmarbangladesh-msf-surveys-estimate-least-6700-rohingya-were-killed-during-attacks>

8 <https://www.theguardian.com/world/2017/sep/19/myanmar-satellite-imagery-confirms-rohingya-village-of-tula-toli-razed>

9 <http://www.un.org/apps/news/story.asp?NewsID=57490#.WnbJUaiWaUk>

10 <https://www.un.org/press/en/2017/sc13012.doc.htm>

11 <http://www.rakhinecommission.org/the-final-report/>

operation, Aung San Suu Kyi denied that ethnic cleansing took place. She dismissed international criticism of her handling of the crisis and accused the critics of fuelling resentment between Buddhists and Muslims in the country. In December 2017, the Government of Myanmar again denied access to the UN Special Rapporteur on human rights in Myanmar, Yanghee Lee, and suspended cooperation for the remainder of her term. On 5th December 2017, the UN Human Rights Council (HRC) held a Special Session on human rights situation in the Rakhine State of Myanmar and issued a strong worded resolution that condemned the alleged systematic and gross violations of human rights and abuses committed against persons belonging to the Rohingya Muslim community and other minorities in Myanmar and called upon the Government of Myanmar to take immediate steps to address these concerns. However, Myanmar dismissed this resolution as unfounded criticism and also reiterated its refusal to cooperate with an earlier Fact-Finding Mission appointed by the HRC¹².

The increasing international criticism against Myanmar's human rights violations, is echoed in various U.N resolutions on the human rights situation in Myanmar (Third Committee and HRC resolutions), reports of the relevant UN Special Rapporteurs as well as in the UN Security Council. This strong international reaction forced Myanmar to sign an initial deal with Bangladesh for the repatriation of hundreds of thousands of Rohingya Muslims who fled violence in Rakhine state. Contrary to the earlier statements by the Head of the country's military, the Government of Myanmar also pledged that there would be no restrictions on the number of Rohingyas allowed to return. Rohingya refugees, however, remain very reluctant to return due to lack of trust in the pronouncements of the Government of Myanmar and for fear of persecution on return.

OBSERVATIONS OF THE OIC-IPHRC FACT-FINDING VISIT ON THE HUMAN RIGHTS VIOLATIONS AGAINST ROHINGYA MUSLIMS IN MYANMAR:

The ongoing humanitarian crisis resulting from latest Myanmar military operations against Rohingya civilians has caused suffering on a catastrophic scale. By the end of 2017, there have been nearly one million Rohingya refugees in Cox's Bazar – of whom 700,000 have arrived since 25 August 2017, added to the 300,000 who came after similar waves of violence in the past. This means that more Rohingyas now live in Bangladesh than in their homeland. Not only the pace of new arrivals since 25 August 2017 has made this the fastest growing refugee crisis in the world but the concentration of refugees in Cox's Bazar is now amongst the densest in the world. Refugees arriving in Bangladesh—mostly women and children—are traumatized, and some have arrived with serious injuries caused by gunshots, shrapnel, fire and landmines. But everyone has a story to tell that includes some of the worst forms of human rights violations suffered over a long time.

During the OIC-IPHRC Fact Finding visit to Rohingya Refugees' Camps in Cox's Bazar, IPHRC delegation had the opportunity to meet and discuss in detail with the Rohingya refugees the sordid state of human rights situation faced by them in Myanmar. The horrifying tales of human rights violations narrated by the Rohingya refugees, included systematic and systemic discrimination which denied all sorts of civil, political, economic and social rights to them. In addition, innocent civilians including women, children and elderly, endured widespread and indiscriminate violence in the form of torture, rape and extrajudicial killings. Eye witnesses also provided poignant details of dreadful events of August 2017, when in the garb of pursuing the attackers of two security posts, hundreds of Rohingya villages were torched and thousands of innocent civilians were tortured and brutalized by the Myanmar military using helicopters and rocket propelled grenades.

Some of the worst forms of violence, including extrajudicial killings, torture, rapes and forced displacement have been committed against the Rohingya women and children. IPHRC delegation received first-hand information from victims who suffered these violations and fled to Cox's Bazar. Many Rohingya women narrated in tears how they, including the young girls were gang-raped by soldiers. Some of them also shared the horrific accounts of witnessing their family members killed, thumping the heads of their children against trees, throwing children and elderly parents into burning houses, and shooting their husbands. Based on multiple reliable reports¹³, these widespread violations in particular

¹²<http://www.ohchr.org/EN/HRBodies/HRC/SpecialSessions/Session27/Pages/27thSpecialSession.aspx>

¹³ <https://www.hrw.org/report/2017/16/11/all-my-body-was-pain/sexual-violence-against-rohingya-women-and-girls-burma>

sexual violence against women and children, especially girls, are systematic, multidimensional and part of the organized campaign of ethnic cleansing, which falls in the category of crimes against humanity under international law.

The IPHRC delegation also met with the officials from relevant UN human rights and humanitarian agencies, representatives of international human rights organizations and local government / civil society actors, who all confirmed receiving similar accounts from victims who fled their homes in Myanmar to save their lives. Accordingly, based on the first-hand information acquired from the direct victims and eye-witnesses accounts, which were repeated/confirmed by separate groups of victims in different camps as well as widely reported in relevant human rights reports by reputed organizations, the IPHRC delegation was able to conclude that there exists sufficient proof of institutionalized discrimination and systematic violations against Rohingya Muslims in Myanmar. The systematic and systemic nature of discrimination can also be dubbed as a form of apartheid, which is considered a crime against humanity under international human rights law. Some of the specific nature of human rights violations narrated by the victims are given below:

1. Violation of the Right to Life

A significant number of Rohingya refugees in Cox's Bazar have reported killing of some of their family members in front of their eyes. However, it is very hard to verify the total number of Rohingyas killed inside Rakhine State because of the complete media censorship by the Government of Myanmar, which includes blocking most international and independent media agencies from verifying the facts in the sieged Rohingya communities and camps of internally displaced Rohingyas in Rakhine State. According to the statistics gathered from multiple sources, reportedly, more than 7,000 Rohingya refugees were killed by the Myanmar security forces in Rakhine State since 25th August 2017. Many refugees also counted details of similar violations as part of their persecuted lifestyle in ghetto communities over past decades.

On 10th January 2018, Myanmar's military admitted that security forces and villagers summarily killed 10 captured Rohingya people and buried them in a mass grave outside Inn Din, a village in Maungdaw, Rakhine State¹⁴. Based on multiple reports about the extrajudicial killings of Rohingya by Military, this rare and grisly admission, seems to be only the tip of the iceberg and warrants serious independent investigation into what other atrocities were committed amid the ethnic cleansing campaign since 25th August 2017.

The systematic killing of Rohingya Muslims in Myanmar expands beyond the latest army operations. As evident from the repetitive refugee crises resulting from violence against Rohingyas in Rakhine State (1977/2012/2001/92-1991/1982/78-) and past reports on human rights situation in Myanmar from multiple international sources, it is clear that these violations are not new, but a continuation of decades old systematic discrimination against Rohingya Muslims. Rohingya refugees informed the IPHRC delegation that while access of Rohingya to hospitals was very limited and restricted for many years, Rohingya women attending hospitals for different ailments were maltreated, often resulting into their death even after simple medical procedures. These consistent and repetitive incidents, which seem to raise the flag about intended killings of Rohingya women, have forced Rohingyas to stay away from hospitals and to use other primitive alternatives for medical treatments, including giving birth at home. Such inhuman treatment not only violates Rohingya Muslims' right to health but also manifests a form of social stratification that clearly falls under contemporary forms of racism and racial discrimination.

2. Torture, cruel, inhuman or degrading treatment or punishment

The full extent of the violations and crimes against Rohingya Muslims in Myanmar resulting from the latest military operation cannot be precisely measured until a UN Fact-Finding Mission and other independent observers are given unfettered access to Rakhine State in Myanmar. However, the refugees who survived the violence and were able to cross over to Bangladesh provide walking evidence of the cruel and inhuman treatment they were subjected to. During the IPHRC interaction with these refugees in Cox's Bazar, they showed the bullet scars and burn and injury marks on their frail

¹⁴ <https://www.amnesty.org/en/latest/news/201801//myanmar-militarys-mass-grave-admission-exposes-extrajudicial-killings-of-rohingya/>

bodies. Dozens of eyewitnesses narrated that no one was spared — men, women, old and young, and children, even infants, were shot at and thrown into the fires by the Myanmar army and Buddhist mobs. When asked why they were attacked, they said it was because they registered themselves in their ID documents as Rohingya, instead of Bengali, which the Government of Myanmar insists on calling them. Multiple credible reports have confirmed these testimonies.

Again, scores of refugees described suffering physical violence as part of their routine life even before 25th August 2017 incidents. Innocent civilians who were forced to live a ghetto life based on their Rohingya ethnicity, were subjected to torture and cruel inhuman treatment on routine basis for not following discriminatory and illegal restrictions imposed on their freedoms of religion, movement and peaceful assembly. By analysing the nature of the systematic military operation, it can be safely stated that these were carried out against the entire Rohingya population of Rakhine State in an apparent attempt to permanently drive them out of the country.

3. Destruction of Rohingya Village sby Myanmar security forces:

During its interaction with Rohingya refugees in Cox's Bazar, dozens of eyewitnesses confirmed to IPHRC delegation that the Myanmar army conducted a systematic operation of burning houses and whole Rohingya villages. Multiple victims narrated the manner in which Myanmar army soldiers rendered the Rohingya defenceless by ordering them to hand over all sharp tools and knives to the soldiers and assemble in one area, before putting to fire the whole villages. The accounts included military men who clubbed the baby children and hurled them into fire in front of their mothers. Also, many women were gang- raped and subjected to brutal torture.

These incidents of burning of Rohingya houses and mosques in Maungdaw Township and other villages in Northern Rakhine State, were confirmed through various credible reports from media, reputed international human rights organizations as well as United Nations. As early as December 2016, many satellite images also confirmed that the destruction in Rohingya villages is far greater and at places more than the Government of Myanmar has admitted in its official communications. In early October 2017, Amnesty International revealed evidence pointing to a mass-scale scorched-earth campaign across northern Rakhine State, where Myanmar security forces and vigilante mobs burnt down entire Rohingya villages and shot people at random as they tried to flee. The organization's analysis of active fire-detection data, satellite imagery, photographs and videos from the ground, as well as interviews with dozens of eyewitnesses in Myanmar and across the border in Bangladesh, shows how an orchestrated campaign of systematic burning of Rohingya villages across northern Rakhine State took place for almost three weeks¹⁵.

Contrary to the claims of the Government of Myanmar that it is addressing the situation based on the principle of rule of law, it appears that it is merely deflecting the criticism and remains in a state of denial to address the grave human rights violations. This assumption is strengthened by Myanmar authorities' assertions that civilians were themselves burning their homes to attract attention and that the security forces were merely attacking the militant groups. However, the evidence is irrefutable – the Myanmar security forces sat ablaze Rohingya villages in Northern Rakhine State in a targeted campaign to push the Rohingya people out of Myanmar.

IPHRC delegation, after going through various credible reports and hearing the corresponding testimonies from Rohingya refugees, concluded that attacks on Rohingya villages were planned, deliberate and systematic to deprive the Rohingyas of their homes and living places and to force them to flee to permanently change the demographic composition of the State. Lately, it has been reported that the Myanmar authorities have also changed the names of the burnt sites and villages, which makes it even difficult for the Rohingya refugees to return to and claim their lands through available records.

4. Violation of the Freedom of Religion and belief

Freedom of religion and belief is guaranteed under the international law¹⁶. Despite multiple historic causes of

¹⁵ <https://www.amnesty.org/en/latest/news/201709//myanmar-scorched-earth-campaign-fuels-ethnic-cleansing-of-rohingya-from-rakhine-state/>

¹⁶ Articles 18 of the UDHR and ICCPR and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

discrimination against Rohingya Muslims in Myanmar, it must be recognized that one of the key causes of the current situation is institutionalized discrimination based on religion and race. Historically, during the British-Japan clash during the 2nd World War, Buddhists of Myanmar sided with Japanese whereas Muslims supported the British. Apparently, that animosity has not been forgotten by the Buddhist majority and the Myanmar military. In many of the public declarations, extremist Buddhists and military leaders in Myanmar used religion and race as the main trigger for inciting discrimination and violations against Rohingya Muslims. This goes in line with the statement of Pope Francis who said that Rohingya Minority in Myanmar had been tortured and killed simply because they wanted to live according to their culture and Muslim faith¹⁷.

Multiple Rohingya refugees in Cox's Bazar confirmed to IPHRC that for many years, especially since 2012, the Government of Myanmar imposed arbitrary and unlawful ban on their right to offer their daily prayers and holding Friday congregations in mosques. Instead they were forced to offer it in their houses or secretly in make-shift arrangements within their camps. Military administration used brute force against Rohingya Muslims walking to Friday prayers, especially if they walk outside their camps where they are confined. Scores of witnesses conveyed to IPHRC how their mosques were destroyed and even burnt.

Furthermore, older Rohingya witnesses stated that for many years, the Government security forces, frequently ordered many Muslim communities in Rakhine State to close their religious centres, including mosques, madrassahs, and "moqtobs" (madrassahs), and "hafez khanas" (Qur'an reciting centres). The closures were ordered under the pretext that these centres were not officially registered. However, some witnesses also confirmed that government officials did not allow any madrassah to register officially. It was also conveyed that Myanmar authorities frequently refused to approve requests for gatherings to celebrate traditional Islamic holidays and restricted the number of Muslims that could gather in one place. Rohingya Muslims were only allowed to gather for worship and religious rituals during the major Muslim holidays, and that too under strict vigilance.

The systematic discrimination against Rohingya Muslims because of their faith has been widely reported by many organisations. Rohingya refugees informed IPHRC delegation that they were treated as illegal foreigners and the Government had issued them with "Temporary Registration Cards" (TRC). Myanmar Authorities also insisted that Rohingya Muslim men applying for TRCs to submit photos without beards. Refugees also reported that many Buddhists leaders, endorsed by the military regime, conducted multiple campaigns of enticing Muslims to convert to Buddhism by offering charity or bribery. Indeed, conversion of non-Buddhists, coerced or otherwise, is part of a longstanding government campaign to "Burmanize" ethnic minority regions. These campaigns have frequently coincided with increased military presence and pressure. However, Rohingya refugees stated that all these campaigns have failed miserably.

5. Denial of Civil and Political Rights including Citizenship

Since the military coup of 1962, the Government of Myanmar has effectively denied the Rohingya Muslim minority their political rights and institutionalized discrimination against them through gradual restrictions on all aspects of their lives, including marriage, family planning, employment, education, religious practices and freedom of movement. For example, as narrated by some Rohingya refugees in Cox's Bazar, Rohingya couples are only allowed to have two children, these restrictions have been confirmed in an earlier report¹⁸ by Fortify Rights Organization. Rohingyas must also seek permission to marry, which may require them to bribe authorities and provide photographs of the bride without a headscarf and the groom with a clean-shaven face to humiliate their Islamic customs.

Similarly, the Rohingya Muslims were restricted to their areas and were not allowed to move, relocate or travel outside their designated areas without prior government approval. Majority of Rohingya refugees interviewed by IPHRC were illiterate or had very basic education. On enquiry, it was revealed that they were also subjected to institutionalized

¹⁷ <https://www.reuters.com/article/myanmar-rohingya-pope-int/pope-issues-stinging-criticism-of-myanmars-treatment-of-rohingya-idUSKBN15N120>

¹⁸ www.fortifyrights.org/downloads/Policies_of_Persecution_Feb_25_Fortify_Rights.pdf

discrimination in this sector, where first they were not welcomed, secondly needed to bribe authorities for admission in public schools and lastly were discriminated within the schools vis-à-vis non-Rohingya students. No facilitation was provided for their higher education. Most refugees got basic education in home schools/moqtoqs of their shanty towns.

Most Rohingya Muslims were effectively deprived of their nationality by applying the discriminatory 1982 Citizenship Law. This Law created three categories of citizens: “citizens” (commonly referred to as “full citizens”), “associate citizens” and “naturalized citizens,” each of which affords different rights and entitlements. Section 3 of the 1982 Citizenship Law provides that people belonging to one of the officially recognized “national races” are considered to be full citizens by birth, as are people belonging to ethnic groups that are considered to have settled in the country prior to 1823.

While available official records clearly indicate that Rohingya Muslims inhabited these lands much before the British occupation of 1826, they were excluded from the eight “national races” listed in the Law and were also not included in a list of 135 officially recognized ethnic groups, which was subsequently published by the Government of Myanmar in September 1990. As explained in earlier parts of this report, the institutionalized discrimination worsened overtime and the minimal right to vote has also been taken away from Rohingyas. In November 2015, while the world celebrated the holding of first democratic elections in Myanmar, since the end of military rule, Rohingyas were not allowed to participate either as candidates or as voters.

The International Advisory Commission on Rakhine State led by Kofi Annan in its final report published on 24th August 2017, called for the review and revision of Myanmar’s Citizenship Law and to end all restrictions on its Rohingya Muslim minority to prevent further violence in the beleaguered region. The report also states that the Government of Myanmar has actively supported the drive towards segregation between Rohingya Muslims and Buddhists in Rakhine State¹⁹. A number of recommendations in this report focus on the Myanmar’s citizenship verification process for Muslims, their rights and equality before the law, their freedom of movement, and the situation of those who are confined to internally displaced persons (IDP) camps. The Advisory Commission also advised the Government of Myanmar to take concrete steps to end enforced segregation of ethnic Rakhine Buddhists and Rohingya Muslims; allow unfettered humanitarian access in Rakhine; address the statelessness of the Rohingyas; hold accountable those who violate human rights and end restrictions on the Rohingya’s freedom of movement²⁰.

6. A System of Apartheid: Ethnic Cleansing and Genocide

Under the International Convention on the Suppression and Punishment of the Crime of Apartheid and the Rome Statute of the ICC, apartheid is defined as a crime against humanity covering a range of acts, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and with the intention of maintaining that regime²¹. Specific acts committed in this context and criminalized as apartheid range from openly violent ones such as murder, rape and torture to legislative, administrative and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and to deny them basic human rights and freedoms. All these conditions are aptly met in the case of the treatment of Rohingya Muslims in Myanmar.

Also, based on the testimonies recorded from a wide range of Rohingya victims taking refuge in Cox’s Bazar, which include systematic violations of the range of civil, political, economic, social and cultural rights of Rohingya Muslims, over a protracted period of time, the IPHRC believes that the human rights situation faced by Rohingya Muslims in Myanmar bears the hallmark of an organized campaign of ethnic cleansing, which is a crime against humanity under the international law. The international community is duty bound to take all possible steps to put an end to this situation, forthwith.

Murder, torture, rape, forced displacement/ transfer of population, enforced disappearance and other inhuman acts committed by Myanmar security forces against its Rohingya population, particularly in October 2016 and August 2017,

¹⁹ Final Report of the Advisory Commission on Rakhine State, page 50.

²⁰ http://www.rakhinecommission.org/app/uploads/201708/FinalReport_Eng.pdf

²¹ <http://www.un.org/en/genocideprevention/crimes-against-humanity.html>

are added manifestations of their crimes against humanity. One of the foundational elements of the discrimination and persecution of the Rohingya is the denial of their right to nationality (enforced through 1982 Citizenship law), which coupled with the government's denial of their identity as an ethnic minority of Myanmar and the persistent reference to them as "foreigners" or "Bengalis" falls into the realm of racism and racial discrimination. This in turn has enabled and facilitated a system of severe restrictions on the Rohingya's freedom of movement, which have expanded in scope and severity since the violence of 2012.

In a legal analysis of the human rights situation in Myanmar's Rakhine State, the Allard K. Lowenstein International Human Rights Clinic at Yale Law School has found strong evidence of genocide against the Rohingya population²². The 65-page legal analysis released in October 2015 found that the record of anti-Rohingya rhetoric from government officials and Buddhist leaders, the policies that specifically target Rohingya and the mass scale of the abuses against Rohingya, all provide strong evidence that each of the three elements of genocide have been present in the overall situation of Rohingya in Rakhine.

7. State of Rohingya Refugees from Myanmar in Cox's Bazar

The IPHRC delegation visited refugee camps in Cox's Bazar namely Kutupalong and Balukhali. As witnessed and conveyed by relevant authorities, despite the signing of a Repatriation Agreement (23 Nov 2017) between Myanmar and Bangladesh, the influx of refugees was continuing, which manifested their persistent plight for safety in Rakhine.

IPHRC delegation also visited the Tomru border area, which is a No Man's Land between Myanmar and Bangladesh, where in a short strip of land thousands of Rohingya refugees are taking shelter. Representative of Bangladesh Border Security Force (which is providing them the humanitarian assistance), narrated the horrific details of these refugees' struggle to reach this area after crossing the heavily guarded zones of barbed fire and landmines from Myanmar under constant hostile fire. Relevant Bangladesh authorities also conveyed that these refugees would soon be transferred to the regular refugee camps.

The delegation also interacted with both the local and international humanitarian stakeholders, on the ground, who explained in detail the ongoing humanitarian operation. At the same time, they urged the OIC and its Member States to lend their full support in various forms to alleviate the suffering of the Rohingya refugees who left their country, in most cases, with nothing except clothes on their bodies and some identity documents.

It is worth noting that the refugees' camps have been established in an area stretching along the border with Myanmar in a valley which previously had a lot of wildlife and a great number of trees and lakes. However, due to heavy influx of refugees in a short period of time, the ecology of the area has faced extensive damage as most of the bamboo trees have been cut to build the makeshift huts for the refugees and for use as firewood. One of the key fears expressed by Bangladeshi officials is that the situation might worsen during the monsoon season, which will bring about landslides and heavy floods unless more engineering works were carried out. Additional resources are, therefore, critically needed as Bangladesh, despite its best efforts, would not be able to cope with the massive humanitarian challenge during the upcoming rainy season.

While the situation of refugees and their stories were heart-wrenching, it was pleasing to note that the Government of Bangladesh is striving its best to facilitate the Rohingya refugees and facilitating the orderly management of humanitarian relief operation. One must also acknowledge and pay tribute to the generosity and compassion of the host communities in Cox's Bazar in providing shelter and sharing their personal – in many cases limited – resources to help the Rohingya population who fled from Myanmar for the fear of their lives and dignity.

Most of all, one is squarely humbled by the resilience and strength shown by the Rohingya refugees, women and children who survived the hardest conditions of discrimination and persecution one can imagine. At the same time, however, the

²² Persecution of the Rohingya Muslims: Is Genocide Occurring in Myanmar's Rakhine State? – A Legal Analysis: <https://law.yale.edu/system/files/documents/pdf/Clinics/fortifyrights.pdf>

visiting delegation noted with regret the abysmal psychological state of refugees, who were visibly shattered by the horrific violations faced and witnessed by them in the recent past. Most of them, when asked about their willingness to return, frightfully refused to return unless fool proof guarantees were provided for their safety and basic human rights.

CONCLUSION

Based on its research, including following up of the crisis since 2012, as well as first-hand testimonies received from the victims in Cox's Bazar, the IPHRC fact-finding Mission concluded that the discrimination against Rohingya in Rakhine State is multi-faceted and systemic. They have been systematically stripped of their citizenship, discriminated against and increasingly marginalized in the economic, social and political spheres. Despite their centuries old presence, Rohingyas are still not accepted as full members of Myanmar society and are often labelled as foreigners or illegal migrants. An intersecting collection of discriminatory laws, regulations, policies and practices, form a central part of a State machinery of oppression, which meets the definition of apartheid a crime against humanity under international law.

Recent horrific human rights violations since October 2016 and more severely since August 2017, resulted in arson attacks against Rohingya villages - forcing their mass scale displacement; ill treatment and torture; rape and extrajudicial killings of civilians. However, all these horrible crimes were perpetrated with ease as these are conducted in the backdrop of decades of state-sponsored persecution and negative stereotyping of Rohingya Muslims on the basis of their ethnicity and religious beliefs. The unending misery and plight of Rohingya Muslims in Myanmar are a matter of grave concern for the entire international community, in particular all Muslims around the world. While affirming the culpability of the Government of Myanmar for the dire human rights situation faced by the Rohingya Muslims, one must also acknowledge that this situation could have been avoided or at least its magnitude could have been reduced if the international community acted decisively on time when the wave of violations committed by the Government of Myanmar were reported back in 2012. It is indeed clear that the tragic events of August 2017 were the tipping point of the injustices and violations long endured by the Rohingyas and inaction by the rest of the world.

Sustained OIC and international pressure has forced Myanmar to sign a framework agreement with Bangladesh for the repatriation of Rohingya refugees on 23 November 2017. There, however, are many loopholes in this agreement, which must be fixed to ensure their safe and dignified return. Most importantly, there is a need to take a range of steps to assuage the concerns of petrified Rohingya refugees, who are unwilling to return without firm guarantees for their safety. The IPHRC fact-finding mission to Cox's Bazar discovered details of the egregious human rights violations committed against the Rohingyas in Myanmar, which substantiate allegations of deplorable discrimination on the basis of their race, religion and origin in all spheres of life including their socio-economic, civil and political rights. The Commission, therefore, concludes that, despite IPHRC's inability to physically visit the Rakhine State and investigate (due to Myanmar's refusal to allow such a visit), there is a considerable body of empirical and circumstantial evidence, which lends credence to the allegations of human rights violations by the Myanmar security forces against unarmed and innocent civilians, resulting into torture, rape, extrajudicial killings and forced displacement. Based on the available data and findings of the field visit, the Commission also considers that real scale of violations and atrocities in Myanmar is far more serious and grave than what was heard from the victims. The extent and severity of these violations have rightly obliged the UN High Commissioner for Human Rights to describe these as "text book examples of ethnic cleansing" and forced other human rights NGOs to call these as "crimes against humanity". IPHRC extends its sincere appreciation to the Government of the People's Republic of Bangladesh for the unfettered access and full logistical support provided to its delegation to visit Rohingya refugees' camps in Cox's Bazar, enabling it to undertake its mandated task with objectivity and neutrality. The Government of Bangladesh also deserves praises for the large-scale humanitarian assistance provided to the Rohingya refugees in an organized and consistent manner.

RECOMMENDATIONS

For the Government of Myanmar

- Take immediate and effective actions to put an end to all forms of human rights violations against innocent and unarmed Rohingya Muslims in Rakhine State and other parts of the country. To this end, the Government of Myanmar must initiate urgent, transparent and impartial investigations of all the allegations of human rights violations and swiftly bring to justice the perpetrators of these violations.
- Revise and replace all discriminatory policies and practices against its Rohingya population, and to take concrete steps to address root-causes of deprivation and discrimination of the Rohingya, including the core issue of right to nationality /citizenship and long-standing challenges to social and economic development through a human rights-based approach.
- Immediately allow its forcibly displaced Rohingya population in neighbouring countries, especially the over one million Rohingya refugees in Bangladesh, to return to their homeland in Rakhine State. It is critical for Rohingya to feel secure before returning to their homeland, hence, necessary steps must be taken to ensure their protection and guarantees for a dignified life on return. IPHRC recommends that the minimum conditions for any repatriation program must include a sustainable and voluntary return of Rohingya refugees in safety, security, dignity and with ensured livelihood including the provision of their fundamental human rights such as freedom of religion, movement and equal access to socio economic opportunities.
- Allow free and unfettered access to humanitarian aid agencies, facilitate UN and OIC fact finding missions for independent investigations into all alleged violations of international human rights law with a view to addressing these comprehensively.
- Address the disinformation/hate campaigns against Rohingya Muslims both in the public spaces and official media as well as initiate an inclusive and sustained interfaith dialogue process to foster peace and harmony between affected communities. To this end, the establishment of the long promised OIC Humanitarian office in Rakhine²³ will greatly help both the Myanmar and OIC countries.
- Immediately and positively implement the recommendations of the International Advisory (Kofi Annan) Commission on Arakan/Rakhine State. These include the longstanding demands to the Government of Myanmar by the international human rights community on issues of citizenship, freedom of movement, Internally Displaced Persons, unhindered humanitarian and media access, provision of education, health, and other development issues that are crucial to prevent violence, maintain peace, foster reconciliation and offer a sense of hope to the State's hard-pressed Rohingyas.

For the OIC, the UN and the International Community:

- IPHRC urges all OIC Member States, especially neighbouring countries of Myanmar to continue to engage and urge the Government of Myanmar to uphold its obligation of ensuring the promotion and protection of human rights of all its citizens in particular its persecuted Rohingya Muslim minority. OIC countries should also continue to raise these concerns at all appropriate international forums including the UN Human Rights Council in Geneva, UN General Assembly and the Security Council in New York.
- The Commission called upon the international community in general and OIC Member States in particular to do all they can to engage Myanmar to fulfil its international human rights obligations towards its Rohingya minority in a concrete and time bound manner, to abide by its obligations under international human rights law and to prevent further deterioration of the crisis in Rakhine state.

²³ https://www.oic-oci.org/upload/documents/acm_2017_rohingya_rep_en.pdf

- IPHRC also urges the international community in particular the OIC countries to extend all out humanitarian assistance to the Rohingya population both internally displaced in Myanmar and those living in refugee camps in neighbouring countries.
- OIC should expedite the appointment of its Special Envoy on Rohingya, who should actively coordinate with relevant UN and international counterparts to duly highlight the plight of Rohingya as well as work with Myanmar government for a durable solution of Rohingya crisis through dialogue and development.
- The OIC Contact Group on Rohingya should utilize the opportunity of upcoming OIC CFM in Bangladesh to visit Cox's Bazar; deliberate on this issue in detail and make concrete recommendations on the subject.

For the IPHRC:

- The Commission should continue to closely follow the human rights situation of Rohingya Muslims; raise awareness about human rights violations against them in Myanmar and to do all it can to mitigate their sufferings in cooperation with the relevant regional and international human rights actors and stakeholders.
- IPHRC may continue to regularly brief the OIC Contact Group on Rohingya about the latest human rights situation in Rakhine State. IPHRC may also coordinate with OIC Missions in New York and Geneva to circulate the findings of this report widely with the UN and human rights organizations.

**FACT FINDING REPORT OF THE SECOND OIC-IPHRC
VISIT TO THE
STATE OF AZAD JAMMU AND KASHMIR TO ASSESS
THE HUMAN RIGHTS SITUATION IN THE INDIAN
OCCUPIED KASHMIR**

Adopted by the 18th IPHRC Regular Session - November 2021

Introduction

Jammu & Kashmir is one of the oldest internationally recognized disputes on the agendas of the UN Security Council (UNSC) and the Organization of Islamic Cooperation (OIC). UNSC has passed 18 resolutions¹ recognizing the Kashmiris' legitimate right to self-determination; a right India has denied through an occupation force of over 900,000 making Indian Occupied Jammu and Kashmir (IOJK) the most militarized zone in the world.

Mandate of the Fact-Finding Mission

The 43rd OIC Council of Foreign Ministers (CFM) through its resolution no.843-/Pol and no.5243-/Pol², while welcoming the establishment of a *“Standing Mechanism to monitor human rights violations in the IOJK”* requested the IPHRC to undertake a fact finding visit to IOJK to ascertain the human rights situation and report its findings to the OIC CFM. Based on this specific mandate, OIC-IPHRC, in July 2016, approached the Indian Government to facilitate IPHRC fact-finding visit to IOJK. However, to this day, this request remains unheeded. A similar letter, written by the OIC General Secretariat to the Government of India concerning the OIC fact finding visit to IOJK, also remains unanswered. In the backdrop of this non-responsiveness from the Indian Government, the Commission discussed the matter in its 9th and 10th Regular Sessions³ and it was decided that IPHRC should at least visit Azad Jammu Kashmir (AJK) in Pakistan to meet with the refugees from IOJK to ascertain the human rights situation in the IOJK. A similar suggestion was also made by the Special Representative of the OIC Secretary General on Jammu and Kashmir after his visit to AJK in May 2016⁴.

While the OIC-IPHRC continued impressing upon India to allow a fact-finding visit to IOJK, without any success, the Government of the Islamic Republic of Pakistan took the initiative to invite the OIC-IPHRC to visit AJK and meet with the refugees from IOJK, political leadership, media and civil society. In the backdrop of these developments, the OIC-IPHRC delegation, in compliance with the CFM mandate, undertook a three-day visit to the AJK from 27-29 March 2017, and produced a comprehensive report based on the first-hand data gathered by the IPHRC delegation and other authentic independent sources. It was the first ever report factfinding report published by an intergovernmental human rights organization investigating the human rights violations in IOJK. The findings of the IPHRC's 2017 report were confirmed by the relevant reports of the Office of the High Commissioner for Human Rights (OHCHR) issued in June 2018⁵ followed by its update in 2019⁶.

While endorsing the IPHRC's first report, the 47th Session of the OIC Council of Foreign Ministers (CFM) denounced India for continuing to deny access to IPHRC and other international bodies to IOJK including the request made by the OHCHR to establish a Commission of Inquiry to ascertain the human rights violations in IOJK. The IPHRC report inter alia voiced its grave concerns over gross human rights violations in the IOJK including the denial of the fundamental right to self-determination to the Kashmiris, guaranteed by international law and promised by various UN Security Council Resolutions.

As the human rights violations in the IOJK continue to worsen, the 47th CFM mandated the IPHRC to submit an updated

¹ All resolutions of the UNSC on the issue of Kashmir can be accessed here:

https://www.securitycouncilreport.org/un_documents_type/security-council-resolutions/?ctype=Jammu%20and%20Kashmir&cbtype=jammu-and-kashmir

² The full text of the Resolution is accessible here: <https://www.oic-oci.org/docdown/?docID=6626&refID=3255>

³ Reports of the IPHRC 9th and 10th Regular Sessions held in April and November 2016

⁴ https://www.oic-oci.org/topic/?t_id=11171&ref=4392&lan=en

⁵ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23198>

⁶ https://www.ohchr.org/Documents/Countries/IN/KashmirUpdateReport_8July2019.pdf

report on the situation to the 48th Session of the CFM⁷. In accordance with this mandate, IPHRC conducted a second visit to the AJK from 48- August 2021. During this visit the IPHRC delegation focused on the human rights situation from March 2017 onwards, with a special focus on the period since August 2019, when India illegally revoked its constitutional provisions to change the special status of the occupied territory of IOJK, in total violation of the international human rights and humanitarian laws.

There are three dimensions of the Kashmir dispute: the first and foremost is the legal / political dimension concerning the respective claims of the Governments of India and Pakistan regarding the territorial jurisdiction of the State of Jammu and Kashmir, which is recognized by relevant international institutions as a legal dispute over a territory and its people that has the right of self-determination. Secondly, the dimension of peace and security that makes the issue of Kashmir a critical dispute that has the potential to threaten the peace and stability in the region of South Asia with dangerous consequences on the global peace and security as both India and Pakistan are nuclear States. Thirdly, the human rights dimension i.e., the widely reported serious allegations of human rights violations by the Indian security forces and civil administration in total disregard of the prevailing international human rights and humanitarian laws, which is the main concern of the OIC-IPHRC. International human rights organizations including Indian civil society organizations and Media have extensively reported about the systemic and systematic human rights violations in the IOJK, which are a cause of continuing concern both for the OIC and the wider international human rights community.

The OIC IPHRC, as mandated, is exclusively concerned with the human rights aspect of the dispute and has accordingly focused on this aspect in both its reports. This latest report has particularly focused on:

- a) providing an update on its first report and assessing the current human rights and humanitarian situation in the IOJK in the light of prevailing international human rights laws and standards;
- b) first hand investigation of the reports about allegations of human rights abuses by the Indian Occupation forces in the IOJK, particularly after the illegal actions by India since 5 August 2019; and
- c) making recommendations to various stakeholders on the need to protecting the fundamental human rights of the Kashmiris.

Visit Program and Sources of Information:

The Commission, during its four day visit met with a cross section of Kashmiri political leadership, including All Parties Hurriyat Conference representatives (a coalition of political parties' representatives from the IOJK), Kashmiri refugees from IOJK, victims (of human rights violations in IOJK), witnesses and their families as well as victims of Indian shelling and firing living in the AJK side of the Line of Control (LoC), representatives of the UNMOGIP Office in AJK, media and civil society, as well as relatives of the Kashmiri political leaders, who have been incarcerated in New Delhi's Tihar Jail without due legal process or the opportunity of a fair trial⁸. In addition, the delegation met with the political leadership and concerned officials of the Governments of Pakistan and State of the AJK. The Commission appreciated the unfettered, open and transparent access provided by the Governments of Pakistan and the State of AJK to undertake its mandated task with objectivity and neutrality.

OBSERVATIONS/FINDINGS OF THE OIC-IPHRC OVER THE HUMAN RIGHTS VIOLATIONS IN THE IOJK:

The Commission had to surmount the gigantic task of collating reliable data and information as the locus of human rights violations against the Kashmiris was in the in-accessible IOJK and also because of multidimensional nature of such violations. As an independent expert body, IPHRC's views presented in this report are based on facts and the grim realities existing on the ground. Therefore, while compiling this report, besides first-hand information gathered from the victims, witnesses and refugees who have fled from the IOJK, including Kashmiri leadership and other concerned persons, the Commission has relied extensively on the data reported by the independent human rights bodies, including the Office of the High Commissioner for Human Rights (OHCHR), Amnesty International (AI), Human Rights Watch (HRW), Médecins Sans Frontières (MSF), International People's Tribunal on Human Rights and Justice in Indian-Administered Kashmir

⁷ Details of the mandate of the Resolution No. 1047-/POL on the Jammu and Kashmir Dispute are available here: <https://www.oic-oci.org/docdown/?docID=6626&refID=3255>

⁸ <https://www.aljazeera.com/news/2020/9/4/jailed-kashmiri-separatist-yasin-malik-being-denied-fair-trial>

(IPTK), Kashmir Media Service (KMS) and the Association of Parents of Disappeared Persons (APDP).

Since the last report of the Commission was released in March 2017, there have been important political and legal developments in IOJK, which seriously impacted the life and livelihood of the Kashmiri population, in what it seems to be yet another phase of human rights violations that aggravated both in nature and intensity.

On 5th August 2019 India unilaterally and illegally, revoked Articles 370 and 35A of the its constitution scrapping the special status of the IOJK (which were providing a legal basis of minimal State's legislative autonomy and restriction of permanent residency status to the indigenous people of Kashmir only)⁹, scrapping the special status accorded to IOJK. This unilateral and illegal step was vehemently rejected and termed as unconstitutional and illegal by the entire Kashmiri leadership in IOJK¹⁰. The revocation of these articles clearly indicated the Indian intention to irreversibly change the demography of the IOJK territory.

Based on these unilateral and illegal actions, the BJP government, in a bid to change the disputed region's demography, has also introduced illegal domicile rules in IOJK to advance its 'Hindutva' agenda. India has reportedly issued over 4 million domiciles to outsider Hindu population to settle in IOJK¹¹. The Indian Government has also introduced new land laws under Union Territory of Jammu and Kashmir Reorganization (Adaptation of Central Laws) Third Order 2020¹², allowing "citizens of India" to purchase non-agricultural land in the IOJK without ever having residency or domicile of the occupied territory. (UN Experts Statement)¹³

OIC-IPHRC, in its earlier press statements¹⁴, categorically stated that these new laws and the unilateral and illegal Indian actions of 5 August 2019 in IOJK will adversely impact the human rights situation, both immediately and in the long term. Particularly, the new domicile law undermines religious, linguistic and cultural identity of Kashmiris and puts employment for native Kashmiris at high risk. India's illegal and unilateral actions of 5th August 2019 were also forcefully rejected by the Kashmiris and the international human rights community as a blatant violation of the international law including the UN Charter, UNSC resolutions and international humanitarian law, especially the 4th Geneva Convention.

Human rights violations reported by the international media and human rights organizations

Since August 2019, India has imposed unprecedented military siege and restrictions on fundamental rights and freedoms of the Kashmiri people in IOJK. While the Kashmiri political leadership remains incarcerated under trumped-up charges, Kashmiri youth are routinely subjected to "fake encounters" and "cordon-and-search" operations by the Indian occupation forces resulting into arbitrary arrests / detentions without any due investigations and extrajudicial killings with impunity. Thousands, including children, have been imprisoned without any charge-sheet or due process¹⁵. In addition, refusal to return the mortal remains of martyrs for proper burial demonstrates a terrible disregard for basic norms of respecting human dignity and decency. A recent illustration of these severe human rights violations was seen at the death (1st September 2021) of popular Kashmiri leader Syed Geelani whose family was not given the right to perform burial rites or to choose his burial site. Indian security forces illegally took away the dead body from his Srinagar house and forced his family to bury him in a different location than the Martyrs' Graveyard in Srinagar¹⁶, which was their original choice.

Based on these unrelenting human rights violations, Kashmir Walla¹⁷, one of the few remaining independent press outlets in Kashmir, summarized the situation in the following words: *"This relentless effort to enforce a silence, criminalize dissent, stop media, [and] disallow any political and society activity on [the] ground can only ensure peace of a graveyard"*.

⁹ <https://www.bbc.com/news/world-asia-india-49231619>

¹⁰ <https://www.aljazeera.com/news/2019/8//india-revokes-disputed-kashmir-special-status-with-rush-decree>

¹¹ <https://tribune.com.pk/story/2304530/over-3m-fake-domiciles-issued-to-non-kashmiris-to-change-IOJK-demography>

¹² <https://www.indiacode.nic.in/handle/12345678912030/?locale=hi>

¹³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26758&LangID=E>

¹⁴ <https://oic-iphrc.org/home/article/457>

¹⁵ <https://www.hrw.org/news/2019/16/09//india-free-kashmiris-arbitrarily-detained#>

¹⁶ <https://thewire.in/rights/how-syed-ali-shah-geelani-body-was-taken-from-his-family-buried-in-haste>

¹⁷ <https://thekashmirwalla.com/peace-of-a-graveyard/>

Reliable sources have reported a significant increase in the level of systematic violence by the Indian Occupation Forces in the IOJK against the Kashmiri civilians since August 2019. Following is a summary of recorded casualties in the IOJK from August 2019 to August 2021¹⁸:

- More than 460 Kashmiris have been killed by Indian Occupation Forces. Out of these around 70 have been killed in fake encounters, extra-judicial operations and in Indian custody;
- Since January 2021 more than 160 Kashmiris have been killed extrajudicially by Indian Occupation Forces;
- In June 2021 alone, Indian Occupation Forces have killed more than 16 Kashmiris in custody, fake encounters or in extra-judicial operations, 169 have been tortured or injured and 81 civilians have been arrested;
- Some 4000 innocent Kashmiris have been tortured and injured and more than 145,039 civilians have been arrested. Around 1022 structures, including private houses, have been destroyed by Indian occupying forces;
- Whereas 21 women have been widowed, 54 children have been orphaned and more than 118 women have been molested or disgraced; and
- Pellet injuries stand at 584, including those who lost their eyesight.

And as stated above, in brazen acts of brutality, even the mortal remains of those killed in fake encounters are not handed over to the families for proper burial.

According to the bi-annual human rights report released by the All Parties Hurriyat Conference, since January 2021, the Indian occupation forces have:

- Conducted 202 so-called 'cordon-and-search' operations;
- Destroyed 58 houses of the Kashmiri people;
- Extra-judicially killed 67 innocent Kashmiris; and
- Arbitrarily detained and arrested 350 Kashmiris.

All these actions have been given impunity under a range of draconian laws such as Public Safety Act (PSA), Armed Forces Special Powers Act (AFSPA) and Unlawful Activities Prevention Act (UAPA)¹⁹.

Imprisonment and torturing of Kashmiri leaders on the basis of their political ideology and struggle against illegal Indian occupation is reflection of the disregard of the human rights of the Kashmiris and the international human rights law by the Indian authorities. With the policy of jailing all Kashmiri leaders who oppose the unilateral measures imposed by India on the Kashmiri population, the IOJK has been turned into the world's largest open prison with severe human rights and humanitarian repercussions for the innocent Kashmiri population²⁰.

IPHRC delegation also noted reports from other credible media sources that provided detailed accounts of incarceration of entire Kashmiri political leadership without any legal recourse, and prosecution of journalists and human rights activists on false charges²¹. Reports also indicated that violence, rape, and molestation of women are widely used as a method of collective punishment by the Indian security forces with impunity due to blanket protection of the draconian laws. These draconian measures show India's blatant attempts to portray the legitimate Kashmiri struggle as "terrorism", and to prosecute its leaders through concocted cases, in a clear violation of the UN Charter, UN Security Council and UN General Assembly resolutions, and international human rights and humanitarian law.

Consequently, the recent actions by the Indian administration in IOJK have been criticized by a number of world parliaments²², global media outlets and international organizations including UN, OHCHR, EU, OIC and others. The severity of human rights violations in IOJK also forced the UNSC to discuss the situation at least thrice since 5th August 2019, which shows the grave concern international community has over this inhuman crisis and its possible repercussions on the regional and global peace and security. Furthermore, many UN experts have called for urgent action

¹⁸ Kashmir media services reported human rights violations and statistics are available at <https://www.kmsnews.org/kms/>

¹⁹ <https://www.indiacode.nic.in/handle/1234567891470/>

²⁰ <https://www.tandfonline.com/doi/abs/10.108001296612.2021.1949841/?src=&journalCode=rmea20>

²¹ <https://oic-iphrc.org/home/article/480>

²² <https://hansard.parliament.uk/commons/202123-09-/debates/BB35EDC2-CCB64-E7D-941B-6E0929F2DC6D/HumanRightsKashmir>

to remedy “alarming” human rights situation in Jammu and Kashmir²³. For instance, five UN Experts have provided details of specific cases of three men about allegations of arbitrary detention, extrajudicial killing, enforced disappearance and torture and ill- treatment committed by the Indian security forces, in a letter that was addressed to the Indian government on 31 March 2021.²⁴

The recent United Nations Secretary General’s (UNSG) Report titled “Children and Armed Conflict”²⁵ also expressed grave concerns on the human rights violations of children in IOJK. The report raises alarm at the detention and torture of children and the military use of schools. It urges the Indian Government to stop associating children with the security forces in any way and take preventive measures to protect children including by ending the use of pellet guns against them.

The UN Special Rapporteurs on Minority issues and on Freedom of Religion or Belief too have voiced their concerns over human rights violations, communication blockade, new domicile laws and demographic changes in IOJK²⁶.

The Human Rights Watch (HRW) in its recent report²⁷ also gave an extensive overview of the human rights violations in IOJK, detailing Indian government’s policies and actions targeting minorities in India and in IOJK. In its report²⁸ titled “The State of World’s Human Rights 2020- 2021” Amnesty International highlighted grave human rights violations being perpetuated in IOJK by Indian Government and its Occupation Forces.

As the IPHRC’s core mandate is to focus on the state of human rights violations in IOJK, the Commission has endeavored to collate all the available information gathered both during the fact-finding visit as well as available from the reliable / credible sources into clusters of specific human rights violations. Accordingly, the next few pages list some of the core human rights, which have been routinely violated and denied to people in IOJK.

A. Violation of the Right to Self-Determination:

The Abrogation of Articles 370 and 35A of the Indian Constitution as a strategy to irreversibly change the demographic composition of Muslim majority in the IOJK

The UN Charter and Article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) reaffirm peoples’ right to self-determination as by virtue of that right people freely determine their political status and pursue their economic, social and cultural development. All of these are fundamental precepts of international human rights law. Here, it may also be recalled that Right to Self Determination is both an individual and collective right of people, exercise of which enables them to freely choose their socio-political and economic destiny and enjoy corresponding rights. Thus, this right is rightly called as the *raison d’être* of international human rights edifice.

The inalienable right to self-determination of the people of Jammu and Kashmir is guaranteed by International Law and promised under numerous UNSC resolutions and agreed by the parties in dispute i.e., India and Pakistan. The UNSC Resolutions 47 of 21 April 1948, 51 of 3 June 1948, 80 of 14 March 1950, 91 of 30 March 1951, 122 of 24 January 1957 and UN Commission on India and Pakistan (UNCIP) Resolutions of 13 August 1948 and of 5 January 1949 all of which, declare that the final disposition of the State of Jammu and Kashmir would be made in accordance with the will of the people expressed through the democratic method of a free and impartial plebiscite conducted under the auspices of the United Nations. The denial of this fundamental right to the Kashmiri people is a serious breach of international law. In terms of Article 25 of the UN Charter, it remains an international responsibility to pressurize India to agree to grant this fundamental right to the Kashmiris who are denied this right for over almost three quarters of a century.

Abrogation of Articles 370 and 35A of the Indian constitution in August 2019 stripped the symbolic special status of the

²³ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26148>

²⁴ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26181>

²⁵ <https://childrenandarmedconflict.un.org/document/annual-report-of-the-secretary-general-on-children-and-armed-conflict-2/>

²⁶ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26758&LangID=E>

²⁷ <https://www.hrw.org/news/2021/08/10/india-gunmen-target-minorities-jammu-and-kashmir>

²⁸ <https://www.amnesty.org/en/documents/pol102021/3202/en/>

IOJK, bifurcating the Occupied State into two parts and annexing it with the Indian Union. While Kashmiris in the IOJK were being denied their fundamental right to self-determination for decades, these illegal constitutional amendments seek to exacerbate this denial by overturning centuries-long demographic identity of Kashmir into a redesigned population map²⁹.

Since August 2019, India has started to gradually disempower the local population and consolidate control through untrammled executive power. While the elections in the IOJK have no legitimacy as these are routinely rejected by the Kashmiri leadership, for over two years now, the IOJK has been without any so-called elected government. All the changes being introduced have been steamrolled by the Indian government rather than being legislated by elected representatives of the people in the IOJK³⁰. Even the pro-Indian politicians were not involved as there is unanimity of views among Kashmiri leadership on the illegality of the recent constitutional amendments and their negative repercussions on the socio-cultural, political and demographic rights of Muslims in IOJK.

Accordingly, India resorted to illegal constitutional and administrative measures to illegally alter the demographic composition of the Muslim majority in IOJK by enacting 'Jammu and Kashmir Grant of Domicile Certificate (Procedure) Rules, 2020' and land laws for IOJK titled, "Union Territory of Jammu and Kashmir Reorganization (Adaptation of Central Laws) Third Order, 2020" causing 'demographic flooding' of non-natives in the IOJK which is a manifest violation of the Articles 27 and 49 of the Fourth Geneva Convention. Indian government has forced law reforms and new regulations to settle non-Kashmiri Hindu citizens in the occupied territory in order to convert its Muslim majority into a minority, and has been actively engaged in gerrymandering to reduce Muslim representation in the state legislature of IOJK. The new law and Indian policies in IOJK closely resemble and are widely equated with the policy of illegal Israeli settlements in the Occupied Palestine³¹ (West Bank) with settlers living among disenfranchised locals. Various analytical reports have also compared the severe impact of these Indian policies on human rights situation in Kashmir with the Israeli settlement policies in Occupied Palestine, which India has adopted in the IOJK.³²

During its visit to AJK, the Kashmiri leadership informed the IPHRC delegation that since April 2020, India has introduced 113 new laws and amended 90 other laws against the rights of Kashmiris that were protected by the revoked articles. Even the administrated body in the IOJK is being changed from Kashmiris to Indians through executive orders by the Indian government. Furthermore, as a consequence of these reforms, the Kashmiri Muslims in the IOJK, who have been the indigenous population of the region for many centuries, risk losing their majority and distinct identity due to the demographic changes³³ being imposed to the occupied territory³⁴, in a clear violation of the 4th Geneva Convention. In a clear attempt to change the demography and to turn the Kashmiris into a minority in their homeland, the Indian government has brought millions of Hindus to the IOJK since April 2020, which is a serious violation of international humanitarian law that prevent orchestrating demography changes in disputed territories. And while the population in IOJK is currently about 6870%- Muslim, the representation in administrative and political institutions is already down to 50% Muslim only.

Several reports indicate that between April 2020 and July 2021, 4.1 million new domicile certificates in the IOJK had been issued to non-Kashmiris brought from mainland India³⁵, while thousands of additional domicile certificates are being issued to Indians. In addition, Indian authorities have been allowing extra seats and extra waterside rights to the Indian citizens in the IOJK. These unprecedented policies are paving the way for the demographic genocide of Kashmiris. Exiled Kashmiri leadership in AJK warned that if the ongoing Indian demographic terrorism is not stopped in IOJK, they feared "there will be no Kashmir to save in two years' time".

These concerns are based on the serious developments on the ground, and reflected in many reports and statements by

²⁹ <https://www.aljazeera.com/news/2019/8//darkest-day-uproar-as-india-strips-kashmir-of-special-status>

³⁰ <https://thewire.in/government/jammu-and-kashmir-land-policy-reform>

³¹ Rana Ayyub, an Indian journalist, put it more bluntly in a tweet: "Kashmir is now Westbank," <https://t.co/5qLAW6lYll>

³² <https://www.aljazeera.com/opinions/2020/6//bringing-the-israeli-model-to-kashmir>

³³ <https://www.usnews.com/news/us/articles/202119-02-/un-rights-experts-concerned-over-indias-changes-in-kashmir>

³⁴ <https://www.aljazeera.com/news/202028/6//kashmir-muslims-fear-demographic-shift-as-thousands-get-residency>

³⁵ <https://tribune.com.pk/story/2304530/over-3m-fake-domiciles-issued-to-non-kashmiris-to-change-IOJK-demography>

international human rights organizations. The Genocide Watch in its latest report³⁶ highlighted that preparation for genocide was definitely underway in India. Explaining the systematic targeting of Muslims, Chairman Genocide Watch stated that, “the persecution of Muslims in Assam and Kashmir is the stage just before genocide. The next stage is extermination – that’s what we call genocide”.

The 8th report³⁷ of the Concerned Citizens group, which visited IOJK in April 2021 also expressed its concerns that there is a sense of alienation reflected by the Kashmiris’ hopelessness at the loss of their identity, division of the territory into two Union Territories, deep anger at the obliteration of the political mainstream and the unfathomable fear of demographic change through revised domicile laws.

These are all serious developments that are carefully crafted to alter the demography of IOJK. These will not only affect the present social, cultural, political and economic rights of Kashmiri Muslims but most importantly their ultimate goal to exercise their right to self-determination would be compromised as they are gradually converted from a majority to a minority in IOJK.

During his visit to Pakistan in May 2021, UN General Assembly President Mr. Volkan Bozkir called on all the parties to refrain from changing the status of Jammu and Kashmir and stated that “a just solution should be found through peaceful means in accordance with UN Charter and UNSC Resolutions on the issue”³⁸.

B. Violation of Right to life

Article 3 of the Universal Declaration of Human Rights (UDHR) stipulates that “Everyone has the right to life, liberty and security of person.” The International human rights law prohibits arbitrary deprivation of life under any circumstances, Article 6 of ICCPR, prohibits derogation from the right to life, even during occasions of emergency. ICCPR Articles 4 and 7, explicitly ban torture even in times of national emergency or when the security of the State is threatened.³⁹

IOJK, with an approximate 900,000 Indian Occupation force, is the most heavily militarized zone in the world with a ratio of 1 soldier for 9 civilians, has seen an increase in the use of force against civilians since August 2019. However, the Indian Security Forces continue to enjoy blanket immunity through discriminatory laws, imposed in the State, since 1990. Among these laws, Armed Forces Special Power Act (AFSPA) empowers the security forces “to shoot at sight or arrest people without a warrant.” The documents, which have been made public through a Right to Information query filed by Venkatesh Naik, a human rights activist, show that Jammu and Kashmir tops the list of human rights violations committed under the AFSPA, with 92 complaints against the Indian Army and paramilitary forces in 2016.⁴⁰ The right to life is violated by section 4(a) of the AFSPA, which grants the armed forces the power to shoot to kill in law enforcement situations without regard to international human rights law restrictions on the use of lethal force⁴¹. Such laws violate the fundamental human rights and international norms, to which Indian government is a signatory and duty bound to protect in all situations.

OHCHR Report dated June 2018 stated that “Impunity for human rights violations and lack of access to justice are key human rights challenges in the Indian state of Jammu and Kashmir. Special laws in force in the State, such as the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA) and the Jammu and Kashmir Public Safety Act, 1978 (PSA), have created structures that obstruct the normal course of law, impede accountability and jeopardize the right to remedy for victims of human rights violations”⁴².

In response to the protests by Kashmiri Muslims against the 2019 reforms in IOJK and demand for freedom, the Indian Occupation Forces which are laced with the unbridled powers provided by these black laws that assure their impunity,

³⁶ <https://www.genocidewatch.com/single-post/kashmir-is-on-the-brink-of-genocide-warns-american-scholar>

³⁷ <http://mainstreamweekly.net/article10769.html>

³⁸ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³⁹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

⁴⁰ <https://www.livemint.com/Politics/CcFJoIMR39wtQwilof30/Jammu--Kashmir-tops-list-on-rights-abuses-under-AFSPA-Assa.html>

⁴¹ <https://legislative.gov.in/sites/default/files/A195828-.pdf>

⁴² <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

have committed excessive human rights violations in IOJK. Multiple reports indicate that Kashmiri civilians have been brazenly brutalized, extra-judicially killed, injured, maimed, tortured and arbitrarily detained. For instance, prominent political leaders, including three former chief ministers, were among thousands detained to prevent protests. Police told the courts that 144 children had also been taken into custody. According to the Jammu Kashmir Coalition of Civil Society, based on habeas corpus petitions over 400 people remain in custody under the draconian Public Safety Act, which permits detention without trial for up to two years⁴³. Furthermore, the indiscriminate use of pellet guns had resulted in mass blinding of Kashmiri youth. These human rights violations are widely reported and criticized, both in Indian and international media⁴⁴.

(i) Extrajudicial killings and Fake Encounters

During the Covid-19 pandemic, Indian security forces increased the pace of killings, arrests and tortures of Kashmiris, protesting against issuing residency and domicile certificates and water rights to non- native Kashmiris from India. Ironically, India has even used the time of Covid-19 to intensify its abuses. While the rest of the world including international media were busy grappling with the effects of the Pandemic elsewhere, India under the guise of pandemic related measures, placed further restrictions on the freedom of movement and assembly and imposed a communication blockade in IOJK.

The IPHRC delegation was informed by the AJK administration that since 2019, several dead bodies were recovered in the AJK from the river Jhelum coming from the IOJK. The Commission also met with the families of the victims who were killed in fake encounters and listened to many painful accounts from Kashmiris in AJK from IOJK. These families underwent the trauma of losing their loved ones without any recourse to justice and without any opportunity to register official complaints with the police.

Stories of these families are not unfounded as the United Nations Special Rapporteur in his letter dated 31 March 2021⁴⁵ cited specific cases of “Mr. Waheed Para, Mr. Irfan Ahmad Dar, Mr. Naseer Ahmad Wani, including allegations of arbitrary detention, extrajudicial killing, enforced disappearance, torture and ill treatment committed against them. The allegations also include an act of reprisals against Mr. Para following his engagement with the UNSC members and denunciation of human rights violations in the State of Jammu and Kashmir (IOJK)”. The same communication also raises “concerns regarding the repressive measures and broader pattern of systematic infringements of fundamental rights used against the local population, as well as of intimidations, searches and confiscations committed by national security agents in Jammu and Kashmir which were raised by Special Procedures mandate holders in previous communications dated 21 December 2021 (AL IN 20/2020) and 4 May 2020 (AL IND 6/2020) and 1 July 2020 (AI IND 11/2020)”⁴⁶.

During its interaction with Kashmiri refugees from the IOJK in AJK, IPHRC delegation listened to many of the gruesome and shocking stories, which either involved their personal experiences or first-hand information about human rights tragedies faced by their close relatives, friends and family members. Testimonies of these Kashmiri refugees from IOJK re-confirmed the horrors of brutalities and serious human rights violations including right to life, protection against torture and other curbs on fundamental human rights and freedoms, faced by Kashmiri Muslims in IOJK, which are otherwise widely reported in the national and international media.

Gasping for air and constantly crying, some women were even unable to speak and convey properly the extremities faced by them and their relatives in IOJK. Some of them bitterly recalled the loss of lives and brutalities faced by their near and dear ones, merely on the pretext of being involved with freedom fighters. Others counted the horrors of facing torture, arbitrary arrests and humiliation including mal-treatment of women as collective punishment, faced by the families, friends and even complete villages of suspected freedom fighters in IOJK. Another woman kept crying as she had just received the news of her son being martyred in IOJK. Other refugees also counted incidents of killings of their relatives under ambiguous circumstances, news of which they received several months after their death.

⁴³ <https://www.hrw.org/news/2020/04/08/india-abuses-persist-jammu-and-kashmir>

⁴⁴ https://www.voanews.com/a/south-central-asia_one-year-later-human-rights-violations-continue-indian-kashmir/6193953.html

⁴⁵ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26181>

⁴⁶ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26181>

While praising the hospitality of AJK government in providing them food and shelter, these refugees highlighted that they were not able to enjoy these facilities as their family members remain hungry and suffering in the IOJK. However, the most bitter part was the desperation coming out from multiple testimonies, which conveyed their disappointment at the lack of a strong response by the international community, in particular Muslim countries/OIC, to push India to stop these human rights abuses against Kashmiri Muslims and grant them their legitimate right to self-determination.

Based on multiple interviews made with the relatives of the victims and refugees from IOJK and the reports from credible Media and civil society organizations, the IPHRC delegation concurs with the observation raised by the UN Special Rapporteurs in their above referred letter that “no investigation into the allegations of enforced disappearances and extra judicial killings have yet to be conducted in an independent, impartial, prompt, effective, thorough and transparent manner in accordance with the human rights obligations of India”,⁴⁷ which remains a consistent pattern and trend in all other cases.

According to yet another report⁴⁸ in July 2020 Indian Occupation forces in IOJK claimed to have killed three “unidentified hardcore terrorists” in a gunfight in Amshipora village of Kashmir’s Shopian district. These three so called “terrorists” were later identified to be innocent labourers. The police and security forces admitted the guilt and in December 2020, police filed a chargesheet of more than 200 pages against a captain of the Indian Army and two civilians for the alleged abduction and subsequent murder of the three workers. But despite lapse of more than a year no headway is made in the case⁴⁹. The evidence presented in these instances clearly illustrates that Indian false-flag operations are based on fabrication. The July 2020 fake encounter is a repeated example of Indian theatrics, which carried similarities to previous encounters in 2016.

(ii) Restrictive and discriminatory laws

The delegation had the opportunity to examine in detail the AFSPA and Public Safety Act (PSA) and have found them to be absolute discriminatory laws, which encourage impunity in IOJK. The PSA, which Amnesty International has also called as ‘lawless law’⁵⁰ is even used to detain minors. The Amnesty International India, HRW, the International Commission of Jurists and UN Special Rapporteur on extrajudicial, summary or arbitrary executions has urged the Government of India to end the use of AFSPA and PSA to detain people, including children⁵¹.

It is the considered observation of the IPHRC delegation that the PSA, which applies only in IOJK is specifically designed to deter Kashmiri Muslims from demanding their legitimate rights and raising their voices against the illegal actions / atrocities committed by Indian forces. It permits the Indian authorities to detain persons without charges or judicial review for as long as two years without visits from family members. People incarcerated under the PSA are sent to Jammu jail to make them inaccessible to their families causing further anguish and mental distress to the affected families.

Under Section 4(a) of the AFSPA, even a non-commissioned officer can order his men to shoot to kill “if he is of the opinion that it is necessary to do so for maintenance of public order”. Also, Section 4(c) of the Act permits the arrest without warrant, with whatever “force as may be necessary” of any person against whom “a reasonable suspicion exists that he is about to commit a cognizable offence.” As evident, the provisions of these acts violate relevant provisions of international law including Indian obligations for protection of human rights as provided in International Bill of Rights. IPHRC views are supported by Amnesty International’s report on AFSPA on July 1, 2015⁵² which severely criticized the Act for creating an environment of impunity for Indian security forces in IOJK enabling them to commit atrocious human rights violations without any fear of being tried. It focuses particularly on Section 7 of the AFSPA, which grants virtual immunity to members of the security forces from prosecution for human rights violations.

⁴⁷ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26181>

⁴⁸ <https://www.aljazeera.com/news/20213/6/pro-india-kashmiri-politician-tortured-in-custody-say-un-experts>

⁴⁹ <https://scroll.in/article/1000841/one-year-after-three-young-workers-killed-in-kashmir-fake-encounter-police-probe-filled-with-holes>

⁵⁰ Amnesty International: India: Still a ‘Lawless Law’ Detention under the Jammu and Kashmir PSA 1978 <https://www.amnesty.org/en/documents/asa202012/035/en/>

⁵¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, 26 April 2017 http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.1_EN.pdf

⁵² Amnesty International Report “Denied: Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir”

The Commission is also of the view that the powers granted under AFSPA, PSA and other such discriminatory laws are in reality broader than that allowable under a state of emergency as the right to life may effectively be suspended and the safeguards applicable in a state of emergency are absent. Moreover, the widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict. This situation is also difficult to reconcile in the long term with India's insistence that it is not engaged in an internal armed conflict. Therefore, retaining such law runs counter to the principles of human rights and democracy.

During its interaction with the exiled Kashmiri leadership in AJK, the IPHRC delegation was informed that the use of these abusive practices and laws have expanded during the Covid-19 pandemic. The Indian security forces responded with extreme violence against the peaceful protests and the increasing frustration of the local population about reforms that stripped them from the minimal legal protections they used to have before the illegal constitutional reforms of August 2019. As narrated by local sources from the IOJK, since August 2019, the level of gross human rights violations is unimaginable, the Indian authorities have dismembered the Kashmiri population from the Kashmiri leadership who have either been imprisoned or have become refugees.

The exiled leadership in AJK narrated that jailed Kashmiris continue to suffer from the lack of basic medical facilities throughout the IOJK. Ironically, while India provided only one doctor for every 4000 people in Kashmir, it does provide one soldier for every 9 people, a shameful statistic.

The Kashmiri leadership also highlighted that the economic cost of Indian oppression on the Kashmiri population is significantly increasing under the pandemic situation. As reported by the NYTimes recently⁵³, 500,000 people in the IOJK had been sent jobless and \$5 billion had been lost from the local economy.

In fact, this dramatic increase in the human rights violations and oppression in the IOJK goes beyond being simply about restrictive and discriminatory laws, to reflecting strategic turnout in the relationship between India and the territory it occupies. It is not anymore, a question about discriminatory policies only, but it is about a new state model that seeks to eradicate the very existence of Kashmiri identity and history in the IOJK. The latest form of Indian war in the IOJK is lawfare. "Just with a stroke of a pen, our right of self-determination is being further undermined" as narrated by a local activist.

C. Violation of the Right to Freedom of Opinion and Expression:

Freedom of expression is one of the most important human rights, vital for a functioning democracy and protection of all other rights. Article 19 of UDHR provides that "everyone has the right to freedom of opinion and expression, which includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

In August 2019, India imposed an unprecedented curfew on Media and communication in IOJK (230 days without internet), which is the longest Internet shut down in history so far. The Indian authorities also violated the basic rights of freedom of expression and any Kashmiri writing anything on digital media was being put behind bars under the notorious Unlawful Activities (Prevention) Act. Shortly after India imposed unprecedented restrictions on communication in Kashmir, many UN human rights Special Procedures called on the Government of India to end the crackdown on freedom of expression, access to information and peaceful protests imposed in the IOJK. The Special Procedures expressed concern that the measures, imposed after the Indian Parliament revoked the Constitutionally-mandated status of the IOJK, are without justification, inconsistent with the fundamental norms of necessity and proportionality," and represent "a form of collective punishment of the people of Jammu and Kashmir, without even a pretext of a precipitating offence."⁵⁴

The IPHRC delegation interviewed refugees and members of civil society and media from IOJK and inferred that the existing restrictions on the freedom of expression in IOJK have been expanded since August 2019. Interviewees also

⁵³ <https://www.nytimes.com/202111/01/world/asia/kashmir-india-tourism.html>

⁵⁴ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24909&LangID=E>

conveyed that the increased militarization of IOJK in post August 2019 has worsened the security situation. Kashmiri civilians who try to speak up against the new measures are regularly subjected to arbitrary arrests and extrajudicial killings with impunity as the Indian Occupation forces' policy to shoot to kill is protected by various Indian Acts that are in stark contradiction to International human rights laws.

The delegation visited Thotha model village in the suburbs of Muzaffarabad which hosts hundreds of refugees from the IOJK, where it interacted with number of refugees, including women and children. Many among them were victims who reported first-hand experiences about the violations they suffered from the Indian authorities. Most had left their families behind and couldn't reunite with them for many years. It is most concerning that all interviewed refugees mentioned that they had lost any contact with their families since August 2019, when the Kashmiri population in the IOJK were subjected to new restrictions that limited their communication with the outside world and their freedom of communication and movements. Only few refugees reported being in touch over the phone with their families in the IOJK recently. They too, however, mentioned that their families avoid speaking about the situation on the ground and the conditions of their livelihood out of fear that they will be arrested by the Indian Security forces who maintain surveillance of all their communications.

Civil society representatives informed the delegation that the Indian authorities have been ruthless against Kashmiris trying to exercise their freedom of expression. Journalists are thrown behind bars without trial for merely expressing their independent views least to talk of human rights violations or speaking about freedom or the right to self-determination. In its interaction with Mrs. Mishal Malik, prominent Kashmiri activist and wife of jailed Kashmiri Hurriyat leader Yasin Malik, IPHRC delegation was informed that in the aftermath of August 2019, whatever was left of the already limited freedom of speech, is gone in the IOJK, as the Indian authorities shut down any media content as soon as it is perceived by the authorities to be against the Indian State. Based on interaction with her own and other Kashmiri families from the IOJK, Mrs. Malik provided detailed and first-hand instances of the suffering of Kashmiri people, which reflect the worsening situation of human rights as a result of the increasing violations of the Indian authorities against the innocent Kashmiri population. She highlighted that the Indian authorities have tightened-up their censorship measures in the IOJK since August 2019, which seriously limit information coming out from the occupied territory. As an example of that, Mrs. Mishal herself couldn't speak to her husband for the last two years.

Mrs. Malik referred to the IOJK as the Gaza strip of Kashmir. She stressed that there are a lot of commonalities between the Palestinian issue and the Kashmir issue. Yet, while the international media is present in Palestine, none are allowed in IOJK. Covering events or getting information out of there was quasi-impossible. Referring to sporadic news reports, she called these "out of blue acts", which occasionally pop up and are shared by Kashmiri diaspora through social media. Even on the social media, India tried to establish a monopoly on the news coming out from the IOJK by blocking accounts of Kashmiri activists. So, there is an international invisible curfew on sharing the news of Kashmir as well", she added.

Testimonies of Ms. Malik and others are confirmed by other independent international reports on the ongoing developments after August 2019. In April 2020, Amnesty International reported that Indian authorities invoked the Unlawful Activities (Prevention) Act (UAPA) against many journalists, which signal the authorities' attempt to curb the right to freedom of expression. Harassment and intimidation of journalists through draconian laws such as UAPA worsened the efforts to address the COVID-19 pandemic by creating an atmosphere of fear and reprisal.⁵⁵ Amnesty International has strongly criticized the prolonged restrictions on internet speed and arbitrary detentions, often without any kind of documentation, access to lawyers and recourse to justice, which severely undermines the human rights guarantees of the people of Kashmir.⁵⁶

EU DisinfoLab (a reputable NGO), which undertook an intensive investigation and published an extensive report in December 2020, exposed 750 fake media outlets in a vast 15-year global disinformation campaign to serve Indian interests that were designed primarily to "discredit Pakistan internationally" and influence decision-making at the UN Human Rights Council (UNHRC) and European Parliament⁵⁷. The whole operation is termed as an Indian attempt to cover up its failing human rights record at the international level.

⁵⁵ <https://www.amnesty.org/en/latest/news/202004//journalists-in-jammu-and-kashmir/>

⁵⁶ <https://www.amnesty.org/en/latest/news/202004//journalists-in-jammu-and-kashmir/>

⁵⁷ <https://www.disinfo.eu/publications/indian-chronicles-deep-dive-into-a-15-year-operation-targeting-the-eu-and-un-to-serve-indian-interests>

In addition, the Pegasus spyware's leaked database revealed that over 25 Kashmiri Journalists, politicians, businessmen and human rights activists were kept under illegal surveillance, in breach of their right to privacy, which is contrary to the international human rights law⁵⁸.

D. Violation of the right to Freedoms of Peaceful Assembly and Association:

While meeting with refugees and visiting people from IOJK, the IPHRC delegation came across several accounts of relentless imposition of curfew without any leniency offered to cater for the needs of the vulnerable segments of population like elderly, infirm and children. As per their views, the curfew by the State administration is imposed as a tool to suppress civil liberties and inflict collective punishment for the entire population.

The IPHRC delegation was told by the exiled members of the Hurriyat leadership in the AJK that their colleagues in the IOJK continue to be frequently arrested or kept under house detention. It was highlighted that while the intensification of the search and cordon operations against any civic movement that demands basic political and social rights for the Kashmiri population started with the election of Modi in 2015, the situation has further deteriorated since his reelection in 2019.

The Commission was informed that the limited information coming out from the IOJK since August 2019 indicates that the Indian authorities do not allow any peaceful protest, and that any pacific civic action is harshly silenced by using systematic violence against civilians and punishing whole neighborhoods for organizing any peaceful protests to demand their basic human rights. It was also reported that the increased arrests of Kashmiri political leadership by the Indian authorities was a planned strategy to eliminate the leadership role in mobilizing pacific action against the human rights violations in the IOJK.

Referring to the case of her husband, Yasin Malik (a famous Kashmiri political leader), Mrs. Malik informed the Commission that he was kept in a death cell of Tihar jail in a fake case for more than two years in solitary confinement, while being denied all demands for a meeting between him and his daughter. Mrs. Malik complained that despite being a political prisoner, he was mentally and physically tortured, a treatment which wasn't even meant for criminally convicted prisoners. She highlighted that her husband, as well as other Kashmiri prisoners don't have access to any legal assistance as guaranteed by International human rights law. She also conveyed that her husband had developed numerous illnesses including kidney and urinary infections beside twice suffering food poisoning in the prison.

Another example of prolonged illegal and inhuman incarcerations against Kashmiris is that of Ms. Asiya Andrabi and her two female associates in Tihar Jail in India on concocted and baseless charges under the controversial Unlawful Activities Prevention Act (UAPA)⁵⁹, which wasn't only mentioned by Kashmiri dissidents in AJK but also widely reported in Indian national and international media. Ms. Andrabi and her associates, like other political prisoners in the IOJK, are being held without access to free and fair trial. As per reports, they are also subjected to physical and psychological torture and denied critical medical care endangering their lives in contravention of the international human rights and humanitarian laws.

As widely observed and reported, since August 2019, IOJK faced the longest curfew and communication blockade with no breaks leading to worst humanitarian sufferings. Most fundamental rights were curtailed through the imposition of continuous curfews and restrictions. Section 144 of the Criminal Procedure Code, prohibiting assemblies of more than four persons, remained in force for most of the times in the IOJK. Assemblies, marches, graffiti, pamphlets, even silent vigils are banned.

Yet again the reported violations of freedom of peaceful assembly, association and communication blockade were confirmed during IPHRC delegation's interaction with Kashmiri refugees. Many of them affirmed that since 5 August 2019, their communication links with their relatives in IOJK were cut-off and they remained unable to know their well-being for a very long time. One of the women narrated that she received the news of the demise of her father and later

⁵⁸ <https://www.thehindu.com/news/national/pegasus-delhi-based-kashmiri-journalists-kashmir-leaders-were-potential-spying-targets-from-2017-to-mid-2019-the-wire/article35493223.ece>

⁵⁹ <https://oic-iphrc.org/home/article/480>

her brother only six months after they had expired.

Both the refugees and representatives of the All Parties Hurriyat Conference confirmed that one of the key reasons of the Media blackout was to curtail the steady flow of information among Kashmiri Muslims and their leadership to avoid large scale protests, spread mis- information through official sources and impose a forced calm at all costs. However, the blackout not only impacted political rights of the Kashmiri Muslims, but it seriously impacted their lives in all aspects including the right to education, health, information and loss of economic livelihood. Many of the refugees expressed their continued serious concerns about the safety of their family members as the communication links of the IOJK remain disrupted, hence no regular feedback. At the same time, these refugees expressed concerns that communication links with outer world from IOJK are regularly surveilled that put the lives and livelihood of the Kashmiri Muslims under greater risk of reprisals.

In the aftermaths of the constitutional amendments of August 2019, many former Indian ministers visited the IOJK under the platform of Concerned Citizen Group and have released nine reports so far. One of the reports released in August 2020 titled "Raising Stakes in Kashmir" noted that "the Kashmiri youth was being pushed towards militancy because of the harassment faced by people at the hands of the army personnel"⁶⁰.

Many exiled Kashmiri political leaders in AJK opined that continuous detention of the Kashmiri leadership in IOJK shows Indian authorities' unwillingness to negotiate any solution of the Kashmir dispute and the desire to address the problem with an iron hand, though it has historically and repeatedly proven to be a futile exercise. Most Kashmiri refugees and leaders stressed that no number of extrajudicial killings, illegal detentions of their leaders or harassment of innocent men and women, which is an attempt to silence the population in IOJK, can desist them from their ongoing liberation movement. They were confident in stating that the sacrifices of Kashmiri martyrs and sufferings of prisoners will not go waste.

In a recent account that illustrates the increasing misuse of draconian laws against any peaceful assembly of Kashmiri civilians in the IOJK, a report by Kashmir Media Service on 26 October 2021, indicated that the Indian Police in the IOJK have registered two separate cases against the staff and students of two medical colleges under a harsh anti-terror law for allegedly celebrating Pakistan's victory against the Indian side in the T20 Cricket World Cup match⁶¹. Based on the First Information Report (FIR) registered at Soura police station in the IOJK, these students were accused of terrorism under Section 13 of the Unlawful Activities Prevention Act (UAPA) and Sections 105-A and 505 of the Indian Penal Code (IPC) just because they "were crying and dancing after Pakistan won the World Cup T20 match against India". These verified accounts of how the Police interacts with Kashmiri civilians in the IOJK illustrates the level of abuse the Kashmiri population is subjected to at the hands of the Indian occupation forces.

E. Protection against Torture, cruel, inhuman or degrading treatment or punishment

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁶² together with Geneva Convention related to the Protection of Civilian Persons in times of war, 1949 and Additional Protocols of 1977 provide for protection against humiliating and degrading treatment; torture, rape, enforced prostitution or any form of indecent assault.

According to WikiLeaks, US Embassy in one of its cables disclosed the findings of the International Committee of the Red Cross (ICRC) about the widespread use of torture in IOJK. The ICRC report claimed that out of 1,296 detainees it had interviewed, 681 said they had been tortured. Of those, 498 claimed to have been electrocuted, 381 said they were suspended from the ceiling, and 304 cases were described as sexual abuse⁶³. Two months after the August 2019 crackdown started, the Secretary of State for Foreign Affairs in UK also expressed deep concerns about wide allegation of torture by Security Forces in the IOJK, which was raised with the Indian government⁶⁴. Furthermore, in a letter dated 31

⁶⁰ <https://www.crisisgroup.org/asia/south-asia/kashmir/310-raising-stakes-jammu-and-kashmir>

⁶¹ <https://www.dawn.com/news/1654166>

⁶² <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

⁶³ <https://www.theguardian.com/world/2010/dec/16/wikileaks-cables-indian-torture-kashmir>

⁶⁴ <https://tribune.com.pk/story/2258061/kashmir-a-giant-open-air-prison>

March 2021, the UN Special Rapporteurs expressed their grave concern on a number of reported cases of arbitrary arrests, torture and ill-treatment including extrajudicial killing, which if confirmed, would amount to violations of articles 6, 7, 9 and 14 of the ICCPR to which India acceded to in 1979⁶⁵.

War Crimes by the Indian Occupation Forces:

Regarding anti-Islam and anti-Muslim actions in the IOJK, multiple eye witnesses from the refugee camps conveyed to the Commission that the Indian troops were killing only the Kashmiri Muslims, destroying their places of worship, outraging their language, history, culture and traditions, which clearly show that under the garb of fighting terrorism, Indian Occupation forces are engaged in the systematic war against the Muslims in Kashmir.

Accusations against the Indian Occupation forces in the IOJK find evidence in many reported cases by various international and even national observers within India itself. IPHRC was able to get access to 3432 case studies, which include testimonies of Kashmiri victims and multiple investigation reports according to which 1128 members in the Indian Security forces were found to be involved in war crimes⁶⁶, which include both higher and lower rank officials.

The multitude of these reports do not only reflect complicity of the Indian government but also validates involvement of complete hierarchy of Indian law enforcement machinery in the systematic human rights violations against Kashmiri Muslims in the IOJK. Testimonies received by the IPHRC delegation revealed that the perpetrators enjoy complete State patronage and are deliberately shielded by sham Indian system of justice, and continue to serve within the various ranks of security apparatus in the IOJK. The Commission was also informed that the majority of the Kashmiri victims do not opt for the legal recourse against the security forces out of fear of reprisals and lack of hope for any remedy. These reported crimes contradict Indian obligations to the ICCPR obligations, which prohibits all forms of torture, cruel, inhuman and degrading treatment.

The systematic character of these gross human rights violations is supported by the so-called legal machinery of Indian laws, such as the Unlawful Activities Prevention Act (UAPA). This reality was reflected in a joint letter on 26th May 2020 addressed to the Indian Minister of Home Affairs by 28 Human Rights organizations stating that “we are seriously concerned that the Indian authorities have routinely misused draconian, anti-terrorism laws such as the UAPA, to

undermine human rights, stifle dissent and press freedom. This is even more concerning during the Covid-19 pandemic”⁶⁷.

These concerns were again raised by ten UN Special Procedures who addressed the Indian Minister of External Affairs in another joint letter dated on 1st July 2020 highlighting that the “sudden closure of J&K State Human Rights Commission has left the people of the region with limited recourse to seek justice for human rights violations committed against them, including enforced disappearances, extra-judicial killings, torture, sexual violence, and it has also created uncertainty as to how pending cases will be treated”⁶⁸.

These multiple reports are few of many other sources verified by the Commission, which confirms the first-hand information collected by the IPHRC delegation from its interaction with Kashmiri refugees and their families who have been victims of these severe human rights violations. The draconian UAPA serves as a tool, which the Indian government has extensively used to curb the dissent and silence the Kashmiri voices, especially in the aftermath of August 2019 reforms. The Commission strongly believes that the repetitive and systematic actions of the Indian security forces in the IOJK, as narrated by Kashmiri refugees in the AJK and reported by dozens of human rights organizations across the world, represent serious evidence for elements of war crimes, including genocide and destructions of cultural heritage of the Kashmiri people in the IOJK.

⁶⁵ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=26181>

⁶⁶ Names of perpetrators and details of testimonies are available in audiovisual format with the Commission.

⁶⁷ <https://www.icj.org/joint-open-letter-to-the-indian-government-calling-for-the-release-of-human-rights-defenders-at-risk/>

⁶⁸ Full text of the UNHRC Joint Communication Letter to Jaishankar is accessible at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25346>

F. Violations of Economic, Social, and Cultural Rights:

The worsening situation in the IOJK has significantly disrupted the economic, social, and cultural lives of the Kashmiri people. Consequently, economic activities, including trade, industry, banking, agriculture, and other sectors, have been severely affected by the post- August 2019 lockdown and communication blockade imposed by the Indian occupation authorities. The illegal Indian measures have not only resulted in the internal displacement of the population but also caused forced migration of skilled artisans, traders, and farmers, leading to severe violations of their economic, social, and cultural rights. Furthermore, the lockdown and the pandemic have cost an estimated loss of US\$6 billion to the economy of the IOJK⁶⁹.

These systematic violations have been facilitated through the impugned laws of AFSPA and PSA and other discriminatory laws introduced after the illegal constitutional amendments of August 2019, which provided false legal grounds for disrupting the economic lives of the Kashmiri population. For instance, Section 4(b) of AFSPA allows Indian military personnel to destroy any shelter from which, in their opinion, armed attacks "are likely to be made" or which has been utilized as a hide-out by absconders "wanted for any offense." This license has provided the pretext of vandalizing private property, including schools and places of worship, causing severe damage to Kashmiri's cultural heritage and civic life. In addition, the burning of crops and disruptions in sowing, the torching, and the ransacking of markets and private property have further ruined the economic well-being of the Kashmiri people.

As a part of the new systematic policies after August 2019 that target the economic and social rights of the Kashmiri population in the IOJK, the Indian government has lifted a requirement set in place by a 1971 circular under which Indian security forces had to obtain a special certificate to acquire land in Kashmir. However, a new order introduced in July 2020 allows "Indian Army, Border Security Forces, paramilitary forces and similar organizations" to acquire land without a "no objection certificate" (NOC) clearance from the region's home department.⁷⁰ This process officially began on 18 July 2020 when the Indian authorities amended the Development Act of 1970, which used to require local assent for any acquisition of land by the military⁷¹. Accordingly, the army, paramilitary forces, and all other "similar organizations" can now identify any area in the IOJK as "strategic" and take it over, disregarding any objections from civilian authorities or landowners.

As a result of these new draconian measures, various activists from the IOJK have warned that farmers near the LoC now fear losing even more of their land to the military. With India bringing IOJK deeper into its occupation fold, the Indian government will have greater power to seize territory in the border regions in the name of national security⁷².

Based on these realities, it is clearly observed that the looting of cultural property and destruction in the IOJK is becoming the main feature of the multifaced and systematic human rights violations by the Indian authorities. By misusing the so-called "legal measures," the occupying Indian authorities are regarding these violations as their right to rob the defeated populations of their distinct cultural heritage. IPHRC is deeply concerned that in the cases of both Palestine and IOJK, as a result of the armed occupation, local populations – in this case, Kashmiri Muslims – have witnessed a massive loss of cultural property and heritage. Buildings, museums, and archives were looted. At the same time, rituals, festivals, languages, and cultural practices, which were generational in nature, were either destroyed or inhibited by utilizing so-called legal and institutionalized measures.

In fact, these measures affect a multitude of economic, social, and cultural rights, including the right to health. Even before the events of August 2019, residents of the IOJK already showed symptoms of significant mental distress, according to many reports. For instance, a 2016 survey⁷³ published by Doctors Without Borders (MSF) recorded 45 percent of the Kashmiri population (nearly 1.8 million adults) experiencing some form of mental distress. According to another MSF's "Kashmir Mental Health Survey 2015"⁷⁴, 50 percent of women (compared to 37 percent of men) suffered from probable depression; 36 percent of women (compared to 21 percent of men) had a probable anxiety disorder, and 22

⁶⁹ <https://thekashmirwalla.com/rs-45000-crore-cost-of-three-years-of-kashmir-lockdowns/>

⁷⁰ <https://www.aljazeera.com/news/202028/7//india-eases-rules-for-security-forces-to-acquire-land-in-kashmir>

⁷¹ <https://www.article-14.com/post/2-legal-tweaks-make-it-easier-for-armed-forces-to-take-over-land-in-j-k>

⁷² <https://www.aljazeera.com/news/201930/10//indias-defences-eat-away-at-farmland-along-border-with-pakistan>

⁷³ <https://www.msfindia.in/msf-scientific-survey-45-kashmiri-population-experiencing-mental-distress/>

⁷⁴ https://www.msfindia.in/sites/default/files/201610-/kashmir_mental_health_survey_report_2015_for_web.pdf

percent of women (compared to 18 percent of men) suffer from post-traumatic stress disorder (PTSD).

In the aftermath of the Indian lockdown in 2019, India has flooded the IOJK with thousands of extra troops to keep Kashmiri people from hitting the streets in protest. Residents were forced to stay inside their homes, fearful and stressed for months while bearing the brunt of operations by security forces to quash protests⁷⁵. According to a report by the Jammu Kashmir Coalition of Civil Society (JKCCS), at least 229 killings and 48 cases of destruction of civilian property were reported in IOJK in the first six months of 2020⁷⁶. Furthermore, health experts indicated that the continued presence of extra troops on the streets of the world's most militarized zone⁷⁷ and mass arrests of civilians have led to an increase in trauma and anxiety, particularly among women and children⁷⁸.

During its interactions with the Kashmiri refugees from the IOJK in AJK, the IPHRC delegation has witnessed the psychological distress of various families whose loved ones have either been killed or detained or whose houses got damaged or entirely burnt down during fake military encounters in IOJK. These first-hand observations are severe indicators of the catastrophic situation of mental health of thousands of families in the IOJK who remain under these draconian measures, which constitute brutal and systematic aggressions against the right to health of Kashmiri civilians under the constant stress of Indian occupation. As indicated by Dr. Junaid Nabi, a psychiatrist at the Institute of Mental Health and Neuroscience (IMHAMS) in IOJK, "Since women often find themselves the sole manager of the household, sole parent, or caretaker of elders in Kashmir; they suffer more [as a result of the ongoing circumstances]"⁷⁹.

G. Indiscriminate shelling across Line of Control (LoC) and targeting of civilians and civil infrastructure:

The IPHRC delegation had the opportunity to visit the LoC and meet with several victims of cease fire violations and members of village defence committees who narrated their first-hand experiences and observations about the Indian violations against civilians along the LoC. The IPHRC delegation also witnessed dozens of victims with severe body injuries, including women and children, that were affected by the indiscriminate shelling by Indian forces across the LoC. In addition to its first-hand observations, the IPHRC delegation was informed of multiple Indian violations of the cease fire which resulted in civilian casualties inside AJK. Among those in touch with their families on the other side of the LoC, further informed the IPHRC delegation that villagers in IOJK continue to suffer torture at the hands of the Indian occupation forces including stripping them naked during custody, for seeking confessions.

Use of Cluster Munitions and Pellets:

During its interaction with refugees in AJK, the IPHRC delegation frequently heard serious allegations of the indiscriminate use of pellet guns by the Indian security forces against many of their family members and friends in the IOJK. They reported that the use of pellet guns against the peaceful protests in the IOJK has resulted in blinding, killing and traumatizing consequences for the innocent civilians. This widely reported practice of the Indian security forces - pellet firing shotguns, violates international human rights standards on the use of force.

These reported violations were also confirmed in the OHCHR report released in 2018 which stated that "one of the most dangerous weapons used against protesters in 2016 was the pellet- firing shotgun, which is a 12-gauge pump-action shotgun that fires metal pellets."⁸⁰. According to information received by the J&K Human Rights Commission from 10 districts of the Kashmir Valley, metal pellets injured 1726 people. CPRF and JK Police used the weapons against protesters⁸¹.

An earlier report titled "Losing Sight in Kashmir" released in 2018 by Amnesty International has included around 88 case studies of victims whose eyesight was damaged by metal pellets between 2014 and 2017, including several people who

⁷⁵ <https://reliefweb.int/report/india/silent-mental-health-crisis-among-women-kashmir>

⁷⁶ <https://jkccs.net/bi-annual-hr-review-229-killings-107-casos-55-internet-shutdowns-48-properties-destroyed/>

⁷⁷ <https://www.sbs.com.au/news/explained-kashmir-the-most-militarised-zone-in-the-world/f24bd3851-d6a-4ed2-b04e-394c8805bd20>

⁷⁸ <https://reliefweb.int/report/india/silent-mental-health-crisis-among-women-kashmir>

⁷⁹ <https://reliefweb.int/report/india/silent-mental-health-crisis-among-women-kashmir>

⁸⁰ <https://www.ohchr.org/Documents/Countries/IN/DevelopmentsInKashmirJune2016ToApril2018.pdf>

⁸¹ Reference will be added.

have permanently lost their eyesight despite repeated surgeries⁸². Another report by the Association of Parents of Disappeared Persons in October 2019 documented 23 case studies⁸³. These reports confirm the stories of victims that interacted with the IPHRC delegation and clearly indicate that using pellet guns is not an isolated act but a systematic behavior by the Indian security forces against the unarmed Kashmiri population in total violation of international human rights and humanitarian norms.

The IPHRC delegation also interacted with victims of Line of Control (LoC) violations who shared their experiences about suffering from the use of Cluster ammunition by the Indian military from the Indian side of the LoC. During this interaction, IPHRC delegation has witnessed severe body injuries among the resident of AJK villages near the LoC. Observed injuries included amputated parts and permanent disabilities resulting from the Cluster ammunition used by the Indian troops from across the LoC.

These first-hand observations are some of many recorded cases by official authorities and human rights organizations in AJK. According to data collected by AJK's revenue department and disaster management authority during the period from 1989 to 2020, IPHRC delegation was informed that at least 916 innocent Kashmiris residing in AJK along the Line of Control have been killed and 3469 have been injured by Indian Forces. The Commission was also informed that in addition to ceasefire violations, Indian troops have been targeting innocent Kashmiris residing along Line of Control by using snipers and cluster ammunition.

As an illustration of additional cases, a recent report released in 2020 by the Kashmir Institute of International Relations has documented accounts of 10 victims of sniper fire based upon the testimonies of witnesses⁸⁴. Based upon the testimonies of four eye witnesses, the report has revealed that 9 years old child called Ayyan Zahid was killed by an Indian sniper fire on 18 February 2019 while playing outside his house in Kotli District in AJK. Another account revealed that in July 2019, Indian forces deliberately targeted villages along the LoC in Neelum Valley with cluster ammunition, where cluster bombs were found lying in populated civilian areas. The report included visual evidence of bombs found in armed state with their stability ribbons detached and forensic confirmed their Indian origin.

The cases witnessed by the IPHRC delegation along the LoC and those included in multiple other reports are all heart-breaking stories of ordinary Kashmiri civilians trying to live their lives in peace, while being targeted by the Indian forces across the LoC from inside the IOJK.

H. Conclusion

During its second visit to AJK, the Commission interacted with refugees, victims and families of victims, representatives of political parties and civil society from IOJK as well as victims of cross border shelling along the LoC. Based on the first-hand information collected from this visit, and by carefully examining multiple reports from independent sources to contrast and compare the collected evidence about alleged human rights violations with various other allegations, the Commission concluded that since 5th August 2019, the entire region of Indian Occupied Kashmir is turned into a prison with severe human rights and humanitarian repercussions for the innocent Kashmiri population.

The gross human rights violations faced by the innocent Kashmiri Muslims in the IOJK make it one of the worst human rights tragedies in the world. Despite pandemic and persistent global condemnation by the UN, OIC and other human rights bodies, the Government of India, continues to pursue systematic persecution of Kashmiri Muslims through vicious political, economic and communication blockade to change the on-ground demographic and geopolitical realities. The entire Kashmiri political leadership is incarcerated without any legal recourse and journalists and human rights activists are being prosecuted on false charges.

While the Kashmiri political leadership remains incarcerated under trumped-up charges, Kashmiri youth are regularly tortured and killed during "cordon-and-search" operations and fake "encounters" carried out by the Indian occupation

⁸² <https://www.amnestyusa.org/reports/losing-sight-in-kashmir-the-impact-of-pellet-firing-shotguns/>

⁸³ https://apdpkashmir.com/ebmedia/sitename_eb/wp-content/uploads/201912//APDP-Report-9.12.19.pdf

⁸⁴ Zulfqar Ali, Kashmir: India's Sniper War along the UN-monitored ceasefire line", Kashmir Institute of International relations, June 2020

forces with impunity. Thousands, including children, have been imprisoned without any charge or due process of law. Worst still, rape and molestation of women is used as a method of collective punishment. The impugned laws of AFSPA and PSA and many other such discriminatory laws continue to provide blanket protection to over 9 million Indian Occupation forces deployed in IOJK to trample human rights of innocent Kashmiris.

Since August 2019, the Indian government, through nefarious means, has been actively engaged in gerrymandering, to reduce Muslim representation in IOJK. It has enforced illegal reforms to settle non-Kashmiri Hindu citizens in the occupied territory to convert its Muslim majority into a minority. The abrogation of Articles 370 and 35A of the Indian constitution has taken away the symbolic special status of the IOJK. While Kashmiris in the IOJK were being denied their fundamental right of self-determination for decades, these illegal and repressive reforms seek to exacerbate this denial by illegally changing the demographic composition of Kashmir akin to the Israeli settlements in Occupied Palestinian Territories.

Since April 2020, India has introduced 113 new laws and amended 90 other laws and issued 4.1 million new domicile certificates to non-Kashmiris from mainland India, paving the way for implementing genocide tools through demographic changes. This is a manifest violation of the well codified international human rights treaties, including Articles 27 and 49 of the Fourth Geneva Convention, which clearly prohibit any illicit transfer of population in conflict zones or disputed territory. These blatant human rights violations reflect an obvious State bias, which has led to the issuance of genocide alerts by international human rights organizations.

The persistent denial of the Indian Government to allow access to the OIC-IPHRC, UN and other international human rights bodies further reflects negation of India's human rights obligations and to come clean on serious allegations of human rights violations.

The analysis of considerable statistical and circumstantial evidence indicates that the human rights violations against the Kashmiri population in the IOJK have reached an unprecedented level. It could also be inferred that these repetitive, systematic and systemic human rights violations seem to have a well-defined pattern and design of State bias and collusion, which are telltale signs of an impending genocide.

Based on its mandate, IPHRC will continue to monitor and report human rights violations in IOJK, through its Standing Mechanism that monitors human rights situation in the IOJK. IPHRC will also keep pronouncing its position on these developments through Press Statements as well as by providing regular briefings to OIC Contact Group on Jammu and Kashmir. Additional efforts would also be made to raise awareness on this important issue in cooperation with all relevant OIC organs / Missions, UN mechanisms and other human rights organizations, including through holding of relevant symposia and seminars.

I. Recommendations:

For the UN and international community

The Jammu & Kashmir dispute remains one of the oldest items on the UN agenda, which bestows an important role on the UN to continue to make concerted efforts to protect and promote the fundamental rights and freedoms of the people of Jammu and Kashmir, especially their right to self-determination. Therefore, the UN may be requested to:

- a- implement UNSC resolutions to allow people of Jammu and Kashmir to exercise their right to self-determination in a free and fair plebiscite under the UN auspices;
- b- fulfil its primary responsibility to bring an end to the ongoing human rights violations in the IOJK by using all diplomatic means to pressurize the Government of India;
- c- establish a Commission of Inquiry, as proposed by OHCHR Reports to investigate the allegations of human rights violations, especially cases of enforced disappearance, extrajudicial killings, rape, unmarked mass graves and illegal demographic changes in the occupied territories by India since August 2019.
- d- urge the Government of India to fulfil its human rights obligations by repealing all discriminatory and repressive laws like AFSA, PSA and UAPA which are contradictory to international human rights law;
- e- employ political and diplomatic means to pressurize Indian Government to reverse all measures aimed at changing

the demographic status of the majority Muslim State of the Jammu and Kashmir;

- f- urge all relevant Special Procedures mandate holders to focus and report on various grave violations in IOJK from human rights and international law perspectives;
- g- push the UN Human Rights Council to consider appointing a Special Rapporteur with a specific mandate to investigate India's human rights violations in IOJK under international law and international humanitarian law;
- h- request the UN High Commissioner for Human Rights may continue to urge the government of India to accept an OHCHR fact finding mission to IOJK and must continue to monitor, document and report the ongoing human rights violations under her regular briefings to the HRC;
- i- request the Director General of World Health Organization, in his periodic health situation reports may consider to report upon the health conditions of Kashmiris in the IOJK, especially those related to COVID-19 and also vaccination status, as is done in the case of Palestinians in the Occupied Palestinian Territories. It will help in highlighting the precarious health conditions in the IOJK;
- j- request UNESCO to investigate and report on the violations of cultural rights of Kashmiris and desecration and destruction of the cultural heritage and identity of the native Kashmiris especially in the wake of ongoing illegal demographic policies which will systematically debase the cultural landscape of IOJK; and
- k- in the event of continuing non-cooperation by the Indian Government, the UNSC must employ all available means including targeted sanctions such as Boycott, Divestment and Sanctions (BDS) to protect the rights of the Kashmiris.

For the Governments of Pakistan and the State of the AJK

The Government of Pakistan should:

- a- provide moral and diplomatic support to the Kashmiris at all bilateral and multilateral fora, including UN and OIC, to create awareness over the human rights violations and internationalize the issue;
- b- engage with the IsDB and other Multilateral Development Institutions to provide humanitarian support to the victims and affectees in IOJK;
- c- engage international media and human rights organizations and civil society to create quality digital content to present the plight of Kashmiris in IOJK;

For the Government of India

The Government of India must:

- a- allow access to OIC, UN, IPHRC and other human rights organizations international media to visit IOJK and conduct independent investigations into and reporting upon allegations of human rights abuses;
- b- repeal all restrictive and discriminatory laws like AFSA, PSA, UAPA and other laws aimed at bringing demographic changes within the occupied territories to allow the Kashmiris appropriate access to justice, free trial, freedom of movement;
- c- allow access to the humanitarian organizations to provide much needed medical support to the victims of the violence in particular cases of blindness by the pellet gun injuries;
- d- bring an end to impunity accorded to the security forces and other government functionaries, involved in gross human rights violations against Kashmiris;
- e- remove travel restrictions imposed upon the Kashmiri leadership to facilitate their right to free movement abroad;
- f- be reminded that non-Kashmiri people (granted domicile of IOJK after Aug 2019) cannot be part of any future referendum/plebiscite, which remains the only path for the Kashmiris toward realizing their inalienable right to self-determination.

For the OIC

The OIC has several mechanisms/platforms to deal with the issue, which include raising it during the Summit, CFM and Contact Group on Jammu and Kashmir Meetings. OIC Groups in Geneva and New York must also raise the issue during meetings of the relevant Committees and Commissions in the General Assembly and the UNHRC. Besides the OIC may:

- a- pressurize the Government of India to allow the OIC and IPHRC Fact Finding Missions to IOJK to investigate and report upon the allegations of human rights violations;
- b- organize an international conference/symposium of international human rights and legal experts to discuss the implications of the latest demographic changes in the IOJK and consider pronouncing a legal strategy to deal with the issue;
- c- coordinate with the OIC Contact Group on Jammu and Kashmir to meet regularly on the side-lines of session of the UN General Assembly, the UN Human Rights Council as well as the OIC Ministerial meetings to forge a consensus position for presentation at the international forums, beside regularly meeting the UN Secretary General and President of the UN General Assembly to apprise them about the human rights situation in IOJK;
- d- establish and operationalize a humanitarian support fund, in collaboration with Islamic Development Bank and Islamic Solidarity Fund, for providing humanitarian support to the people of IOJK and also initiating development projects in the field of education and health to mitigate the humanitarian catastrophe in IOJK;
- e- urge its Member States to use their influence with Indian government to put an end to the human rights abuses against Kashmiri Muslims, failing which they may consider using the BDS measures against India to fulfill its human rights obligations;
- f- in partnership with all relevant stakeholders, including the UNESCO and ISESCO should prepare a media strategy to raise awareness about various aspects of suffering in the IOJK, including destruction of Kashmiri cultural heritage and identity. It should include systematic use of social media, films and audio-visual documentaries to highlight the impact of the Indian occupation on the native population of Kashmir;
- g- nominate a Kashmiri human rights activist for relevant international prizes and/or establish prizes that support the promotion and protection of human rights in Kashmir;
- h- through the assistance of Member States, should take the case of illegally detained Kashmiri leaders, including Yasin Malik, Asiya Andrabi and others to the International Court of Justice (ICJ) and other world forums to ensure their release. These Kashmiri leaders should be declared as prisoners of conscience/opinion, and should be given a status within the norms of International Law;
- i- explore all legal avenues for taking the case of human rights violations in IOJK to ICJ;
- j- ask the OIC Groups in New York and in Geneva to circulate this report as an official document of the UN. It may also be shared with the relevant EU authorities through our OIC Mission in Brussels.
- k- Request the CFM to encourage Member States to translate this report into their local languages for wider dissemination and distribution in academic circles, in order to raise awareness on the aspect of human rights violations taking place in the IOJK among the local populations and civil society actors in OIC Member States.

**REPORT OF THE OIC-IPHRC FACT FINDING VISIT
TO THE TERRITORIES PREVIOUSLY OCCUPIED BY
ARMENIA TO ASSESS HUMAN RIGHTS &
HUMANITARIAN SITUATION**

Adopted by the 18th IPHRC Regular Session - November 2021

Introduction

i. Mandate for the IPHRC Fact-finding Mission:

The Independent Permanent Human Rights Commission (IPHRC) of the Organization of Islamic Cooperation (OIC) is an independent organ of the OIC¹ with mandate to assess and report on human rights situations concerning Muslim communities in different parts of the world in accordance with the Rule 39 h(i) & (l) & Rule 64 of the IPHRC Rules of Procedures². During the 17th Regular Session of the IPHRC held from 2831- March 2021, the Commission, on the invitation of the Government of the Republic of Azerbaijan, agreed to undertake a fact-finding visit to the recently liberated regions of Azerbaijan on a mutually agreed date³. The Representatives of the OIC Contact Group on the Aggression of the Republic of Armenia against the Republic of Azerbaijan also undertook a visit to these liberated areas from 510- April 2021. The report of the said visit stressed the importance of a similar fact-finding visit by IPHRC to assess the human rights situation of these liberated areas⁴.

2. Accordingly, on the invitation of the Government of the Republic of Azerbaijan⁵, an IPHRC delegation led by its Chairperson Dr. Saeed Mohammad Al-Ghufli and Vice- Chairperson Dr. Haci Ali Acikgul, and Commission Member Dr. Aydin Safikhanli undertook a fact-finding mission from 2226- September 2021.

ii. Brief History and Legal Overview of the Conflict and Present Status:

3. Nagorno-Karabakh (NKAO), spread over 4400 square km⁶, was recognized as an Autonomous Region under Azerbaijan Soviet Socialist Republic (SSR) in 1923. After the collapse of the Union of Soviet Socialist Republics (USSR) in December 1991, the international legitimacy of the boundaries of newly independent States was secured by the international legal doctrine of *uti possidetis juris*⁷, which provides that newly-formed sovereign States should retain the internal borders that their preceding dependent area had before their independence. The procedures for changing the existing borders of Soviet Republics were stipulated in the Constitution of the USSR and the Constitutions of Soviet Republics. According to article 78 of the USSR Constitution of 1977⁸, the territory of a Soviet Republic could not be altered without its consent. The borders between Union Republics could only be redrawn by mutual agreement of the Republics concerned, subject to approval by the higher legislative bodies of the USSR. This provision was also stipulated in the Constitutions of the Azerbaijan SSR and Armenia SSR.

4. Based on this principle, the former administrative borders of Azerbaijan SSR, which included NKAO, were recognized by international law as the legitimate borders of the newly independent Republic of Azerbaijan. However, before the collapse of the Soviet Union, Armenia and the Armenian separatist groups in Karabakh began armed operations in 1988, leading to the outbreak of the First Karabakh War (1988-1994)⁹. The separatist regime in Nagorno-Karabakh unilaterally declared its “independence” in 1991, which does not comply in any way with international law and remained

¹ Art.5 and 15 of OIC Charter

² IPHRC Rules of Procedures: https://www.oic-iphr.org/en/data/docs/legal_instruments/OIC_HRRIT/111912.pdf

³ Report of the 17th Session of the IPHRC held from 2931- March 2021 para.10

⁴ Report of the visit of the Representatives of the OIC Contact Group on the Aggression of the Republic of Armenia against the Republic of Azerbaijan from 510- April 2021, page. 4

⁵ Embassy of the Republic of Azerbaijan Note Verbale No: 3-37/2021- dated 18th August 2021

⁶ <https://www.britannica.com/place/Nagorno-Karabakh>

⁷ [https://www.law.cornell.edu/wex/uti_possidetis_juris#:~:text=uti%20possidetis%20juris%20\(UPJ\)%20i s,wider%20application%2C%20notably%20in%20Africa.](https://www.law.cornell.edu/wex/uti_possidetis_juris#:~:text=uti%20possidetis%20juris%20(UPJ)%20i s,wider%20application%2C%20notably%20in%20Africa.)

⁸ USSR Constitution 1977, Art. 78 available at <https://www.departments.bucknell.edu/russian/const/77cons03.html#chap08>

⁹ <https://www.britannica.com/place/Nagorno-Karabakh>

unrecognized by any country¹⁰. The Republic of Armenia financed and provided military and operational support to the self-proclaimed Nagorno-Karabakh Republic and its forces in coordinating and helping the general planning of their military and paramilitary activities¹¹. The military hostilities were halted with the signing of the Bishkek Protocol, leading to a cease-fire in 1994¹², leaving Nagorno Karabakh and other regions of Azerbaijan- Lachin, Kalbajar, Aghdam, Fizuli, Jabrayil, Gubadli, and Zangilan - under Armenian occupation. Organization for Security and Co-Operation in Europe (OSCE) formed the Minsk Group¹³ tasked with facilitating a peace agreement between Azerbaijan and Armenia. The United States, France, and Russia, who serve as the Minsk Group's co-chairs, do not recognize the self-proclaimed independence of Nagorno-Karabakh.

5. The legality of Azerbaijan's position is affirmed through United Nations Security Council (UNSC) Resolutions, which demanded the withdrawal of all occupying forces from the Kalbajar, Agdam, and Zangilan districts and other occupied areas of Azerbaijan (UNSC Res 822 (1993), para. 1¹⁴; UNSC Res 853 (1993), para. 3¹⁵; UNSC Res 874 (1993), para. 5¹⁶; UNSC Res 884 (1993), para. 4¹⁷). In March 2008, the United Nations General Assembly (UNGA) demanded the "withdrawal of all Armenian forces from all the occupied territories of the Republic of Azerbaijan" (UNGA Res 62243/, para. 2¹⁸) and the Council of Europe Parliamentary Assembly (PACE) Resolution 1416 (2005)¹⁹. The Final Communique of the 14th Session of the Islamic Summit Conference in Makkah Al- Mukarramah, Kingdom of Saudi Arabia in May 2019²⁰ and Resolution No. 1247-/POL on the Aggression of the Republic of Armenia against the Republic of Azerbaijan²¹ adopted during 47th Session of the OIC Council of Foreign Ministers (CFM) reiterated OIC's principled position on condemnation of the aggression of the Republic of Armenia against the Republic of Azerbaijan and reaffirmed that acquisition of territory by use of force is inadmissible under the Charter of the United Nations and international law as well as urged for strict implementation of UN Security Council resolutions and immediate, complete and unconditional withdrawal of the armed forces of the Republic of Armenia from Nagorno-Karabakh region and other occupied territories of the Republic of Azerbaijan.

6. According the international law, since the end of the First Karabakh War in 1994 until the start of hostilities on 27 September 2020, Armenia was the occupying power in the Nagorno-Karabakh region, as well as in the other districts of Azerbaijan.

7. During the 2nd Karabakh War from 27 September-10 November 2020, the Armenian offensive blatantly violated the relevant provisions of International Human Rights (IHL) and Humanitarian laws (IHL).

8. On 10 November 2020, a nine-point ceasefire agreement was concluded. Under the ceasefire agreement signed by President of the Republic of Azerbaijan, Prime Minister of the Republic of Armenia, and President of the Russian Federation²², Azerbaijan regains control of the districts which were liberated by Azerbaijan and those that were handed

¹⁰ Chiragov and Others v. Armenia, 16 June 2015, European Court of Human Rights observed that "Armenia's military support continued to be decisive for the control over the territories in question. Furthermore, it was evident from the facts established in the case that Armenia gave the "Nagorno- Karabakh Republic" (the "NKR") substantial political and financial support; its citizens were moreover required to acquire Armenian passports to travel abroad, as the "NKR" was not recognised by any State or international organisation. https://www.echr.coe.int/documents/fs_extra-territorial_jurisdiction_eng.pdf

¹¹ <https://www.rulac.org/browse/conflicts/military-occupation-of-azerbaijan-by-armenia#collapse1accord> & Supra note 9

¹² <https://www.ifimes.org/en/researches/brief-history-of-ceasefire-in-the-nagorno-karabakh-conflict/4681>

¹³ <https://www.osce.org/minsk-group/108308>

¹⁴ <https://digitallibrary.un.org/record/165604?ln=en>

¹⁵ <https://digitallibrary.un.org/record/170257?ln=en>

¹⁶ <https://digitallibrary.un.org/record/174420?ln=en>

¹⁷ <https://digitallibrary.un.org/record/176731?ln=en>

¹⁸ <https://www.un.org/press/en/2008/ga10693.doc.htm>

¹⁹ <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17289&lang=en>

²⁰ Final Communique of the 14th Session of the Islamic Summit Conference, para. 34 available at <https://www.oic-oci.org/docdown/?docID=4496&refID=1251>

²¹ <https://www.oic-oci.org/docdown/?docID=6626&refID=3255>

²² Nine Point Cease Fire Agreement, 9 November 2020 available at <http://en.kremlin.ru/events/president/news/64384>

over by Armenia to Azerbaijan gradually in the month following the signature of the ceasefire agreement²³.



Source: <https://www.aa.com.tr/tr/azerbaycan-cephe-hatti/azerbaycanve-ermenistan-daglik-karabagda-anlasmaya-vardi/2037860>

9. There are three dimensions of the conflict, which include: (a) legal / political dimension concerning the occupation of the NKAO territories by the Republic of Armenia in contravention of the international law and breach of territorial integrity and sovereignty of Azerbaijan; (b) peace and security threat to regional stability and (c) human rights dimensions concerning widely reported grave violations of human rights committed by the Armenians in total disregard of the prevailing International Human rights (IHRL) and Humanitarian Laws (IHL) which was the focus of the IPHRC delegation's fact-finding visit. The extensive reports by international human rights organizations point towards systemic and systematic human rights violations, which include willful targeting of civilians, destruction of cultural and religious sites, displacement of people, and widespread laying of landmines in the occupied areas, posing a threat to the lives of Azerbaijani IDPs trying to return to their native lands.

iii. Visit Program and sources of information

10. The IPHRC delegation had an extensive visit which concluded meetings with relevant government officials in Baku, visit to the recently liberated areas as well interactions with the victims and IDPs from these areas. The delegation, during its four-day visit from 22-26 September 2021, met with Ms. Aliyeva Sabina Yashar gizi, Azerbaijan Commissioner for Human Rights (Ombudsman); Mr. Ali Huseynli, First Deputy Chair of the Milli Majlis (Parliament); Mr. Zahid Oruj, Chair of the Human Rights Committee at the Milli Majlis; Mr. Hikmat Hajiyev, Assistant to the President & Head of the Department of Foreign Policy Affairs of the Presidential Administration; Mr. Vugar Suleymanov, Chairman of Board of Azerbaijan National Agency for Mine Action (ANAMA); Mr. Mustagim Mammadov, Head of the Executive Power of Terter Region of Azerbaijan; Mr. Adil Tagiyev, Deputy of the Head of the Executive Power of Ganja city of Azerbaijan and Ms. Ariane Bauer, Head of the International Committee of Red Cross (ICRC) in Baku.

Besides meeting with the concerned officials and agencies in Baku, the delegation visited the recently liberated territories of Azerbaijan and carried out an onsite objective and independent assessment of allegations of human rights violations and humanitarian situations. The delegation collated vital photographic, documentary, and circumstantial evidence from the testimonies of the victims, governmental and non-governmental agencies, and other independent sources about the nature and extent of intentional and collateral damage caused to the life, property, cultural heritage, and environment during the period 1992-2020.

11. The OIC IPHRC, as mandated, is exclusively concerned with the conflict's human rights and humanitarian aspects. Accordingly, the IPHRC delegation in its report has focused on this aspect to (i) assess the current human rights and humanitarian situation in the recently liberated territories in the light of prevailing international laws and standards; (ii)

²³ https://www.ejiltalk.org/the-recent-ceasefire-in-nagorno-karabakh-territorial-control-peacekeepers-and-unanswered-question-of-status/?utm_source=mailpoet&utm_medium=email&utm_campaign=ejil-talk-newsletter-post-title_2

investigate and report upon the allegations of human rights abuses and; (iii) make recommendations to protect the human rights of the people in these territories.

B. OBSERVATIONS/FINDINGS OF THE OIC-IPHRC OVER THE HUMAN RIGHTS VIOLATIONS:

12. The delegation visited the cities of Agdam, Terter, and Ganja. During its visit to Agdam, the delegation observed noxious peppering of landmines and the damage and destruction caused to the cultural relics, museums, and religious sites. The cities of Terter and Ganja suffered colossal damage to civilian infrastructure, including schools and the physical environment, due to indiscriminate bombing/targeting of non-combat infrastructure by the Armenian forces causing loss of innocent civilian lives and injuries and widespread displacement of the civilian population. Although the cities of Terter and Ganja are located away from the active military front/conflict zone and were of no military significance, they suffered a large number of civilian losses, including death and injuries of women and children due to the Armenian offensive.

i. Destruction of Cultural, Religious, and Historical Sites & Environment:

13. The delegation visited the recently liberated Agdam, which remained under occupation since 1993. The delegation was shocked to witness the extent of irreversible damage inflicted to the physical infrastructure, rich cultural and religious heritage, and environment of the town that once used to be a vibrant city with an estimated population of 132,170 in 1993²⁴. It was now found to be in the state of an uninhabited 'ghost town.' The physical infrastructure is in ruins with only relics of erstwhile architectural glory. The city of Agdam, prior to the Armenian occupation in 1993, had an airport, well-developed infrastructure theatres, museums, industrial complexes, and a thriving economy, as shown in the following photos.



Agdam before occupation (Courtesy: <https://www.rferl.org/a/inside-agdam-the-ghost-city-of-the-caucasus-after-1990s-conflict/30966555.html>)

According to information collected, since occupation due to persecution and killings by Armenians, the local Azerbaijanis fled their homes²⁵ and settled in various parts of Azerbaijan. They have become IDPs in their own country.

14. The Armenian occupation forces did not inhabit the city. Instead, they used the land as 'no-mans' buffer zone' signifying that they knew that their occupation is untenable, so they did not invest in the city. More damage occurred in the following decades when the then-abandoned town was looted for building materials and other historical possessions.²⁶ It is currently almost ruined and uninhabited²⁷, prompting the locals to refer to it as the Hiroshima of the

²⁴ <https://rm.coe.int/16805abf1e>

²⁵ Report of the visit of the Representatives of the OIC Contact Group on the Aggression of the Republic of Armenia against the Republic of Azerbaijan from 510- April 2021, page.2

²⁶ "Azeris return to their ruined old homes". The Economist. 16 December 2020
<https://www.economist.com/europe/202016/12//azeris-return-to-their-ruined-old-homes>

²⁷ Specter, Michael (2 June 1994). "Azerbaijan, Potentially Rich, Is Impoverished by Warfare". The New York Times. Cities like Agdam have been emptied of people.

Caucasus²⁸. A video footage of the pre- and post-occupation Agdam provides a visual account of the wide-scale 'urbicide'²⁹ and 'culturicide'³⁰ which happened in Agdam³¹.



Aerial view of the Agdam - A Ghost City

15. The delegation had the opportunity to visit the "Imarat of Panah Khan" complex, Central Jamia Mosque of Agdam, Central Square, and Agdam Theatre, all of which are in ruins and dilapidated. The Central Jamia Mosque, which was built



Archival photo of the central mosque of Agdam in 1990 & Photo taken by the delegation during the fact-finding visit 2225- September 2021



Desecration of Central Mosque at Agdam, which was used to keep cows, horses, even pigs during the times of occupation by the Armenian forces & Interior of Agdam's Central Mosque.

²⁸ Musayelyan, Lusine. "Life Among Ruins of Caucasus' Hiroshima". Institute for War and Peace Reporting.

²⁹ A term which first came to be used during the 1992-95- Bosnian war as a way of referring to widespread and deliberate destruction of the urban environment. (Urbicide: The Politics of Urban Destruction by Martin Coward, 2009)

³⁰ <https://www.macmillandictionary.com/dictionary/british/culturicide>

³¹ <https://www.azerbaycan24.com/en/aghdam-region-before-and-after-armenian-occupation-videos/>

in 1870 and is not only a religious site but also cultural heritage, was visibly vandalized. It had graffiti and signs of bullets and shelling both in the interior and exterior. Ironically, the mosque was desecrated during the Armenian occupation when it was used as a barn for cows and other animals³².



Images of the vandalized Agdam Museum of History and the Bread Museum & Theatre

16. It was observed that the Armenian occupation had catastrophic consequences for the country’s cultural heritage in its occupied territories. The occupation forces destroyed historical monuments, including the mansion of Karabakh Khan Panahali (18th century) and his tomb (19th century), the Agdam Museum of History and the Bread Museum, and other historical places were destroyed plundered in the occupied territory. A tabulated account is given as below:

Destruction and Damages (1988 - 1993) ³³					
Settlements	830	Houses	150,000	Public constructions	7,000
Schools	693	Kindergartens	855	Medical institutions	700
Libraries	927	Temples	44	Mosques	9
Historical monuments, palaces and museums	464	Museum pieces	40,000	Industrial and agricultural enterprises	6,000
Highways	800 km	Bridges	160	Water pipelines	2,300 km
Gas pipelines	2,000 km	Power lines	15,000 km	Woods	280,000 ha
Farmlands	1000 000 ha	Irrigation systems	1200 km		

³² Carlotta Gall and Anton Troianovski (11 December 2020). "After Nagorno-Karabakh War, Trauma, Tragedy and Devastation". The New York Times available at <https://www.nytimes.com/2020/11/12/world/europe/nagorno-karabakh-armenia-azerbaijan.html>

³³ Letter from Azerbaijan to the UN SG: Report on Armenian aggression against Azerbaijan and recent developments (A/58594-S/20031090/) available at <https://reliefweb.int/report/armenia/letter-azerbaijan-un-sg-report-armenian-aggression-against-azerbaijan-and-recent>

17. According to the preliminary data, the overall damage inflicted on the Republic of Azerbaijan as a result of Armenian aggression exceeds 20 billion USD³⁴. The scorched earth policy of purposeful destruction by the Armenians caused irreparable loss to the cultural and environmental ecology of Agdam and surrounding areas causing the death of the city and loss of a rich civilization³⁵. In its interaction with the locals who had fled the area, the IPHRC delegation was given detailed accounts of vandalism, including grave robbery, uncovering tombs and graves to steal artefacts or personal valuables, and removal of building material during the times of occupation. The deliberate destruction of the cultural heritage of Agdam and other towns and settlements of Karabakh is a grave violation of cultural rights and violation of IHL, which constitute a serious violation of Armenia's obligations under international law to respect and protect the cultural heritage of the occupied territories.

ii. Recovery of and right to know about the fate of Missing Persons:

18. The delegation, during its interaction with government officials and representatives of ICRC, was apprised of the dreadful fact that around 3890 Azerbaijani citizens (3171 servicemen, 719 civilians)³⁶, including (71 children, 267 women, and 326 old people)³⁷, are still missing as a result of the conflict since the 1990s.

19. The Head of the ICRC delegation in Azerbaijan confirmed, as per Azerbaijan's complaint, thousands are still missing, and ICRC is working with relevant State agencies for decades to address the humanitarian consequences of the problem related to missing people, without much success. ICRC continues to process these cases of missing persons and has developed a consolidated list and reported that it had received thousands of calls and visits from families of missing individuals and received hundreds of tracing requests for civilians and soldiers.³⁸

20. The delegation was briefed by the Azerbaijan Commissioner for Human Rights that the Government of Armenia, despite repeated requests from Azerbaijan, is not cooperating for a prompt and effective investigation into the fate of missing persons, which is quite frustrating and agonizing for the families of the missing persons.

21. According to the IHL, including the Four Geneva Conventions of 1949 for the Protection of War victims and Additional Protocols (I & II) of 8th June 1977 it is an international responsibility of States to protect the Prisoners of War against torture and degrading conditions. Also, two main principles that stand out are that the Parties to an armed conflict must take every possible measure to elucidate the fate of missing persons³⁹ and that families are entitled to know the fate of their relatives⁴⁰. The right to know the fate of missing relatives is a fundamental right of the families concerned and should be guaranteed. Furthermore, State practice establishes as a norm of customary international law, applicable in both international and non-international armed conflicts, the obligations of each party to the armed conflict to take all feasible measures to account for persons reported missing as a result of armed conflict, and to provide their family members with any information it has on their fate.

22. The delegation also noted allegations of secret detention of missing persons by Armenia and using them for extracting information or espionage purposes. The delegation considers that all such allegations should be fully investigated, and Armenian authorities must extend all possible assistance to ICRC and Azerbaijan authorities to disclose the state of missing persons. All concerned countries with influence as well as the international community should also pressurize the Armenian authorities to come clean on this top humanitarian matter. "Failure to disclose information on the fate and whereabouts of missing persons and refusal to hand over the remains of the deceased may amount to enforced disappearance, which both Azerbaijan and Armenia have committed to preventing."⁴¹

23. The delegation emphasized that the issue of missing persons is a humanitarian issue with human rights and IHL

³⁴ *ibid*

³⁵ "I don't even know if my home still exists.". National Geographic. 5 February 2021. <https://www.nationalgeographic.com/history/article/i-dont-know-if-my-home-still-exists-nagorno-karabakh-conflict>

³⁶ <https://en.trend.az/azerbaijan/politics/3475998.html>

³⁷ <https://www.azernews.az/nation/182759.html>

³⁸ <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/azerbaijan/>

³⁹ Geneva Convention I, Articles 1920-; Geneva Convention II, Articles 1617-; Geneva Convention II, Articles 122- 125; Geneva Convention IV, Articles 136 – 141;

Additional Protocol I, Articles 32 – 33. J.M. Henckaerts / I. Doswald-Beck. Customary International Humanitarian Law, ICRC, Cambridge, Cambridge University Press, 2005,

⁴⁰ Additional Protocol I, Article 32. . J.M. Henckaerts / I. Doswald-Beck. Customary International Humanitarian Law, ICRC, Cambridge, Cambridge University Press, 2005

⁴¹ <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26702&LangID=E>

implications. It should not be treated as a political issue and consequently should not be dependent on the political settlements of the disputes in the region. Further, it was stressed that resolution of missing persons could reduce levels of hostility, mistrust, and intolerance, build confidence in the region, and facilitate efforts to find a political settlement to the disputes in the region. However, time is of the essence as delays extend the uncertainty and suffering of the families and reduce the likelihood of finding, identifying, and returning the missing persons, if any, who are still alive.

iii. Land Mines infestation in the Liberated Areas:

24. The delegation received a comprehensive briefing at ANAMA and visited the vast tracts of lands in the Agdam district, heavily infested with lethal landmines. As a result of mines laid by Armenians in the area from 1992 until 10 November 2020, 2,843 persons have been reported killed and injured. Five hundred twenty-two out of whom were military servicemen, and 2321 were civilians. About half of the victims, 1,357 persons, were injured because mine blasts occurred in peacetime⁴². These landmines were not only laid down by the Armenians during the occupation but also during its forced withdrawal from the occupied territories after the recent ceasefire. Regrettably, those mines were laid in a haphazard manner in almost every part, including agricultural fields, graveyards, gardens, and other social and economic means, in order to inflict human losses as much as possible⁴³.

25. The delegation concluded that such wild laying of mines would severely impede the settlement and rehabilitation of internally displaced Azerbaijani people, which could be one of the intended purposes of the withdrawal of Armenian forces. Since the Trilateral Statement of 10 November 2020, 144 Azerbaijani citizens (as of June 2021)⁴⁴, including two journalists⁴⁵, have been killed and seriously wounded/disabled as a result of mine explosions in the liberated territories of Azerbaijan. Referring to the plethora of mines, ICRC weapons expert Chris Poole remarked that “Anti-Personnel mines, loaded weapons, grenades, RPGs, mortar bombs, anti-tank missiles, long-range rockets...there is a contamination everywhere”⁴⁶.

26. The delegation observed that, due to the extremely risky and laborious nature of the demining process, the massive mine contamination of the liberated territories seriously impedes the realization of wide-ranging rehabilitation and reconstruction plans of the Government of Azerbaijan. Thus, seriously affecting the realization of the inalienable right of the hundreds of thousands of IDPs to return to their homes in safety and dignity.

27. The Government of Azerbaijan has urged the Armenian Government to provide ‘mine maps’ to enable ANAMA to demine the area quickly and with safety⁴⁷. There are reports that an agreement was reached where Armenians had provided Azerbaijan with minefield maps of 97,000 mines buried in the Agdam district in exchange for the Prisoners of Wars⁴⁸. However, the delegation was dismayed at the reports that allegedly the mine maps provided by the Armenians are either inaccurate or incomplete, which if found true would be unfortunate⁴⁹.

28. The delegation further observed that deliberate and large-scale planting of landmines by Armenia in the occupied territories, particularly in civilian areas, is a gross violation of the IHL, including the Geneva Conventions of 1949, and infringes upon the rights of Azerbaijani people, including their right to life, right for respect to private and family life, home and correspondences, right to protection of property, right to freedom of movement within the territory of a State. IHL prohibits the use of indiscriminate weapons, as well as those which cause injury disproportionate to their military purpose. These two basic rules of IHL apply to mines. According to Rule 71, “The use of weapons which are by nature indiscriminate is prohibited”⁵⁰.

iv. Deliberate Targeting of Civilians and non-military infrastructure in violation of IHL:

⁴² ANAMA statistics quoted in Mine Problem in the Liberated Areas: Ad Hoc Report of the Commissioner for Human Rights (Ombudsman) of the Republic of Azerbaijan, page 7 available at <https://www.politicamentecorretto.com/wp-content/uploads/202106/Ad-Hoc-Report-of-the-Ombudsman-on-landmine-problem-1.pdf>

⁴³ <https://neweasterneurope.eu/202116/04//mines-karabakh-and-armenias-crisis/>

⁴⁴ <https://mfa.gov.az/index.php/en/category/consequences-of-the-aggression-by-armenia-against-azerbaijan-en/humanitarian-consequences-en>

⁴⁵ <https://www.reuters.com/business/media-telecom/two-azeri-journalists-an-official-killed-landmine-blast-near-karabakh-prosecutor-202104-06/>

⁴⁶ Nagorno-Karabakh conflict: finding common ground in respect of the dead | ICRC

⁴⁷ <https://eurasianet.org/azerbaijan-demands-mine-maps-from-armenia>

⁴⁸ <https://eurasianet.org/armenia-and-azerbaijan-exchange-detainees-for-mine-maps>

⁴⁹ <https://caspiannews.com/news-detail/president-aliyev-blames-armenia-for-providing-inaccurate-minefield-maps-20210-16-8/>

⁵⁰ https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule71

29. The delegation, during its visit to the cities of Barda, Terter, and Ganja, neighboring cities of the formerly occupied territories, met with the government officials, civil defense authorities, victims, and witnesses of the indiscriminate shelling and bombardment to gather firsthand information about the extent and severity of the damage inflicted upon the civilian physical infrastructure, human settlements, and human lives.

30. The delegation observed that despite being away from the active conflict zone, the nature, range, and frequency of the attacks by the Armenian forces, during the period from 27th September 2020 till 9th November 2020 reflected deliberate targeting of the human settlements, civilian population and infrastructure, and historical, cultural, religious and non-military targets. Human Rights Watch (HRW) documented 11 incidents in which Armenian forces used ballistic missiles, unguided artillery rockets, and large-caliber artillery projectiles that hit populated areas in apparent indiscriminate attacks⁵¹.

31. The delegation also visited the residential buildings and private houses hit by the ballistics and heard the firsthand accounts of the residents and victims, who were unanimous in their testimonies that these attacks/artillery shelling have all the elements of prior planning as part of the broader strategy to instill fear among the civilian population and cause widespread damage and destruction. Consequently, due to these attacks, many residential areas as well as places of worship, including Imamzadeh Mosque and the historical Orthodox Church in Ganja, were hit and suffered vast physical damage.

32. In total, as a result of direct and indiscriminate attacks carried out by the occupation forces of Armenia between 27 September and 9 November 2020, 101 Azerbaijani civilians, including 12 children, were killed, 423 civilians were wounded, almost 84,000 people were forced to leave their homes and over 4,300 private houses, and apartment buildings and 548 other civilian objects were either destroyed or damaged⁵². Even hospitals, medical facilities, ambulances, schools, kindergartens, religious sites, cultural monuments, and cemeteries were not spared. Majority of the killed and injured civilians were residents in cities far away from the zone of military operations, including the visited cities of Terter (20 km away), Ganja (100 km away), and Barda (3040- km away).



33. During the deadliest attacks on Barda, the banned cluster munitions were used by Armenia, which claimed the lives of 27 people and injured 105. It also caused damages to historical and cultural sites as a consequence. This attack was specifically mentioned in the statement issued by the UN High Commissioner for Human Rights⁵³ and widely reported by media and international human rights organizations like HRW⁵⁴. HRW reported that upon examination of the remnants of the ballistics, it was identified as Smerch cluster munition rocket and Smerch parachute-retarded high-explosive fragmentation rocket which remain in possession of Armenian forces⁵⁵.

⁵¹ <https://www.hrw.org/news/2020/11/12/armenia-unlawful-rocket-missile-strikes-azerbaijan>

⁵² A/75660/-S/20201267/ dated 22 December 2020: Letter dated 18 December 2020 from the Permanent Representative of Azerbaijan to the United Nations addressed to the Secretary-General https://un.mfa.gov.az/files/file/letters/A_75_660_E.pdf

⁵³ OHCHR | Nagorno-Karabakh conflict: Bachelet warns of possible war crimes as attacks continue in populated areas

⁵⁴ <https://www.hrw.org/news/2020/30/10/armenia-cluster-munitions-kill-civilians-azerbaijan>

⁵⁵ <https://www.hrw.org/news/2020/30/10/armenia-cluster-munitions-kill-civilians-azerbaijan>

34. The same was highlighted by the UN High Commissioner for Human Rights Michelle Bachelet that “the rockets, allegedly fired by American forces from Nagorno-Karabakh, reportedly carried cluster munitions/ Due to their effects, the use of cluster munitions in populated areas would be incompatible with the IHL principles governing the conduct of hostilities”⁵⁶.

35. HRW, in its report, “Lessons of War,” has also provided an account of another attack where two Scud-B ballistic missiles hit Azerbaijan’s second-largest city, Ganja, killing 21 people. The blast from one missile flattened homes in the Mukhtar Hajiev neighborhood and ripped through both Kindergarten and Secondary School, which killed ten civilians in their homes, four of them children⁵⁷.

36. The targeted killing of children by the Armenian forces are violative of Article 6 & 38 (I) of the United Nations Convention on the Rights of the Child (CRC), which not only guarantees a child’s right to life but also obliges all States to respect and to ensure respect for rules of IHL applicable to them in armed conflicts⁵⁸. The 1974 UN Declaration (3318) on the Protection of Women and Children in Emergency and Armed Conflict also prohibits attacks on women and children⁵⁹. Also, the UNSC Resolution 1261 categorically prohibits “attacks on objects protected under international law, including places that usually have a significant presence of children such as schools and hospitals.”

v. Violation of Rights due to forced displacement & Challenges of Post-conflict reconstruction and rehabilitation:

37. Internally Displaced Persons (IDPs), fathomed the gravity of the issue, which continues to violate the rights of IDPs to return to their ancestral lands and have access to their properties, cemeteries of their loved ones, cultural centers, and association, as well as means of a productive livelihood. Unfortunately, Armenia’s offensive of September 2020 forced 84,000 people away from the area of conflict/under occupation to temporarily abandon their places of habitual residence, suffering the tragedy of forced displacement⁶⁰.

38. Since 1994, Azerbaijan has hosted one of the highest numbers of refugees and displaced persons in the world. Between 1988 and 1994, it is estimated that approximately 750,000 to 800,000 Azerbaijani citizens became IDPs⁶¹ in their own country, and approximately 30,000 people lost their lives. The Armenian occupation of the surrounding seven regions also cut the link between Azerbaijan and its Nagorno-Karabakh region and turned it into no man’s land⁶². Furthermore, about 250,000 Azerbaijanis were expelled from their homes in Armenia at the end of the 1980s⁶³. Their forcible deportation was accompanied by killings, disappearances, destruction of property, and pillaging. As a result, Azerbaijan had been hosting about a million IDPs and refugees who were not able to return to their homes.

39. The European Court of Human Rights in its Judgement on Chiragov and Others vs. Armenia case (which concerns the complaints of six Azerbaijani refugees that they were unable to return to their homes and property in the district of Lachin, in Azerbaijan, from where they had been forced to flee in 1992), ruled that Armenia held Nagorno- Karabakh and all other adjacent regions, including Lachin District are under the occupation. The Court further noted that Armenia continues violating Article 1 of the Additional Protocol 1 (right to property), Article 8 (respect to private and family life), and Article 13 (right to an effective remedy) of the European Convention on Human.⁶⁴

40. The delegation observed that in the follow-up to the tripartite ceasefire agreement, sustainable peace is linked to the successful repatriation of the refugees and IDPs and their reintegration into respective societies. De-occupation of territories has already created a euphoria among the IDPs keen to exercise their right to safe and dignified return to their

⁵⁶ UNHCHR Statement of 2 November 2020 available at <https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26464&LangID=E>

⁵⁷ <https://www.hrw.org/news/2021/08/09/lessons-war>

⁵⁸ UNCRC available at <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

⁵⁹ https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc_19_declaration%20protection%20women%20armed%20conflict.pdf

⁶⁰ <https://mfa.gov.az/index.php/en/category/consequences-of-the-aggression-by-armenia-against-azerbaijan-en/humanitarian-consequences-en>

⁶¹ Human Rights Watch, Seven Years of Conflict in Nagorno-Karabakh, 1994

⁶² Tuncel, T., Güney Kafkasya’da 25- Nisan 2016’da Yaşanan 4 Gün Savaşı, Ermeni Araştırmaları, (2016), Sayı:53

⁶³ <https://caspiannews.com/news-detail/azerbaijan-remembers-mass-deportations-on-world-refugee-day- 201754-20-6-/>

⁶⁴ <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%2200122%155353-%5D%7D>

places of origin. This would restore the economic and cultural life of these liberated regions. However, at present, the biggest challenge is the pace of the demining process, which is the major obstacle in the swift return of IDPs to these territories.

C. CONCLUSION

41. The delegation observed that there is sufficient evidence to conclude that purposeful measures were undertaken by the Armenian side, including massive contamination of the liberated territories with mines to prevent the Azerbaijani authorities and their IDPs from returning to their homes and properties. Such measures included, among others, massive militarization of the occupied territories by laying multilayer military obstacles, the complete annihilation of civilian physical infrastructure, destruction, and desecration of historical and cultural heritage and religious symbols, which constitute grave violations of IHL and IHRL. These violations impede the realization of rehabilitation and reconstruction plans for hundreds of thousands of IDPs desperately waiting to return to their homes in safety and dignity.

42. IPHRC delegation is disappointed at the lack of cooperation from the Armenian side both to provide the maps of the installed landmines in the areas previously occupied by them as well as to provide information about the whereabouts of almost 4000 innocent Azerbaijanis missing since the first Karabagh war or even to find the remains of these missing people, which is a source of deep anguish for the surviving relatives and serious violation of the IHL.

43. IPHRC also condemned the targeting of civilian and non-military installations situated away from the war zone, which were deliberately and indiscriminately targeted by the Armenian side to cause destruction and instill fear among the civilian population. The IPHRC delegation observed that these deliberate targeting of civilians by the Armenian occupation forces, without any regard and observance of the principles of 'distinction' and 'proportionality,' are violative of IHL as stipulated in the Additional Protocol (I) to the Geneva Conventions of 1949 relating to the Protection of Victims of International Armed Conflicts Articles 35, 48, 52(2), 53 and 85.

44. IPHRC, reiterating the often repeated and well-established position of the OIC, reaffirms the Azerbaijani peoples' right to freedom and liberation from foreign occupation, which remains one of the cornerstones of IHRL. IPHRC particularly welcomed the generous offer of Azerbaijan to Armenia to put behind their hostility and start a new chapter of friendly relations, which is not only a noble gesture but also in line with Islamic values and teachings.

45. The delegation was particularly pleased to note the plan of the Azerbaijan Government to restore the physical infrastructure in the liberated territories and establishment of smart city project in Agdam to restore its erstwhile glory and architectural significance. The delegation observed that the Azerbaijan government has plans to welcome and reintegrate its citizens of Armenian origin residing in conflict-affected territories by ensuring the protection of their civil, political, economic and social, and cultural rights. Also, Azerbaijan has a palpable optimism to move beyond the past to normalize relations with the neighboring Armenia through revitalizing communication linkages and facilitating people-to-people contacts.

46. Finally, IPHRC commends the unfettered, open, and transparent access provided by the Government of Azerbaijan as well as the support of the Office of the Ombudsman of Azerbaijan in facilitating the fact-finding mission by providing full access to all the affected areas to collate required information needed to verify the allegations of human rights abuses, which enabled the IPHRC to undertake its mandated task with objectivity and neutrality and prepare its detailed report on the subject.

C. RECOMMENDATIONS

47. The optimism and political goodwill that is generated as a result of the Russian brokered cease-fire should be used as an opportunity to solidify the gains of peace to protect and promote the human rights of the people in the liberated areas. There are four human rights dimensions that require immediate attention: (a) Issue of missing persons; (b) Rehabilitation and repatriation of refugees and IDPs; (c) Demining of the liberated territories; (d) Accountability for the acts of wanton destruction to fix the responsibility and bring the perpetrators to justice. The international community, including the UN, OSCE MINSK Group⁶⁵, OIC, Council of Europe, Russia, and other international organizations, both at the

⁶⁵ <https://www.osce.org/mg>

bilateral and multilateral levels, can and must play a proactive role in addressing these emergent issues. The OIC Contact Group on Azerbaijan could become a useful platform to coordinate progress on all of the above accounts.

Following are some of the specific recommendations:

- a. There is a need to establish an international human rights monitoring mechanism under the auspices of the UN in the form of Special Procedures mandate holder or any other regional organization, i.e., OSCE or OIC, to monitor, document, and investigate allegations of human rights abuses by the Armenian occupation forces and facilitate the implementation of human rights obligations;
- b. Establish a multilateral coordination mechanism under ICRC to deal with the issue of missing persons, in particular, to collect and manage data, processes of recovery, and identification of human remains and provide psychological support for their family members. Such mechanism may impress upon Armenia to cooperate in the process of preparation of lists and identification of whereabouts of missing persons;
- c. Establishment of a UN Commission of Inquiry with the mandate to investigate the allegations of war crimes and crimes against humanity and accordingly bring to justice those who are held responsible for grave violations of IHL during the military aggression of Armenia against Azerbaijan;
- d. The OIC Member States and Multilateral Development Institutions, i.e., World Bank and Islamic Development Bank, develop a humanitarian corridor to provide financial resources and expertise to the Government of Azerbaijan to help rehabilitate the refugees and IDPs. The process involves expeditious demining of the area for which international expertise is needed. Secondly, development of physical infrastructure in the liberated areas to allow the IDPs and refugees to return in safety and dignity;
- e. OIC may consider organizing an international conference/symposium, in collaboration with the IPHRC, on the side-lines of the Human Rights Council in Geneva involving academics, policymakers from UN and OIC Member States and human rights experts to propose ways and means to deal with the issue of missing persons and demining of the liberated territories;
- f. OIC General Secretariat may coordinate with OIC Missions in New York and Geneva to circulate the findings of this report widely with the UN and human rights organizations.



Destruction of Residential Complex in Ganja City



Damaged House in Terter Cityt



Ballistics fired by Armenians towards Terter City

The Cairo Declaration of the Organization of Islamic Cooperation on Human Rights

Adopted by the 47th Session of The OIC Council of Foreign Ministers in Niamey, Republic of Niger, 27-28 November 2020

Preamble

The Member States of the Organization of Islamic Cooperation (OIC), keenly aware of the place of mankind in Islam as vicegerent of Allah on Earth; proceeding from the deep belief in human dignity and respect for human rights, and from the commitment to ensuring and protecting these rights as safeguarded by the teachings of Islam;

Aiming to contribute to the efforts of mankind to assert human rights, to protect human beings from exploitation and persecution, and to affirm their freedom and right to a dignified life in accordance with the Islamic values and principles;

Cognizant of their virtuous and time-honored mores, credited with the oldest human rights pact in Islam; the Charter of Medina, the last sermon of the Prophet Mohamed Peace Be Upon Him and the values of justice, equality and peace of Islamic civilization which should underpin the conception of human rights;

Reaffirming the OIC Charter which provides for the promotion of human rights and fundamental freedoms, good governance, rule of law, democracy and accountability in Member States in accordance with their constitutional and legal systems, their international human rights obligations; promotion of confidence and encouraging friendly relations, mutual respect and cooperation between Member States and with other States;

Reiterating that all human rights are universal, indivisible, interdependent and interrelated and must be treated globally in a fair and equal manner, on the same footing, and with the same emphasis; and that it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms while keeping in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds;

Affirming that the Right to Development is an inalienable human right, and that equality of opportunity for development is a right of both States and peoples;

Reaffirming the OIC support to the struggle of the Palestinian people, who presently are under foreign occupation, and the determination to empower them to attain their inalienable rights, including the right to self-determination, and to establish their sovereign state with Al Quds Al Sharif as its capital, while safeguarding its historic and Islamic character and the holy places therein;

Taking into account the Charter of the United Nations (UN), the International Bill of Human Rights; the Vienna Declaration and Program of Action, Durban Declaration and Programme of Action, and the Outcome Document of the Durban Review Conference 2009, and other relevant international human rights conventions and instruments;

In pursuance of coordination, solidarity, integration and interdependence among Member States in all fields, and to deepen links, communication and cooperation among their peoples in the field of human rights;

Pursuant to the principles of brotherhood and equality among all human beings which are firmly established by all Divine religions;

Without prejudice to the principles of Islam which affirm human dignity and the respect and protection of human rights. Have agreed the following:

ARTICLE 1: Human Dignity

- a. All human beings form one family. They are equal in dignity, rights and obligations, without any discrimination on the grounds of race, color, language, sex, religion, sect, political opinion, national or social origin, fortune, age, disability or other status.
- b. Gross and systematic human rights violations, and also slavery, servitude, forced labor and trafficking in persons, shall be prohibited in all forms, and under any circumstances.

ARTICLE 2: Right to Life

- a. The right to life is the fundamental right of every person, a gift by Allah Almighty, and shall be protected by law. It is the duty of State to protect this right from any violation. No one shall be arbitrarily deprived of this right.
- b. Sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime. This penalty can only be carried out pursuant to a final judgment rendered by a competent court, and in full compliance with the provisions of Art 22 of the present Declaration.
- c. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases, as appropriate.
- d. Sentence of death shall not be imposed for crimes committed by minors and shall not be carried out on pregnant and nursing women.
- e. It is forbidden to resort to such means that may result in genocide or the annihilation of mankind.

ARTICLE 3: Inviolability

Every human being is entitled to inviolability and the protection of his/her good name and honor, during his/her life, and after his/her death. The State and society shall protect his/her remains and burial place.

ARTICLE 4: Right to liberty and safety and not to be subjected to torture

- a. Every person has the right to liberty and security. No one shall be subjected to arbitrary arrest or detention, kidnapping or enforced disappearances. No one shall be deprived of his/her liberty except on such grounds and in accordance with such procedures as are established by law.
- b. No person shall be subjected to physical or psychological torture or to cruel, inhuman or degrading treatment or punishment.
- c. No person shall be subjected to inhuman treatment while in custody; defendants shall be separated from convicted persons.
- d. No person may be subjected to medical or scientific experiments, nor can their organs be used, without their free and informed consent and full heeding of potential medical complications.
- e. It is the duty of the State to ensure everyone's safety from bodily harm, in accordance with its legal system and international obligations.

ARTICLE 5: Protection of the Family and Marriage

- a. The family is the natural and fundamental group unit of society. It is based on marriage between a man and a woman.
- b. Men and women of marrying age have the right to marry and to found a family according to the rules and conditions of marriage. No marriage can take place without the full and free consent of both spouses. The laws in force guarantee the rights and duties of man and woman as to marriage, during marriage and after its

dissolution.

- c. The State and society shall ensure the protection of the rights of the family and its members, strengthening of the family ties, and the prohibition of all forms of violence or abuse in the relations among its members, particularly against women, children, persons with disabilities and the elderly.

ARTICLE 6: Rights of Women

- a. Women and men have equal human dignity, rights and responsibilities as prescribed by applicable laws. Every woman has her own legal status and financial independence, and the right to retain her maiden name and lineage.
- b. The State shall take all necessary legislative, and administrative measures to eliminate difficulties that impede the empowerment of women, their access to quality education, basic healthcare, employment and job protection and the right to receive equal remuneration for equal work, as well as their full enjoyment of human rights and fundamental freedoms and effective participation in all spheres of life, at all levels.
- c. Woman and the girl child shall be protected against all forms of discrimination, violence, abuse and harmful traditional practices. The State and society shall ensure such protection.
- d. Every woman has the right to motherhood in line with Allah's creation. The State shall provide adequate pre-natal and maternal healthcare services.

ARTICLE 7: Rights of the Child

- a. Every child shall have, without discrimination of any kind, irrespective of his or her parent's or legal guardian's race, color, sex, language, religion, sect, political or other opinion, national, ethnic or social origin, property, disability, birth or other status, the right to such measures of protection as are required by his status as a minor, including nursing, education as well as material, and moral care, on the part of his family, society and the State. Both the fetus and the mother must be protected and accorded special care.
- b. Every child shall be registered immediately after birth and shall have a name, and entitled to a nationality.
- c. Parents and legal guardians have the primary responsibility to ensure that children rights are respected, protected and fulfilled in all settings. The State shall also ensure that all measures taken to promote and protect the rights of the child are guided by his/her best interests. The State shall take all necessary measures in law and practice to prevent child abuse, sexual exploitation, and violence.
- d. The State shall respect the responsibilities, rights and duties of the parents, and when applicable, legal guardians to choose the type of education of their children, including the religious and moral education, in conformity with their religious beliefs and ethical values while taking into consideration child's best interest as well as their evolving mental and physical capacities.
- e. Children have commitments toward their parents, relatives and kin.
- f. The State shall take all necessary legislative, administrative and judicial measures to guarantee the survival, development and well-being of the child, especially orphans and those with disabilities, as well as to protect them from all forms of violence and exploitation, in an atmosphere of freedom and dignity. The State shall also ensure alternative care through appropriate institutions for children who are deprived temporarily or permanently of the family environment and encourage the guardianship system, when needed.

ARTICLE 8: Right to recognition before the law

Everyone shall have the right to recognition everywhere as a person before the law.

ARTICLE 9: Right to Education

- a. Education is a fundamental human right and is a tool to promote respect for human rights, understanding, tolerance and friendship among all nations and peoples. Human Rights Education is an integral part of the right

to education.

- b. The seeking of knowledge is a responsibility and the provision of education is the duty of society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee educational diversity in the interest of society.
- c. Primary education shall be compulsory and free. Higher and technical education shall be made available by all appropriate means.
- d. Every human being has the right to receive education from various institutions of education and guidance, including the family in an integrated and balanced manner as to develop his/her personality, and to promote his/her respect for and defense of both rights and obligations.

**ARTICLE 10:
Right to Self-determination**

- a. Foreign occupation, subjugation and colonialism of all types are totally prohibited. Peoples suffering from occupation, or colonialism have the full right to freedom and self-determination. It is the duty of all States and peoples to support the struggles for the elimination of all forms of colonialism and occupation.
- b. The right to self-determination is an inalienable human right. By virtue of this right all such peoples freely determine their political status and freely pursue their economic, social and cultural development.
- c. All Member States have the right to protect their political independence, national sovereignty, territorial integrity and unity, as enshrined in the UN Charter.

**ARTICLE 11:
Freedom of Movement**

- a. Every human being shall have the right to freedom of movement, and to select his/her place of residence whether inside or outside his/her country in accordance with the international law and domestic legislations.
- b. No one may be arbitrarily or unlawfully prevented from leaving any country, including his/her own, nor unlawfully prohibited from residing, or compelled to reside, in any part of that country.
- c. No one may be exiled from his/her country or prohibited from returning there to including the right of return of refugees to their countries of origin.

**ARTICLE 12:
Rights of migrants and refugees**

Refugees and migrants are entitled to the same universally recognized human rights and fundamental freedoms, which must be respected, protected and fulfilled at all times. All forms of discrimination, including racism, xenophobia and intolerance, against migrants and their families, must be eliminated by adopting appropriate legislations.

**ARTICLE 13:
Nationality Rights**

Everyone has the right to a nationality, granting of which is governed by law. No one shall be arbitrarily or unlawfully deprived of his/her nationality nor denied the right to change his/her nationality.

**ARTICLE 14:
Right to Work**

- a. State and Society shall take all measures to guarantee the right to work for each person able to work. Everyone shall be free to choose the work that suits him/her best and which serves his/her interests and of society.
- b. The employee shall have the right to safety and security as well as to all other social guarantees. He/she may neither be assigned work beyond his/her capacity nor be subjected to compulsion or exploited or harmed in any way.

- c. The employee shall be entitled-without any discrimination-to fair wages for his/her work without delay, rest and leisure, including reasonable limitation of working hours as well as to the holiday allowances and promotions, which he/she deserves, in accordance with law and regulations in place.
- d. The States should establish mechanisms to guarantee that employers are fair and ethical, and employees are protected against all forms of exploitation and abuse and guaranteed decent work.
- e. Everyone has the right to form with others and to join trade unions, in accordance with law and regulations in place, for the protection of his/her interests.

ARTICLE 15:
Right to Legitimate Economic and financial Gains

- a. Everyone shall have the right to legitimate gains without monopolization, deceit or harm to oneself or to others.
- b. Usury is absolutely prohibited.

ARTICLE 16:
Right to Own Property

- a. Everyone shall have the right to own property, individually or in partnership with others, acquired in a legal way, and shall be entitled to the rights of ownership, without prejudice to oneself, others or to society in general. Expropriation is not permissible except for the requirements of public interest and upon payment of full and fair compensation.
- b. No one may be unlawfully deprived of his/her property.

ARTICLE 17:
Intellectual Property Rights

- a. Everyone shall have the right to enjoy the benefits of his/her scientific, intellectual, literary, artistic or technical production, and protection of the moral and material interests stemming therefrom.
- b. States shall ensure that benefits of such scientific progress and its application are also enjoyed by everyone, including through the encouragement and development of international cooperation in the scientific and cultural fields.

ARTICLE 18:
Right to the enjoyment of the highest attainable standard of physical and mental health

- a. Everyone shall have the right to live in a safe and clean environment, an environment that would foster his/her moral and self-development. It is incumbent upon the State and society in general to guarantee this right.
- b. Everyone shall have the right to the highest attainable standards of physical and mental health, and to all public amenities, provided by the State, within the limits of available resources.
- c. The State, within its means, shall ensure the right of the individual to a decent living which will enable him/her to meet all his/her requirements and those of his/her dependents, including food and water, clothing, housing, education, health care and all other basic needs.

ARTICLE 19:
Protection of Privacy

- a. Everyone shall have the right to live in security for him/herself, and his/her religion, dependents, honor and property.
- b. Everyone shall have the right to privacy in the conduct of his/her private affairs, in home, among family, with regard to property and social relationships. It is not permitted to spy on, to be placed under surveillance or to besmirch his/her good name. The State shall protect him/her from arbitrary interference.
- c. A private residence is inviolable in all cases. It will not be penetrated or entered without permission from its inhabitants, or its dwellers be evicted in any unlawful manner.

- d. All individuals have the rights to have their confidential and personal data protected by law.

ARTICLE 20:

Right to Freedom of Thought, Conscience and Religion

- a. Everyone shall have the right to freedom of thought, conscience and religion. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the rights and fundamental freedoms of others.
- b. No one shall be subject to coercion, which would impair his/her freedom to have or to adopt a religion or belief of his choice.

ARTICLE 21:

Right to Freedom of Opinion and Expression

- a. Everyone shall have the right to hold opinions without interference.
- b. Everyone shall have the right to freedom of expression. The exercise of this right carries with it special duties and responsibilities. The State has the obligation to protect and facilitate the exercise of this right while also protecting its legitimate national integrity and interests, as well as promoting harmony, welfare, justice and equity within society. Any restrictions on the exercise of this right, to be clearly defined in the law, and shall be limited to the following categories:
- i. Propaganda for war.
 - ii. Advocacy of hatred, discrimination or violence on grounds of religion, belief, national origin, race, ethnicity, color, language, sex or socio-economic status.
 - iii. Respect for the human rights or reputation of others.
 - iv. Matters relating to national security and public order.
 - v. Measures required for the protection of public health or morals.
- c. The State and society shall endeavor to disseminate and promote the principles of tolerance, justice and peaceful coexistence among other noble principles and values, and to discourage hatred, prejudice, violence and terrorism. Freedom of expression should not be used for denigration of religions and prophets or to violate the sanctities of religious symbols or to undermine the moral and ethical values of society.

ARTICLE 22:

Right to Access to Justice and fair trial

- a. All individuals are equal before the law, without distinction. The right to due process and justice is guaranteed to everyone through competent, independent authorities and impartial tribunals, established by law, within a reasonable time.
- b. Criminal liability is personal.
- c. A defendant is innocent until his/her guilt is proven, through due process, by a final judgment by a competent court, established by law, in which he/she shall be given all the guarantees of defence and fairness.
- d. There shall be no crime or punishment except as provided for in the law at the time of the commission of crime.
- e. Victims of lawfully proven miscarriage of justice shall have the right to be compensated according to law.

ARTICLE 23:

Right to Participate in the conduct of Public Affairs and Freedom of peaceful assembly and association

- a. Authority is a trust; and abuse or malicious exploitation thereof is absolutely prohibited, so that human rights and fundamental freedoms may be guaranteed.
- b. Everyone shall have the right to participate, directly or indirectly through freely chosen representatives in the administration of his/her country's public affairs. He/she shall also have the right to assume public office in accordance with the principles of equality of opportunity and non-discrimination, in accordance with national legislation.
- c. Everyone has the right to freedom of peaceful assembly and association in accordance with national legislation.

ARTICLE 24:

Fair treatment during situations of war and armed conflict

- a. International Humanitarian Law shall be applied in all situations of war and armed conflicts to safeguard the rights of all persons protected by its rules, including but not limited to non-combatants, older persons, the infirm, persons with disabilities, women, children, civilians, journalists, humanitarian workers and prisoners of war.
- b. During situations of war and armed conflicts, it is prohibited to desecrate holy places and places of worship, damage natural resources and environment and cultural heritage.

ARTICLE 25:

General Provisions

- a. Everyone has the right to exercise and enjoy the rights and freedoms set out in the present declaration, without prejudice to the principles of Islam and national legislation.
- b. Nothing in this declaration may be interpreted in such a way as to undermine the rights and freedoms safeguarded by the national legislation or the obligations of the Member States under international and regional human rights treaties as well as their sovereignty and territorial integrity.



الهيئة الدائمة المستقلة لحقوق الإنسان

Independent Permanent Human Rights Commission
La Commission Permanente Indépendante
des Droits de l'Homme

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