

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

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

² UN Declaration of the Rights of the Child

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.

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)

³ UN CRC Preamble

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.

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

- (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.

⁴ UN CRC Article 20(3)

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

⁶ African Children's Charter Art. 31

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;
- 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;

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.

- 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.
