

# Human Rights in Islamic Law, Specifically the Guarantee of Procedural Justice

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## Abstract

*International law guarantees several fundamental principles of procedural justice, such as presumption of innocence, the right against self-incrimination, the right to be tried without undue delay, the right to examine witnesses, and the right to legal assistance. In this article I examine whether Islamic law guarantees similar procedural protections and demonstrate how Islamic law provides for basic human rights as well as general principles that may serve as guidelines in procedural justice. These include the principle of non-retroactivity, the principle of personal accountability, the principle of no crime or punishment without law, the right to be presumed innocent until proven guilty, and the right to defence. The article also identifies rules of evidence provided by Islamic law which are designed to protect the accused.*

**Keywords:** Islamic law, procedural justice, human rights, rules of evidence, Cairo Declaration of Human Rights.

## A. Introduction

International law guarantees procedural justice on the basis of several fundamental principles embodied in different international legal instruments. These

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include the right “to be presumed innocent until proved guilty according to law”,<sup>1</sup> the right against self-incrimination or the right “not to be compelled to testify against himself or confess guilt”,<sup>2</sup> the right to “be tried without undue delay”,<sup>3</sup> the right to “examine [...] the witnesses against him”<sup>4</sup> and the right to legal assistance, including the right to “communicate freely and confidentially with his lawyer”.<sup>5</sup> The question becomes whether Islamic law provides similar procedural protections. In this article, I will attempt to answer this question, first, by briefly examining the concepts of human rights, justice and protected interests, which constitute the basis upon which procedural protections may be addressed. Second, by covering basic principles that provide guidelines on procedural justice, and, finally, by inquiring into the main evidentiary rules that are designed to protect the accused.

## B. Recognition of Human Rights in Islam

Coulson argues that Islamic law does not know the concept of “individual rights” or the notion of “defined liberties”<sup>6</sup> of the individuals and “the formulation of a list of specific liberties of individual as against the state, in the manner, for example of the American constitution, would in fact be entirely foreign to its whole spirit”<sup>7</sup> and that “the stress [...] throughout the entire Sharia, lies upon the duty of the individual to act in accordance with the divine injunctions”.<sup>8</sup> Coulson also argues that “the interests of the state and not those of the individual will consti-

1 International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (16 December 1966), [hereinafter ICCPR], Art. 14 (2), available at < [http://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch\\_IV\\_4p.pdf](http://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/Ch_IV_4p.pdf)>. See also, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, GA Res. 43/173, UN Doc. A/RES/43/173 (9 December 1988), which states that “A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law.” Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, regarding the right to a fair trial, states simply that “[e]veryone charged with a criminal offence shall be presumed innocent until proved guilty according to law”, Art. 7 (1)b of the African Charter on Human and Peoples’ Rights provides that the accused will have “the right to be presumed innocent until proved guilty by a competent court or tribunal”, Art. 8 (2) of the American Convention on Human Rights, states that “[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law,” and Art. 16 of the Arab Charter on Human Rights states that “Everyone charged with a criminal offence shall be presumed innocent until proved guilty by a final judgment rendered according to law.”

2 ICCPR Art. 14 (3) (g).

3 ICCPR Art. 14 (3) (c).

4 ICCPR Art. 14 (3) (e).

5 Arab Charter of Human Rights Art. 16 (3). For a discussion of the various rights afforded in the Charter, see M.Y. Mattar, ‘Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards’, *Harvard Human Rights Journal*, Vol. 23, 2013, p. 91.

6 N.J. Coulson, ‘The State and the Individual in Islamic Law’, *International & Comparative Law Quarterly*, Vol. 6, No. 1, 1957, p. 50.

7 *Id.*

8 *Id.*

tute the Supreme Criterion of the law.”<sup>9</sup> The principle of individual liberty, he states, is ‘subordinate’ to that of public interest and public welfare. The same argument is made by Ann Mayer, who states that safeguards for individual rights were mainly ignored in Islamic jurisprudence.<sup>10</sup>

However, Islamic law, including its two textual sources, provides for the basic human rights that are known in the modern era. Freedom of religion is fully protected. “There is no compulsion in religion.”<sup>11</sup> The right to equality is clear in the Qur’anic verse “O people, we created you from the same male and female, and rendered you distinct peoples and tribes, that you may recognize one another.”<sup>12</sup> The Prophet declared in the Great pilgrimage “all Moslems are brothers unto one another”, “there is no superiority of an Arab over a non-Arab except as his devotion is concerned” and “the noblest among you is the most God fearing”. Everyone has the right to dignity, as the Prophet said, “truly your blood, your property, and your honor are inviolable”. Right to privacy is explicitly provided for by the Qur’an, whether residential privacy – “Enter not houses other than yours until ye have asked permission and saluted those in them. If ye find no one is in the house, enter it not until permission is given to you. If ye are asked to go back, go back.” – or communication privacy – “and spy not on each other behind their backs”.<sup>13</sup> Right to assembly and association may be inferred from the Qur’anic provision “Let there be a community among you, who will invite (people) to (do) good, command what is proper and forbid what is improper.”<sup>14</sup> Freedom of expression is embodied in the Hadith “the best jihad is to speak the truth in front of an unjust king.” The right to life is well established in the Qur’anic legislation “and whoever kills a believer intentionally, his punishment is hell; he shall abide in it, and Allah will send His wrath on him and curse him and prepare for him a painful chastisement”<sup>15</sup> and “whoever slays a soul, unless it be for manslaughter or for mischief in the land, it is as though he slew all men; and whoever keeps it alive, it is as though he kept alive all men”.<sup>16</sup>

9 *Id.*, p. 51. Coulson concludes that “The problem, therefore, which today confronts those Muslim countries whose aim is the establishment of a system of guaranteed individual liberties, is no small one. For the possibility of such a system is denied by the fundamental doctrines of the Shari’a itself,” p. 60.

10 See A. Mayer, *Islam and Human Rights: Traditions and Politics*, 4th edn, Westview Press, 2006.

11 The Qur’an 109:1-6 states: “O disbelievers, I do not worship what you worship. Nor are you worshippers of what I worship. Nor will I be a worshipper of what you worship. Nor will you be worshippers of what I worship. For you is your religion, and for me is my religion.”

12 Qur’an 49:13.

13 A tradition of Umar ibn al-Khattab, related by one of the prophet’s Companions, reads as follows: “I went out in the city with Umar one night, and while we were walking we saw the light of a lamp. We proceeded toward it, and when we reached it we found a closed door and the sounds of revelry from inside. Umar took my hand and asked me, ‘Do you know whose home this is?’ I said I did not. Umar said, ‘It is the home of [so-and-so]. They are drinking. What do you think?’ I said: ‘I think we have committed a forbidden act; God said we should not spy.’ So Umar left them alone.”

14 Qur’an 3:14.

15 Qur’an 4:93.

16 Qur’an 5:32.

### I. *Justice as a Fundamental Basis of Islamic Law*

“Stand firmly for justice as witnesses to God,” states the Qur’an at 4:135, “even if it be against yourselves, your parents or your relatives, and whether it be (against) the rich or poor, for God can best protect both. Follow not the lust (of your hearts) lest it detract you from the cause of justice.” “Allow not your rancour for a people for that is closer to heeding,”<sup>17</sup> “And I was commanded to deal justly between you,”<sup>18</sup> and “Surely, Allah commands justice and the doing of good.”<sup>19</sup> “God commands justice and good-doing [...] and He forbids indecency, dishonor and insolence.”<sup>20</sup> “God commands you to deliver trusts back to their owners, and when you judge among men, you should judge with justice.”<sup>21</sup> “Of these we created are a people who guide by the truth, and by it act with justice.”<sup>22</sup> Justice, then, is an overarching principle within Islam, and is indeed one of the main objectives of the Islamic legal theory.

### II. *Protection of Human Rights in Islam under the Theory of the ‘Protected Interests’*

Islamic jurists distinguish among three types of interests (Maslelah) upon which different rights and freedoms may be categorised. These are the five ‘essentials, fundamentals and necessities’ (Daruriyyat) or ‘objectives’ (Maqasid) of Islam. They include freedom of religion, right to self-presentation, freedom of thought and experience and knowledge, right to procreation and right to property. To facilitate the implementation and fulfilment of these necessities or essentials, Islamic law provides for what Muslim jurists term as ‘complementaries’ or ‘conveniences’ (Hajiyyat). A third category of interest is embellishments or ‘refinements’ (Tahsiniyyat), which refer to interests that may cause perfection and refinement of human conduct and its proper realisation. In all cases, “God does not want to place you in a difficulty, but He wants to purify you, and to complete His favor to you, that you may be grateful.”<sup>23</sup> “God intends for you ease, and He does not want to make things difficult for you.”<sup>24</sup> In addition, the rule is “no harm and no infliction of harm” or in other words, “there should be neither harming nor reciprocating harm”.<sup>25</sup>

### III. *The Judge and the Judiciary*

It is imperative, if rights are to be protected and harm is to be repaired, that the judiciary exercises its power with full independence and in separation from the

17 Qur’an 42:15.

18 Qur’an 5:8.

19 Qur’an 16:90.

20 Qur’an XV, 92.

21 Qur’an IV, 61.

22 Qur’an VIII, 180. See, generally, M. Khadduri, *The Islamic Conception of Justice*, Johns Hopkins University Press, Baltimore, 2001.

23 Qur’an 5:6.

24 Qur’an 2:185.

25 Several maxims are followed in Islamic jurisprudence, including that “harm shall be removed”, “harm is to be repelled as far as possible”, “harm is not to be removed by the like of it”, “greater harm is to be avoided by a lesser harm”, “repelling harm is preferred to the attainment of benefits”, and “to repel public harm, private harm is to be tolerated”.

executive, which should also be subject to accountability.<sup>26</sup> However, some argue that the *qadi* derives its power from the *calipha*. Regardless, a *qadi* must be impartial, fair, equitable and honest to deliver unbiased justice.<sup>27</sup> Moreover, a *qadi* may not apply a law in contradiction to Islamic Sharia.<sup>28</sup> The Qur'anic verse is clear: "they were entrusted the protection of Allah's Book and they themselves were witnesses. [...]those who do not judge by the law which Allah had revealed are indeed unbelievers."<sup>29</sup>

#### IV. Right to Appeal

It has also been argued that Islamic law does not allow a process of appeal. However, this argument may be refuted because once a *qadi* deviates from the basic principles of *ijtihad* or interpretation, his decision amounts to an apparent miscarriage of justice, and not only a departure from another judicial view, and thus it may be subject to review.<sup>30</sup>

### C. General Principles that Serve as Guidelines for the Rights of the Accused

While Islamic law may not provide detailed rules regarding every procedural right, it does offer general guidelines, including the principle of non-retroactivity, the principle of personal accountability, the principle of no crime or punishment without the law, the right to be presumed innocent until proven guilty and the right to defence.

26 As Abu Bakr put it in his first address after he became Khalifa, "I have been given authority over you, but I am not the best of you. If I do well help me and if I do ill, then put me right." And when Omar attempted to reduce the amount of Mahr, an old woman in the Mosque objected by saying, "You shall not deprive us of what God gave us." Omar responded, "A woman is right and Omar is wrong."

27 A. ur Rehman, M. Ibrahim & I. Abu Bakar, 'The Concept of Independence of Judiciary in Islam', *International Journal of Business & Social Science*, Vol. 4, 2013, p. 2.

28 The constitutionality clause ensures that laws are compatible with Islamic law. For instance, Art. 3 of the Afghan constitution states that "In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam." See M. Lau, 'The Independence of the Judges Under Islamic Law, International Law and the New Afghan Constitution', *Zeitschrift fue auslaendisches oeffentliches Recht und Voelkerrecht. Heidelberg Journal of International Law*. Vol. 64, 2004, pp. 917-927. Similarly, Art. 2 of the Iraqi constitution states, "First: Islam is the official religion of the State and it is a fundamental source of legislation: A. No law that contradicts the established provisions of Islam may be established; B. No law that contradicts the principles of democracy may be established; C. No law that contradicts the rights and basic freedoms stipulated in this constitution may be established." See M.Y. Mattar, 'Unresolved Questions in the Bill of Rights of the New Iraqi Constitution: How Will the Clash Between "Human Rights" and "Islamic Law" Be Reconciled in Future Legislative Enactments and Judicial Interpretations?', *Fordham International Law Journal*, Vol. 30, 2006, p. 1.

29 Qur'an 5:44.

30 But, see M. Shapiro, 'Islam and Appeal', *California Law Review*, Vol. 68, 1980, p. 350. The author concludes that "In Islam a peculiar institutional combination of dual legal systems and absence of hierarchy accounts for the absence of the institution of appeal present in almost all other legal systems. The Islamic experience suggests, therefore, that concern for political control rather than justice under law is the basic motivation for the implementation of appellate institutions." p. 381.

### I. *The Principle of Non-Retroactivity*

Fundamental rights for the accused are provided in the Qur'an. Concerning non-retroactivity, the Qur'an states: "Say to the unbelievers that if they desist (from unbelief), what they have done in the past would be forgiven"<sup>31</sup> and "God forgives what is past: For repetition God will exact from him the penalty. For God is Exalted and Lord of Retribution".<sup>32</sup>

### II. *The Principle of Personal Accountability*

The Qur'an also notes the principle of personal accountability: "Everyone is accountable for his own deeds, and no soul shall bear the burden of another"<sup>33</sup> and "Whoever commits a sin only makes himself liable for it [...] and whoever commits a delinquency and then throws the blame thereof upon the innocent has burdened himself with falsehood and a flagrant crime".<sup>34</sup> The Qur'an further states that "no bearer of burdens can bear the burden of another".<sup>35</sup>

### III. *The Principle of No Crime or Punishment Without Law*

The principle of no crime or punishment without law is observed: "we never punish until we have a messenger"<sup>36</sup> and "Allah forgiveth whatever may have happened in the past, but whoso relapseth, Allah will take retribution from him."<sup>37</sup> "Who receiveth guidance, receiveth it for his own benefit: who goeth astray doth so to his own loss: Nor would we visit with our wrath until we had sent an apostle (to give warning)"<sup>38</sup> and "Nor was thy Lord the one to destroy a population until he had sent to its centre an apostle rehearsing to them our signs; nor are we going to destroy a population except when its members iniquity."<sup>39</sup>

### IV. *The Right to Be Presumed Innocent Until Proven Guilty*

The presumption of innocence is one of the fundamental principles in Islamic law.<sup>40</sup> This principle is based on the so-called *istishab* or presumption of continuity "that means the presumption in the law of evidence that a state of affairs known to have existed in the past continues to exist until a change is proved".<sup>41</sup>

31 Qur'an 8:38.

32 *Id.* 5:95.

33 *Id.* 6:164.

34 *Id.* 4:11-12.

35 Surat Bani Israel XVII, 15.

36 *Id.*

37 Surat al-Ma'ida V, 95.

38 *Id.* 17:15.

39 *Id.* 28:59.

40 S. Tellenbach, 'Fair Trial Guarantees in Criminal Proceedings Under Islamic, Afghan Constitutional and International Law', *ZaôRV*, Vol. 64, 2004, pp. 933-934. *See also*, Art. 14 (2) ICCPR, which is defined in the following words: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to the law."

41 *Id.*

### V. *The Right to Defence*

One of the fundamental principles of fair trial<sup>42</sup> is the guarantee of defence.<sup>43</sup> In Islamic jurisprudence, defence is seen in the traditions of the Prophet that allow the defendant to be informed about the charges against him. When Ali was granted governorship of Yemen by the Prophet, he said to him: "O Ali, people will appeal to you for justice. If two adversaries come to you for arbitration, do not rule for the one, before you have similarly heard from the other. It is more proper for justice to become evident to you and for you to know what is right."<sup>44</sup> Caliph Omar is said to have advised judges by saying, "If an adversary whose eye had been blinded by another comes to you, do not rule until the other party attends. For perhaps the latter had been blinded in both eyes."<sup>45</sup> Also, mere suspicion is not sufficient to justify a warrant of arrest and detention.<sup>46</sup>

### VI. *Strict Rules of Evidence*

The rules pertaining to evidence are intensely important in a criminal proceeding. Strict rules of evidence guarantees are imposed only in cases where there is certainty of guilt, not only evidence beyond reasonable doubt. Islamic law requires direct evidence, as opposed to circumstantial evidence.<sup>47</sup> For instance, the Qur'an

42 See the Arab Charter on Human Rights, Art. 12 "All persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats. They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels"; Art. 13 "1. Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights. 2. Trials shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights"; Art. 23 "Each State party to the present Charter undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity" and Art. 44 "The states parties undertake to adopt, in conformity with their constitutional procedures and with the provisions of the present Charter, whatever legislative or non-legislative measures that may be necessary to give effect to the rights set forth herein."

43 Tellenbach, 2004, pp. 934-935.

44 A.M. Awad, 'The Rights of the Accused Under Islamic Criminal Procedure', in M.C. Bassiouni (Ed.), *The Islamic Criminal Justice System*, 1982, pp. 91-107, at 97.

45 *Id.* at 97; M.H. Kamali, 'The Right to Personal Saftey (haqq al-amn) and the Principle of Right Legality in Islamic Shari'a', in M.A. Haleem *et al.* (Eds.), *Criminal Justice in Islam*, I.B. Tauris, London, 2003, p. 83.

46 See, generally, Awad, 1982, at 91-107.

47 Although some Muslim jurists consider some circumstances as presumptions to establish one's guilt. For example, The Maliki school permits fornication to be legally established by the birth of a child to a female who has never been married and who has not alleged rape. Some scholars recognise the possession of stolen property as presumption of a crime of theft. Also, some consider the order of alcohol on the breath a presumption of drinking alcohol.

requires four male eyewitnesses or four confessions to sustain a conviction of the crime of adultery, or *Zina*.<sup>48</sup>

All this for the 'avoidance of doubt'. Doubt or *shubba* will result in nullification of *Hudud* punishments. In one Hadith, "Nullify the *Hudud* if there is doubt and lift the death penalty as much as you can." According to the Hadith, "Avert *hudud* punishments by suspicions or doubts and if the accused has a way out, release him." In another Hadith, "if the judge makes a mistake in amnesty it is better than a mistake in punishment." Additionally, proof of clear criminal intent is required. The Tradition of the Prophet states that "acts are not to be judged except by motives" and "actions are but by intentions and every man shall have only that which he intended".

### VII. Confessions as Means of Proof in Criminal Cases

Confessions are the most common method for establishing proof in criminal cases under Islamic law, provided that the confession is voluntary. A confession may be withdrawn at any part of the hearing, however, until the sentence is being executed.<sup>49</sup> Accordingly, obtaining a confession through illegal means is strictly prohibited. This rule applies even if such means would be in the public interest.<sup>50</sup> So excluded from evidence are confessions obtained by force or deception or other illegal means. The prophet warned: "God shall torture on the Day of Judgment those who inflict torture on people in life."

Confession of the adulterer must also be repeated four times. In the famous story of Maiz, who came to the Prophet to confess adultery, the Prophet turned him away three times. After the third time, he was punished for his crime. The Prophet is also reported to have discouraged confessions and scrutinised them carefully, when he said to an adulterer: "Perhaps you kissed her, perhaps you only touched her, perhaps you only looked."

In addition and in accordance with the principle of repentance in Islam, a confession of a *hadd* crime may always be retracted, withdrawn, even at the time of execution. It is reported that when Maiz felt the first stone, he tried to run away but was pursued and killed. When the Prophet learned later of this, he said,

48 Moreover, false accusation of adultery is itself considered a *hudd* for defamation or *gaza*, which may subject the offender to the punishment of 80 lashes. "As for those who accuse chaste women (of adultery) and then are unable to produce four witnesses, flog them with eighty lashes" Qur'an 24:4. See A. Quraishi, 'Her Home: An Islamic Critique of the Rape Laws of Pakistan From a Woman-Sensitive Perspective', *Michigan Journal of International Law*, Vol. 18, 1997, p. 287. See also, R. Aslan, 'The Problem of Stoning in the Islamic Penal Code: An Argument for Reform', *UCLA Journal of Islamic & Near Eastern Law*, Vol. 23, 2003-2004, p. 91.

49 See, generally, H. Esmaili & J. Gans, 'Islamic Law Across Cultural Borders: The Involvement of Western Nationals in Saudi Murder Trials', *Denver Journal of International Policy*, Vol. 28, 2000, pp. 145, 156-157; B. Wells & M. Burnett, 'When Cultures Collide: An Australian Citizen's Power to Demand the Death Penalty Under Islamic Law', *Sydney Law Review*, Vol. 22, 2000, p. 5, M.C. Duncan, 'Playing by Their Rules: The Death Penalty and Foreigners in Saudi Arabia', *Journal of International Comparative Law*, Vol. 27, 1998, p. 231.

50 Kamali, 2003, at 81-89.



“Why did you not leave him. Perhaps he would have repented and God forgiven him.”<sup>51</sup>

### VIII. Rules of Testimony and the Status of the Witness

However, temporary detention of a witness to verify their testimony as a precautionary measure is permissible, according to the Qur'an – “If you doubt their testimony, then detain them after the prayer and let them swear by God (saying): we will not take for it a price though there be a relative nor will we hide the testimony [...]”<sup>52</sup>

The classic method for proof is the testimony of an eyewitness; the crime of adultery, for example, requires four male eyewitnesses or four confessions to sustain a conviction. The right of an individual, or his representative, to present evidence is supported by the Tradition of the Prophet, who advised Ali when he granted him the governorship of Yemen: “If two adversaries come for arbitration do not rule for the one before you have similarly heard from the other.”<sup>53</sup> Islam also provides guidance for the judiciary concerning the rules of evidence. In adjudicating disputes, Abu Dawud narrates in the Tradition of the Prophet: “I am but a human being. When you bring a dispute to me, some of you may be more eloquent in stating their case than others. I may consequently adjudicate on the basis of what I hear. If I adjudicate in favor of some over something that belongs to his brother, let him not take it, for it would be like taking a piece of fire.”<sup>54</sup>

When the witness is a woman, there is a debate on the interpretation of the Qur'anic verse 2:282 that states: “Oh! Ye who believe! When ye deal with each other, in transactions involving future obligation in a fixed period of time reduce them to writing and get two witnesses out of your own men and if there are not two men, then a man and two women, such as ye choose, for witnesses so that if one of them errs the other can remind her.”<sup>55</sup>

In a landmark case decided by the Court of Appeal in Morocco,<sup>56</sup> it was argued that the marriage contract that was executed between two Moroccans in France was invalid because one of the witnesses to the contract was a woman, which is in violation of Islamic law. The Court disagreed, holding that “testimony in Islam is not restricted to men.”<sup>57</sup> In fact, “in Islamic jurisprudence there are matters that may not be witnessed except by women [...] as in female defects and suckling [...]” and that Islam allows in a case of ‘necessity’ the testimony of anyone who may not meet the strict requirement of a witness so that the rights are

51 Tradition of the Prophet.

52 Qur'an 5:106.

53 Tradition of the Prophet.

54 *Id.*

55 Surat al-Buqarah 2:282. See, generally, M. Fadel, ‘Two Women, One Man: Knowledge, Power and Gender in Medieval Sunni Legal Thought’, *International Journal of Middle East Studies*, Vol. 29, 1985, p. 185; K. Bauer, ‘Debates on Women’s Status as Judges and Witnesses in Post-Formative Islamic Law’, *Journal of American Oriental Society*, Vol. 1, 2010, p. 130.

56 Court of Appeal, Dec. No. 1041, file on Appeal Ro 494, 18 April 2007.

57 *Id.*

preserved.<sup>58</sup> The Court stated that what is required is that a witness should be just regardless of his or her gender. The Court emphasised that “these principles aim at achieving justice which is now a universal concept that is based on equality and liberty and rejection of discrimination on basis of sex or race or color” and that “these basic tenants are established in Islamic Sharia”.<sup>59</sup> The Court concluded that “the presence of a woman as a witness to the marriage contract does not violate the public order in Morocco which is derived from the principles of Islamic Sharia, the internal values of Moroccan society, and the universal principles of human rights.”<sup>60</sup>

#### IX. *Statute of Limitations*

A statute of limitations or prescription period sets forth the maximum period of time within which legal proceedings may be initiated in respect of certain events.<sup>61</sup> According to the Tradition of the Prophet, there is no statute of limitations: “a right of a Muslim does not extinguish by lapse of time.” Therefore, there is always an obligation to fulfil one’s duty and perform regardless of the time a claim is made.<sup>62</sup>

#### D. **Conclusion**

Islamic law, as indicated, provides for general principles of procedural justice, especially the principle of non-retroactivity, the principle of personal accountability, the principle of no crime or punishment without the law, the right to be presumed innocent until proven guilty and the right to defence. Islamic law also insists on strict evidentiary rules that are based on direct evidence and witness testimony or confession.

The Cairo Declaration of Human Rights of 1990 refers to some of these aspects of procedural justice. Article 19 provides that “the right to resort to justice is guaranteed to everyone”, “liability is in essence personal”, “there shall be no

58 *Id.*

59 *Id.*

60 *Id.* The Court stated that Arts. 56, 57 and 61 of the Moudawana have specified when a marriage contract becomes void and when it may be rescinded and that these cases did not include any reference to absence of witnesses to a marriage contract properly executed in accordance with the law of the country of residence. For a discussion of the Moudawana, see M. Deiana, ‘Improving Women’s Rights in Morocco: Lights and Shadows of the New Family Code (Moudawana)’, *International Journal of Interdisciplinary Social Science*, Vol. 3, 2009, p. 11.

61 For the application of this rule in cases of human trafficking, see, M. Mattar, *Combating Trafficking in Persons in Accordance With the Principles of Islamic Law*, UN Office on Drugs and Crime, New York, 2009, p. 104.

62 This notion is embedded in the Rome Statute of the International Criminal Court, which states that the crimes under the jurisdiction of the Court “shall not be subject to any statute of limitations” (Art. 29). On the other hand, The Convention against Transnational Organized Crime Convention requires that “Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice” (Art. 11, para. 5).

crime or punishment except as provided for in the Shari'ah" and "a defendant is innocent until his guilt is proven in a fast trial in which he shall be given all the guarantees of defense".<sup>63</sup> The Cairo Declaration makes it clear that these and other rules of procedural justice are to be interpreted in accordance with Islamic law.<sup>64</sup> This interpretation of the Islamic text, whether in regard to the admissibility of a woman's testimony or possibility of appeal or other debatable issues, should be made in light of the general objectives of Islamic law that are based on justice, equality and freedom.

## E. Annex: The Catalogue of Human Rights in Islamic Law<sup>65</sup>

### I. *Right to Life*

Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and the state to protect this right from any violation, and it is prohibited to take away life except for a Shari'a-prescribed reason (Cairo Declaration).

"And whoever kills a believer intentionally, his punishment is hell; he shall abide in it, and Allah will send His wrath on him and curse him and prepare for him a painful chastisement" (4:93).

"Whoever slays a soul, unless it be for manslaughter or for mischief in the land, it is as though he slew all men; and whoever keeps it alive, it is as though he kept alive all men" (5:32).

Everyone has the right to life, liberty, and security of person (Universal Declaration of Human Rights, 3).

"And do not kill yourselves (nor kill one another). Surely, God is Most Merciful to you" (4:29).

The preservation of human life throughout the term of time willed by God is a duty prescribed by Shari'a (Cairo Declaration).

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life (Arab Charter on Human Rights 5:1-2).

"The first thing that will be decided among people on the Day of Judgment will pertain to bloodshed" (Prophet Muhammad PBUH).

"Every sin could be forgiven by Allah except the deliberate killing of a believer or when a man dies in the state of being a kafir" (Prophet Muhammad PBUH).

63 Cairo Declaration on Human Rights in Islam, 5 August 1990, UN GAOR, World Conference on Human Rights, 4th Session, Agenda Item 5, UN Doc. A/CONF.157/PC/62/Add.18 (1993), Art. 19b, c, d, e.

64 *Id.* Art. 24 states: "All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah." Art. 25 states: "The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration."

65 Based on the publication "Human Rights in Islam with References to the Cairo Declaration of Human Rights in Islam and the Arab Charter on Human Rights" by The Protection Project at Johns Hopkins University School of Advanced International Studies, Washington, DC, 2012.

“The decline of this world, in the sight of Allah, is easier than the killing of a believer without any legal justification” (Prophet Muhammad PBUH).

“One who kills a man under covenant will not even smell the fragrance of Paradise” (Prophet Muhammad PBUH).

“A believer continues to guard his Faith (and thus hopes for God’s Mercy) so long as he does not shed blood unjustly” (Prophet Muhammad PBUH).

## II. *Right to Be Protected from Torture and Other Cruel, Inhuman or Degrading Treatment*

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of humiliation, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experimentation without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions (Cairo Declaration).

No one shall be subjected to medical or scientific experimentation or to the use of his organs without his free consent and full awareness of the consequences and provided that ethical, humanitarian and professional rules are followed and medical procedures are observed to ensure his personal safety pursuant to the relevant domestic laws in force in each State party. Trafficking in human organs is prohibited in all circumstances (Arab Charter on Human Rights 9:1).

“Visit the ill, feed the hungry, and release the slaves” (Prophet Muhammad PBUH).

Safety from bodily harm is a guaranteed right. It is the duty of the State to safeguard it, and it is prohibited to breach it without a Shari’a-prescribed reason (Cairo Declaration).

No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment (Universal Declaration of Human Rights 5).

No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment. Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation (Arab Charter on Human Rights 8:1&2).

“Fight in the way of Allah with those who fight with you, and do not exceed the limits, surely Allah does not love those who exceed the limits” (2:190).

“Allah will torture those who torture people in life” (Prophet Muhammad PBUH).

“Those who flog people undeservedly will be punished in doomsday” (Prophet Muhammad PBUH).

“Treat the prisoners in good way” (Prophet Muhammad PBUH).

“Repel evil with that which is better. We are Best-Acquainted with the things they utter” (23:96).

“The recompense for an evil is an evil like thereof, but whoever forgives and makes reconciliation, his reward is due from God. Verily, He likes not the oppressors/wrong-doers” (42:40).

“No bearer of burdens shall be made to bear the burden of another” (6:164).

### III. *Right to Liberty and Security of Person*

Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most-High (Cairo Declaration).

All forms of slavery and trafficking in human beings are prohibited and are punishable by law. No one shall be held in slavery and servitude under any circumstances (Arab Charter on Human Rights 10:1).

“There are three categories of people against whom I shall myself be a plaintiff on the Day of Judgment. Of these three, one is he who enslaves a free man, then sells him and eats this money” (Prophet Muhammad PBUH).

Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property (Cairo Declaration).

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant (Arab Charter on Human Rights 14:1).

Everyone has the right to life, liberty and security of person (Universal Declaration of Human Rights 3).

### IV. *Right to Freedom of Movement*

Every man shall have the right, within the framework of Shari’a, to free movement and to select his place of residence whether inside or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Shari’a regards as a crime (Cairo Declaration).

“It is He who made the Earth submit to you, so traverse its surface and eat of its sustenance and to Him is your return” (67:15).

Everyone has the right to freedom of movement and residence within borders of each State. Everyone has the right to leave any country, including his own, and to return to his country (Universal Declaration of Human Rights 13:1 & 2).

Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force (Arab Charter on Human Rights 26:1).

“One who abandons his home for the cause of God will find many places of refuge in the vast land and one who dies, after having abandoned his home to get near to God and His Messenger, will receive his reward from God. God is All-forgiving and All-merciful” (4:100).

Regarding highway safety (which allows for the freedom of movement), Prophet Muhammad (PBUH) stated that the rights of the road are “lowering the gaze, abstaining from abuse, returning the greeting of peace, enjoying what is right, and forbidding what is wrong”.

## V. *Right to Equality*

All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection (Cairo Declaration).

Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage (Cairo Declaration).

All human beings are God’s subjects, and the most loved by Him are those who are most useful to the rest of His subjects, and no one has superiority over another except on the basis of piety and good deeds (Cairo Declaration).

“Indeed the noblest among you before God are the most heedful of you” (49:13).

Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments. Accordingly, each State party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter (Arab Charter on Human Rights 3:3).

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination (Universal Declaration of Human Rights 7).

All persons are equal before the law and have the right to enjoy its protection without discrimination (Arab Charter on Human Rights 11:1).

All individuals are equal before the law, without distinction between the ruler and the ruled (Cairo Declaration).

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or

other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty (Universal Declaration of Human Rights 2).

Every citizen has the right [...] to the opportunity to gain access, on an equal footing with others, to public office in his country in accordance with the principle of equality of opportunity (Arab Charter on Human Rights 24:4).

Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability (Arab Charter on Human Rights 3:1).

“O people, we created you from the same male and female, and rendered you distinct peoples and tribes, that you may recognize one another” (49:13).

“The life and blood of Muslims are equally precious” (Prophet Muhammad PBUH).

“Women are men’s partners” (Prophet Muhammad PBUH).

“No Arab has any superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab. Nor does a white man have any superiority over a black man or the black man any superiority over the white man, except by piety and good action. You are all the children of Adam and Adam was created from clay” (Prophet Muhammad PBUH).

“So their Lord accepted their prayers saying, ‘I do not neglect anyone’s labor whether the laborer be male or female. You are all related to one another’” (3:195).

“O people! Be careful of (your duty to) your Lord, Who created you from a single being and created its mate of the same (kind)” (4:1).

## VI. *Right to Freedom of Thought, Conscience and Religion*

Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism (Cairo Declaration).

Persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language and to practice their own religion. The exercise of these rights shall be governed by law (Arab Charter on Human Rights 25).

Everyone has the right to freedom of thought, conscience and religion and no restrictions may be imposed on the exercise of such freedoms except as provided for by law (Arab Charter on Human Rights 30:1).

The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries (Arab Charter on Human Rights 32:1).

The freedom to manifest one's religion or beliefs or to perform religious observances, either alone or in community with others, shall be subject only to such limitations as are prescribed by law and are necessary in a tolerant society that respects human rights and freedoms for the protection of public safety, public order, public health or morals or the fundamental rights and freedoms of others (Arab Charter on Human Rights 30:2).

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 (Universal Declaration of Human Rights 18).

"There is no compulsion in religion" (2:256).

Regarding followers of religion who are not considered People of the Scriptures, the Qur'an states, "do not abuse those whom they call upon besides [God], lest exceeding the limits they should abuse [God] out of ignorance" (6:108).

"One who kills a man under covenant will not even smell the fragrance of Paradise" (Prophet Muhammad PBUH).

"Say (to the polytheists) 'You will not be asked about our sins, nor shall we be asked of what you do.' Say: 'Our Lord will assemble us all together (on the day of Resurrection), then He will judge between us with truth. And He is the (Most Trustworthy) All Knowing Judge'" (34:25-26).

"If Allah had so willed, I should not have recited it to you nor would He have made it known to you. Verily, I have stayed amongst you a life time before this. Have you then no sense?" (10:16).

"And if they belie you, say 'For me are my deeds and for you are your deeds! You are innocent of what I do, and I am innocent of what you do'" (10:41).

"O disbelievers, I do not worship what you worship. Nor are you worshippers of what I worship. Nor will I be a worshipper of what you worship. Nor will you be worshippers of what I worship. For you is your religion, and for me is my religion" (109:1-6).

"Now truth ( *i.e.* the Qur'an and Prophet Muhammad), has come to you from your Lord. So whosoever receives guidance, he does so for the good of his own self, and whosoever goes astray, he does so to his own loss, and I am not (set) over you as a Wakil (disposer of affairs to oblige you for guidance)" (10:108).

"Do not argue with the People of the Book except only by the best manner, except the unjust among them. Tell them, 'We believe in what is revealed to us and to you. Our Lord and your Lord is one. We have submitted ourselves to His will'" (29:46).

"Say 'Each one does according to his religion (or way) your Lord knows best of him whose path is right'" (17:84).



## VII. *Right to Freedom of Expression*

Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'a (Cairo Declaration).

The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any medium, regardless of geographical boundaries (Arab Charter on Human Rights 32).

"[The faithful] enjoin what is proper and forbid what is improper" (9:71).

The concept of freedom of expression is valued in Islam; however, there are also limitations when it comes to freedom of expression, as it is not permissible to abuse this right to taint someone's honor or incite any form of hatred.

Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'a (Cairo Declaration).

Everyone has the right to freedom of opinion and expressions; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of the frontiers (Universal Declaration of Human Rights 19).

"The best jihad is to speak the truth in front of an unjust king" (Prophet Muhammad PBUH).

## VIII. *Right to Freedom of Assembly and Association*

Every citizen has the right:

To freely form and join associations with others.

To freedom of association and peaceful assembly (Arab Charter on Human Rights 24:5 & 6).

Everyone has the right to freedom of peaceful assembly and association. No one may be compelled to belong to an association (Universal Declaration of Human Rights 20:1 & 2).

"Let there be a community among you who will invite (people) to (do) good, command what is proper and forbid what is improper" (3:104).

## IX. *Right to Found a Family*

The family is the foundation of society, and marriage is the basis of its formation. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from enjoying this right (Cairo Declaration).

The States parties shall take appropriate measures in all domains to ensure partnership between men and women with a view to achieving national development goals (Arab Charter on Human Rights 41:3).

Society and the State shall remove all obstacles to marriage and shall facilitate marital procedure. They shall ensure family protection and welfare (Cairo Declaration).

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. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State (Universal Declaration of Human Rights 16:1-3).

The family is the natural and fundamental group unit of society; it is based on marriage between a man and a woman. 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 parties. The laws in force regulate the rights and duties of the man and woman as to marriage, during marriage and at its dissolution (Arab Charter on Human Rights 33:1).

The State and society shall ensure the protection of the family, the strengthening of family ties, the protection of its members and the prohibition of all forms of violence or abuse in the relations among its members, and particularly against women and children. They shall also ensure the necessary protection and care for mothers, children, older persons and persons with special needs and shall provide adolescents and young persons with the best opportunities for physical and mental development (Arab Charter on Human Rights 33:2).

“Whoever among you has the ability should marry, for it restrains the eyes and protects chastity” (Prophet Muhammad PBUH).

“And one of His signs is that He created mates for you from yourselves that you may find rest in them, and He put between you love and compassion” (30:21).

#### X. *Right to Protection from Discrimination*

It is not permitted to arouse nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination (Cairo Declaration).

The Qur’an condemns that the Pharaoh “had divided his people into different classes... and he suppressed one group of them (at the cost of others)” (28:4).

The States parties to the present Charter shall take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enshrined in the present Charter in order to ensure protection against all forms of discrimination based on any of the grounds mentioned in the preceding paragraph (Arab Charter on Human Rights 3:2).

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any

discrimination in violation of this Declaration and against any incitement to such discrimination (Universal Declaration of Human Rights 7).

### *XI. Right to Asylum*

Every man shall have the right, within the framework of Shari'a, to free movement and to select his place of residence whether inside or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Shari'a regards as a crime (Cairo Declaration).

Everyone has the right to seek political asylum in another country in order to escape persecution. This right may not be invoked by persons facing prosecution for an offence under ordinary law. Political refugees may not be extradited (Arab Charter on Human Rights 28).

Everyone has the right to seek and to enjoy in other countries asylum from persecution. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations (Universal Declaration of Human Rights 14:1 & 2).

"Verily! As for those whom the angels take (in death) while they are wronging themselves (as they stayed among the disbelievers even though emigration was obligatory for them), they (angels) say (to them), 'In what (condition) were you?' They reply, 'We were weak and oppressed on earth.' They (angels) say, 'Was not the earth of Allah spacious enough for you to emigrate therein?' Such men will find their abode in Hell – What an evil destination!" (4:97).

### *XII. Right to Privacy*

A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted (Cairo Declaration, 1990).

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 the protection of the law against such interference or attacks (Universal Declaration of Human Rights 12).

"It is not piety/righteousness that you enter the houses from the back but piety/righteousness (is the quality of the one) who fears God. So enter houses through their proper doors, and fear God that you may be successful" (2:189).

Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference (Cairo Declaration).

No one shall be subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation (Arab Charter of Human Rights 21).

“Do not spy on one another” (49:12).

“Do not enter any houses except your own homes unless you are sure of their occupants’ consent” (24:27).

### *XIII. Right to Self-Determination*

Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States and peoples to support the struggle of colonized peoples for the liquidation of all forms of colonialism and occupation, and all States and peoples have the right to preserve their independent identity and exercise control over their wealth and natural resources (Cairo Declaration).

Every citizen has the right [...] to take part in the conduct of public affairs, directly or through freely chosen representatives (Arab Charter on Human Rights 24:2).

Every citizen has the right [...] to freely pursue a political activity (Arab Charter on Human Rights 24:1).

Every citizen has the right [...] to stand for election or choose his representatives in free and impartial elections, in conditions of equality among all citizens that guarantee the free expression of his will (Arab Charter on Human Rights 24:3).

### *XIV. Right to Own Property*

Everyone shall have the right to own property acquired in a legitimate 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 immediate and fair compensation (Cairo Declaration).

Everyone has a guaranteed right to own private property, and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property (Arab Charter on Human Rights 31).

“Unto men belongs a share of that which parent and near kindred leave, and unto women a share of that which parents and near kindred leave, whether it be a little or much – a determinate share” (4:7).

Confiscation and seizure of property is prohibited except for a necessity dictated by law (Cairo Declaration, 1990).

Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property (Universal Declaration of Human Rights 17:1&2).

“Do not devour one another’s wealth by false and illegal means” (2:188).

“Come not near to the orphan’s property, except to improve it until he or she attains the age of full strength (maturity)...” (6:152; 17:34).

#### XV. *Right to Employment*

Work is a right guaranteed by the State and Society for each person able to work. Everyone shall be free to choose the work that suits him best and which serves his interests and those of society. The employee shall have the right to safety and security as well as to all other social guarantees. He may neither be assigned work beyond his capacity nor be subjected to compulsion or exploited or harmed in any way. He shall be entitled – without any discrimination between males and females – to fair wages for his work without delay, as well as to the holiday allowances and promotions which he deserves. For his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias (Cairo Declaration).

The right to work is a natural right of every citizen. The State shall endeavour to provide, to the extent possible, a job for the largest number of those willing to work, while ensuring production, the freedom to choose one’s work and equality of opportunity without discrimination of any kind on grounds of race, colour, sex, religion, language, political opinion, membership in a union, national origin, social origin, disability or any other situation (Arab Charter on Human Rights 34:1).

Every worker has the right to the enjoyment of just and favourable conditions of work which ensure appropriate remuneration to meet his essential needs and those of his family and regulate working hours, rest and holidays with pay, as well as the rules for the preservation of occupational health and safety and the protection of women, children and disabled persons in the place of work (Arab Charter on Human Rights 34:2).

#### Exceptions:

The States parties recognise the right of the child to be protected from economic exploitation and from being forced to perform any work that is likely to be hazardous or to interfere with the child’s education or to be harmful to the child’s health or physical, mental, spiritual, moral or social development. To this end, and having regard to the relevant provisions of other international instruments, States parties shall in particular:

- a Define a minimum age for admission to employment.
- b Establish appropriate regulation of working hours and conditions.
- c Establish appropriate penalties or other sanctions to ensure the effective endorsement of these provisions.

(Arab Charter on Human Rights 34:3)

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.

(Universal Declaration of Human Rights 23:1-3).

“Seeking God’s bounty” is equivalent to “earning a living”:

- a “Your Lord is He who drives the ship for you through the sea, in order that you may seek of His Bounty” (17:66).
- b “He has put for you night and day, that you may rest therein (at night) and that you may seek of His Bounty (during the day)” (28:73).
- c “There is no sin on you if you seek the Bounty of your Lord (during pilgrimage by trading etc.)” (2:198).
- d “Then when the (Jumu’ah) Salat is finished, you may disperse through the land, and seek the Bounty of Allah (by working, etc.), and remember Allah much, that you may be successful” (62:10).

#### *XVI. Right to Unionize*

Every individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests (Arab Charter on Human Rights 35:1).

Everyone has the right to form and to join trade unions for the protection of his interests (Universal Declaration of Human Rights 23:4).

Exceptions:

No restrictions shall be placed on the exercise of these rights and freedoms except such as are prescribed by the laws in force and that are necessary for the maintenance of national security, public safety or order or for the protection of public health or morals or the rights and freedoms of others (Arab Charter on Human Rights 35:2).

Every State party to the present Charter guarantees the right to strike within the limits laid down by the laws in force (Arab Charter on Human Rights 35:3).

#### *XVII. Right to an Adequate Standard of Living*

Everyone shall have the right to legitimate gains without monopolization, deceit or harm to oneself or to others. Usury (riba) is absolutely prohibited (Cairo Declaration).

Everyone shall have the right to live in a clean environment, away from vice and moral corruption, an environment that would foster his self-development, and it is incumbent upon the State and Society in general to afford that right (Cairo Declaration).

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection (Universal Declaration of Human Rights 25:1 & 2).

The State shall ensure the right of the individual to a decent living that will enable him to meet all his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs (Cairo Declaration).

Every person has the right to an adequate standard of living for himself and his family, which ensures their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment. The State parties shall take the necessary measures commensurate with their resources to guarantee these rights (Arab Charter on Human Rights 38).

“And in their wealth [they have an] acknowledged right [to] the need[ly] and destitute” (51:19).

“The Head of the state is the guardian of him, who has nobody to support him” (Prophet Muhammad PBUH).

### *XVIII. Right to Education*

As of the moment of birth, every child has rights due from the parents, society and the State to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be protected and accorded special care (Cairo Declaration).

The quest for knowledge is an obligation and the provision of education is a duty for 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 so as to enable men to be acquainted with the religion of Islam and the facts of the Universe for the benefit of mankind (Cairo Declaration).

Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of Shari'a (Cairo Declaration).

Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith (Cairo Declaration).

Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Parents have a prior right to choose the kind of education that shall be given to their children (Universal Declaration of Human Rights 26:1-3).

Every human being has the right to receive both religious and worldly education from the various institutions of education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner as to develop his personality, strengthen his faith in God and promote his respect for and defense of both rights and obligations (Cairo Declaration).

The eradication of illiteracy is a binding obligation upon the State and everyone has the right to education (Arab Charter on Human Rights 41:1).

The States parties shall guarantee their citizens free education at least throughout the primary and basic levels. All forms and levels of primary education shall be compulsory and accessible to all without discrimination of any kind (Arab Charter on Human Rights 41:2).

The States parties shall guarantee to provide education directed to the full development of the human person and to strengthening respect for human rights and fundamental freedoms (Arab Charter on Human Rights 41:4).

The States parties shall endeavour to incorporate the principles of human rights and fundamental freedoms into formal and informal education curricula and educational and training programmes (Arab Charter on Human Rights 41:5).

The States parties shall guarantee the establishment of the mechanisms necessary to provide ongoing education for every citizen and shall develop national plans for adult education (Arab Charter on Human Rights 41:6).

“A father gives his child nothing better than a good education” (Prophet Muhammad PBUH).

“A mother is a school. If she is educated, then a whole people are educated” (Prophet Muhammad PBUH).

“God makes way to Paradise easy for him who treads the path in search of knowledge” (Prophet Muhammad PBUH).

“He who follows a path in quest of knowledge, God will make the path of Paradise easy to him” (Prophet Muhammad PBUH).

The first word revealed to Prophet Muhammad was ‘read’, emphasizing the importance of reading and learning.



“God will raise the position of the believers and of those who have received knowledge” (58:11).

“And of men and beasts and cattle are various species of it likewise; those of His servants only who are possessed of knowledge fear Allah; surely Allah is Mighty, Forgiving” (35:28).

“And say: ‘My Lord! Increase me in knowledge’” (20: 114).

“... Say ‘are those who know equal to those who know not?’ It is only those who are endured with understanding that will take heed” (39:9).

### *XIX. Right to Health*

As of the moment of birth, every child has rights due from the parents, society and the State to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be protected and accorded special care (Cairo Declaration).

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control (Universal Declaration of Human Rights 25:1).

Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources (Cairo Declaration).

The States parties recognize the right of every member of society to the enjoyment of the highest attainable standard of physical and mental health and the right of the citizen to free basic health-care services and to have access to medical facilities without discrimination of any kind (Arab Charter on Human Rights 39:1).

The measures taken by States parties shall include the following:

- a Development of basic health-care services and the guaranteeing of free and easy access to the centers which provide these services, regardless of geographical location or economic status.
- b Efforts to control disease by means of prevention and cure in order to reduce the mortality rate.
- c Promotion of health awareness and health education.
- d Suppression of traditional practices which are harmful to the health of the individual.
- e Provision of the basic nutrition and safe drinking water for all.
- f Combating environmental pollution and providing proper sanitation systems.
- g Combating drugs, psychotropic substances, smoking and substances that are damaging to health.

(Arab Charter on Human Rights 39:2)

## XX. *Right to Intellectual Property*

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical production and the right to protect the moral and material interests stemming therefrom, provided that such production is not contrary to the principles of Shari'a (Cairo Declaration).

Everyone has the right to participate in cultural life, as well as the right to enjoy literary and artistic works and to be given opportunities to develop his artistic, intellectual and creative talents (Arab Charter on Human Rights 36).

Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (Universal Declaration of Human Rights 27:1&2).

"A Muslim's wealth is forbidden for others to use without his permission" (Prophet Muhammad PBUH).

## XXI. *Right to Access to Justice*

The right to resort to justice is guaranteed to everyone (Cairo Declaration).

All persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure or threats. They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels (Arab Charter on Human Rights 12: 1).

A defendant is innocent until his guilt is proven in a fair trial in which he shall be given all the guarantees of defence (Cairo Declaration).

Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights (Arab Charter on Human Rights 13:1).

Trials shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights (Arab Charter on Human Rights 13:2).

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed (Universal Declaration of Human Rights 11:1 & 2).

“O you who believe! Be upright for Allah, bearers of witness with justice, and let not hatred of a people incite you not to act equitably; act equitably, that is nearer to piety, and be careful of (your duty to) Allah; surely Allah is Aware of what you do” (5:8).

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 (Universal Declaration of Human Rights 10).

“Do not let your hatred of a people incite you to aggression” (5:2).

“Allah commands you to make over trusts to their owners and that when you judge between people you judge with justice; surely Allah admonishes you with what is excellent; surely Allah is Seeing, Hearing” (4:58).

“O you who believe! Stand out firmly for justice, as witnesses to God, even though it be against yourselves or your parents, or your kin, be he rich or poor, God is a Better Protector to both (than you). So follow not the lusts (of your hearts), lest you may avoid justice, and if you distort your witness or refuse to give it, verily, God is Ever Well-Acquainted with what you do” (4:135).

“God, the Exalted, and Glorious, said; ‘O My slaves, I have prohibited injustice for Myself; and have made it unlawful for you, so do not be unjust to one another or oppress one another [...]’” (Prophet Muhammad PBUH).

“If two parties among the believers start to fight against each other, restore peace among them. If one party rebels against the other, fight against the rebellious one until he surrenders to the command of God. When he does so, restore peace among them with justice and equality; God loves those who maintain justice” (49:9).

“God does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, God loves those who deal with equity” (60:8).

“In Islam, no one can be imprisoned except in pursuance of justice” (Caliph Umar Ibn el Khattab).

## *XXII. Right to Due Process of Law*

Anyone who is arrested shall be informed, at the time of arrest, in a language that he understands, of the reasons for his arrest and shall be promptly informed of any charges against him. He shall be entitled to contact his family members (Arab Charter on Human Rights 14:3).

Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. His release may be subject to guarantees to appear for trial. Pretrial detention shall in no case be the general rule (Arab Charter on Human Rights 14:5).

Anyone who is deprived of his liberty by arrest or detention shall be entitled to petition a competent court in order that it may decide without delay

on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful (Arab Charter on Human Rights 14:6).

Anyone who has been the victim of arbitrary or unlawful arrest or detention shall be entitled to compensation (Arab Charter on Human Rights 14:7).

No one shall be deprived of his liberty except on such grounds and in such circumstances as are determined by law and in accordance with such procedure as is established thereby (Arab Charter on Human Rights 14:2).

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination (Universal Declaration of Human Rights 7).

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law (Universal Declaration of Human Rights 8).

No one shall be subjected to arbitrary arrest, detention or exile (Universal Declaration of Human Rights 9).

Anyone who is deprived of his liberty by arrest or detention shall have the right to request a medical examination and must be informed of that right (Arab Charter on Human Rights 14:4).

No crime and no penalty can be established without a prior provision of the law. In all circumstances, the law most favorable to the defendant shall be applied (Arab Charter on Human Rights 15).

Everyone charged with a criminal offence shall be presumed innocent until proven guilty by a final judgment rendered according to law and, in the course of the investigation and trial, he shall enjoy the following minimum guarantees:

- a The right to be informed promptly, in detail and in a language which he understands, of the charges against him.
- b The right to have adequate time and facilities for the preparation of his defense and to be allowed to communicate with his family.
- c The right to be tried in his presence before an ordinary court and to defend himself in person or through a lawyer of his own choosing with whom he can communicate freely and confidentially.
- d The right to the free assistance of a lawyer who will defend him if he cannot defend himself or if the interests of justice so require, and the right to the free assistance of an interpreter if he cannot understand or does not speak the language used in court.
- e The right to examine or have his lawyer examine the prosecution witnesses and to defense, according to the conditions applied to the prosecution witnesses.
- f The right not to be compelled to testify against himself or to confess guilt.
- g The right, if convicted of the crime, to file an appeal in accordance with the law before a higher tribunal.

- h The right to respect for his security of person and his privacy in all circumstances.

(Arab Charter on Human Rights 6)

### *XXIII. Right to the Preservation of Honour*

Every human being is entitled to inviolability and the protection of his good name and honour during his life and after his death. The State and society shall protect his remains and burial place (Cairo Declaration).

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks (Universal Declaration of Human Rights 12).

“You who believe, do not let one (set of) people make fun of another set. Do not defame one another. Do not insult by using nicknames. And do not backbite or speak ill of one another” (49:11-12).

No one shall be subjected to arbitrary or unlawful interference with regard to his privacy, family, home or correspondence, nor to unlawful attacks on his honour or his reputation (Arab Charter on Human Rights 21:1).

“The person who goes about with calumnies will never enter Paradise” (Prophet Muhammad PBUH).

“Truly your blood, your property, and your honor are inviolable” (Prophet Muhammad PBUH).

“A true believer does not taunt or curse or abuse or talk indecently” (Prophet Muhammad PBUH).