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THE OIC, CHILDREN'S RIGHTS AND ISLAM

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THE OIC, CHILDREN'S RIGHTS AND ISLAM

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PREFACE

THE ORGANISATION OF ISLAMIC COOPERATION AND HUMAN RIGHTS

MARIE JUUL PETERSEN
DANISH INSTITUTE FOR HUMAN RIGHTS

The Organization of Islamic Cooperation (OIC) is an intergovernmental organization established in 1969 with the purpose of strengthening solidarity among Muslims. Consisting in 57 member states, the OIC often refers to itself as ‘the UN of the Muslim world’. But unlike the UN, the OIC has historically challenged the notion of universal human rights, instead promoting a conception of Islamic human rights.¹

In 1990, the OIC introduced the *Cairo Declaration on Human Rights in Islam*, presenting a set of Islamically defined human rights. While there is of course nothing that hinders a combination of Islam and human rights, the particular conception of Islamic rights promoted in the Cairo Declaration does conflict with essential principles of the UN Declaration on Human Rights. Nowhere in the declaration is there any mention of universal human rights; instead the declaration is expressly based on Islamic values, stating that “[a]ll the rights and freedoms stipulated in this Declaration are subject to the Islamic shari’ah” (Article 24), thereby robbing human rights of their inalienability.²

More recently, the OIC has become known for its promotion of the so-called defamation of religion agenda, challenging the right to freedom of expression. In 1999, OIC countries introduced the first of a series of resolutions asking governments to combat the defamation of religions. For the OIC, this was a much-needed step in the fight against rising Islamophobia, arguing that defamation of Islam often led to anti-Muslim discrimination. Western states, for their part, considered the resolutions contrary to free speech at best and universalizing blasphemy laws at worst. These states argued that religious people have a right to protection from discrimination and defamation—but religions do not.

¹ Many member states have a poor human rights record; in fact some of the members are among the world’s worst human rights violators. Freedom House has listed nine OIC member states (Somalia, Sudan, Turkmenistan, Uzbekistan, Libya, Saudi Arabia, Chad, Guinea and Syria) as among the worst human rights violators in the world (Freedom House 2010).

² The full text of the declaration is available here: <http://www.oic-oci.org/english/article/human.htm>

In recent years, however, there are signs of the OIC moving towards a universal conception of human rights, strengthening its participation in the international human rights system. As part of a larger reform of the OIC, a Ten Year Programme of Action was launched in 2005, introducing a clear focus on universal human rights and the importance of mainstreaming them into all programmes and activities. The amended OIC Charter, adopted at the 11th Islamic Summit in Dakar in 2008, further strengthened this new focus on human rights. In his book, then Secretary General Ekmeleddin Ihsanoglu writes that the summit “ushered in a new era for the Organization and its members,” and he continues:

This new approach, in the objectives of the Charter, marked a great step forward in adapting to global human rights values and involves closer alignment of principle to the international instruments and the practices of other regional or intergovernmental organizations.

In 2011, a human rights commission was established with the purpose to support member states in their implementation of international human rights obligations. And the same year, the OIC co-sponsored a UN resolution on religious discrimination, at least on the surface signaling a move away from the anti-defamation agenda.

Optimists see these initiatives as signs of the OIC’s willingness to leave behind the Cairo Declaration, and instead promote a conception of rights that is more in line with international human rights. Skeptics see them as nothing but window-dressing. Some have pointed to the fact that the new human rights commission’s mandate is severely restricted, and that it has little room for the commission to actually do something about the serious human rights violations of certain OIC member states.³ Others note that despite having abandoned the term ‘defamation’, the OIC still works actively for the introduction of blasphemy laws and other measures to criminalize criticism of Islam, to the detriment of the right to free speech.⁴

These issues were on the agenda at a workshop on the OIC and human rights in September 2013 hosted by the Danish Institute for Human Rights and involved a group of international scholars and experts on the OIC.⁵ The group of scholars and experts met again at the ISA Joint Human Rights Conference in Istanbul in June 2014, organizing a panel under the heading ‘Islam and international organisations’. Some of the papers

³ See Marie Juul Petersen, *Islamic or Universal Human Rights? The OIC’s Independent Permanent Human Rights Commission*, Danish Institute for International Studies, 2012, and Turan Kayaoglu, *A Rights Agenda for the Muslim World*, Brookings Doha Center Publications, 2013.

⁴ See Ann Elizabeth Mayer’s working paper.

⁵ Prior to the academic workshop, DIHR hosted a public seminar with the participation of the international scholars as well as representatives from the OIC and its human rights commission. The discussions during the workshop and the seminar led, among other things, to the formulation of a set of recommendations to the Independent Permanent Human Rights Commission., published in the Turkish newspaper *Today’s Zaman* (see <http://oichumanrights.wordpress.com/2014/03/11/human-rights-experts-recommendations-to-independent-permanent-human-rights-commission/> for the full text of the recommendations).

presented at the workshop and the ISA conference are now being published in the Danish Institute for Human Rights' working paper series *Matters of Concern*. With these papers, we hope to contribute to the ongoing discussion of the role of the OIC in the promotion of human rights, and more broadly, to discussions on human rights, international organizations and Islam.

INTRODUCTION

Rights have in the past been perceived in the Western legal tradition as something to be enjoyed and practiced by autonomous adults. Children's rights as such were viewed as a by-product of adults' responsibilities—that is, adults' legal responsibility to support their children. In short, children were placed within a context of adult guidance and protection. In the past century, however, the legal landscape has drastically shifted as new constitutions and treaties have explicitly incorporated references to children's human rights and old constitutions have been expanded to embrace doctrines borrowed from internationally recognized human rights norms and tenets.⁶ The United Nations Convention on the Rights of the Child (CRC—adopted in 1989) was a crucial starting point in providing a useful framework for taking up the challenge of realizing as well as protecting children's rights. The main substantive objective of the Convention, as experts remind us, is to ensure the survival and development of children.⁷ To that end, non-discriminatory and participatory approaches are essential and the best interests of the child will always have to be a primary consideration.⁸

As formidable as the CRC framework is, it is not in and of itself sufficient to protect children's rights. For that to happen, the notion of children's rights must take root in our mundane practices, in homes, schools, and institutions that are committed to protect and promote children's rights.⁹ Despite the fact that the preamble of the CRC defines the child as any individual under the age of eighteen, as experts point out, "this threshold exists more on paper than in practice: there is no global definition of the 'child,' nor any universal conceptualization of 'childhood'."¹⁰ Therein lies the importance of context and cultural relevance in the adoption of

⁶ Barbara Bennett Woodhouse, "Religion and Children's Rights," in John Witte, Jr. and M. Christian Green, eds., *Religion and Human Rights: An Introduction*, New York: Oxford University Press, 2012, pp. 299-315; see pp. 301-302.

⁷ Karin Arts, "General Introduction: A Child Rights-Based Approach to International Criminal Accountability," in Karin Arts and Vesselin Popovski, eds., *International Criminal Accountability and the Rights of Children*, Hague, the Netherlands, 2006, pp. 3-17; see p. 10.

⁸ *Ibid.*, p. 11.

⁹ Tom O'Neill and Dawn Zinga, "Introduction," in Tom O'Neill and Dawn Zinga, eds., *Children's Rights: Multidisciplinary Approaches to Participation and Protection*, Toronto: University of Toronto Press, 2008, pp. 3-18; see p. 3.

¹⁰ *Ibid.*, p. 16.

the CRC into the laws, policies, and jurisprudence of the countries that have ratified it.

Will the incorporation of the CRC articles into domestic laws and its subsequent practical application lead to a wide variety of interpretations of the Convention, thereby prompting further contested ideas even among those countries adhering to its basic principles? Can addressing the issue of children's rights be divorced from the broader socioeconomic and political challenges that Muslim societies face? This paper argues that the realization of children's rights (protection, provision, and participation) in the Muslim world is now increasingly seen as part of the challenge of combating poverty, accelerating human development, and ensuring peace and security for all. It is worth noting that cultural traditions and norms are important tools to enhance human rights in Muslim-majority countries.

Traditional values, such as family, community, and social responsibility toward protecting and providing for children, are dynamic concepts. Throughout the Muslim world, a number of initiatives have been adopted to bring national legislation (laws) in conformity with the CRC. Legislative reforms in civil arenas are unfolding, albeit not in the family status laws, where *Shari'a* is central to the law making. Ultimately, *Shari'a* principles become legally binding by virtue of state action involving legislative organs and courts. This paper focuses on the issues of child labor and child soldiers as the two most controversial aspects of children's rights in the Muslim world, arguing that the intergovernmental Organization of Islamic Cooperation (OIC) should take an active role in protecting and promoting these rights in the Muslim world. The OIC—the second largest inter-governmental organization with a membership of 57 states over four continents—claims to be the collective voice of the Muslim world. In its charter, the OIC specifically aims “to promote human rights and fundamental freedoms,” while also emphasizing the principle of “non-interference in matters which are essentially within the domestic jurisdiction of any State.”¹¹ This puts the duty of enforcing the declarations made by the OIC to the individual states.

More specifically, the paper argues that the Independent Permanent Human Rights Commission (IPHRC) of the OIC must devise specific strategies for action and implementation of norms/standards on the rights of child as enunciated in the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social, and Cultural Rights (ICESCR), while ratcheting up pressure on member states to enforce such norms by incorporating them into their domestic jurisdictions and laws. At the same time, the

¹¹ Charter of the Organization of Islamic Conference, available at http://www.comcec.org/TR_YE/Yeni_Site_Dokumanlar/Basic_Documents/OIC_Charter.pdf. Accessed on June 1, 2014.

international community needs to analyze the legislation and framework for protection already in place, and devise ways to help countries follow them and understand their importance.

CHAPTER 1

1 CHILDREN'S RIGHTS IN MUSLIM-MAJORITY COUNTRIES

The social and legal position of a child and child rights are an integral component of Islamic family law, which is based on the sources of the *Shari'a*.¹⁸ In Islam, all children, before birth and after birth, including orphans, are regarded as “vulnerable” and deserving of child care. Their parents and society as a whole have a social responsibility to ensure they are looked after, not only because children have intrinsic rights, but because Muslims have a duty to be charitable. Islam regards protecting and promoting children's rights as obligatory insofar as all human life is sacred to Allah.¹⁹

Within Muslim-majority countries, Shaheen Sardar Ali notes, child, family, society, and the State are locked into an ineluctable relationship, the dialectic of which is represented in an interplay between claims, rights, and obligations. This relationship is based on a legal framework that provides an institutionalizing mechanism to convert claims into rights and render actions obligatory for the survival, protection, and development of its citizens.²⁰ Legal frameworks as such tend to bear some similarities in Muslim-majority countries. All Muslim jurisdictions, for instance, subscribe to the Islamic law of personal status and enviously guard this area as the “last bastion” of an Islamic identity. Marriage, divorce, inheritance, and succession, custody, and guardianship of children are governed by principles of Islamic law, in some cases even without recourse to formal legislation.²¹

Shari'a enumerates the following rights for children:

- (1) Right to noble and characterized parents

¹⁸ See Shaheen Sardar Ali, “Comparative Perspective of the Convention on the Rights of the Child and the Principles of Islamic Law: Law Reform and Children's Rights in Muslim Jurisdictions,” in Shaheen Sadar Ali, Savitri Goonesekere, Emilio Garcia Mendez, Rebeca Rios-Kohn, eds., *Protecting the World's children: Impact of the Convention on the Rights of the Child in Diverse Legal Systems*, New York, Cambridge University Press, 2007, pp. 142-208; see p. 147.

¹⁹ Shabina Arfat, “Islamic Perspective of the Children's Rights: An Overview,” *Asian Journal of Social Sciences & Humanities*, Vol. 2, No. 1, February 2013, pp. 299-307; see p. 299.

²⁰ Shaheen Sardar Ali, op. cit., p. 151.

²¹ Shaheen Sardar Ali, op. cit., pp. 160-161

- (2) Rights of the Unborn Child
- (3) Right to Nurture (prescribed breast-feeding)
- (4) Right to life
- (5) Right to General Care
- (6) Right to Lineage (knowing the biological parents and the choice to maintain a relationship with them; Kafalah child's right to information concerning her/his identity)
- (7) Right to socialization
- (8) Right to Just and Equal Treatment
- (9) Right to Maintenance (the expenditure for nourishment, health, education, and training; in case of orphaned child, the burden shifts to the grand-parents; parent should support their minor irrespective the child's religious preferences/particular inclinations).
- (10) Right to Education
- (11) Rights of the Orphans (enjoy the same rights of inheritance, protection, returning their money to them when they reach the age of maturity). The practice of adoption does exist within Muslim-majority communities. Adoptive parents must file an affidavits stating that the child has been given into their care by the natural parents voluntarily and without any undue influence or coercion.²² Nationality rights remain unequal, as do guardianship rights.²³

Increasingly, a number of initiatives have been adopted to bring national legislation in conformity with the CRC. Legislative reforms in civil arenas are unfolding, albeit not in the family status laws, where *Shari'a* is central to law making. It is, therefore, important to analyze these improvements to see if they can achieve the protections they set out to. The dichotomy between the national and the community-based Islamic laws (Ahadith: right to life and education) leaves room for confusion, but also for progress. Within Islamic traditions, there is space for community-based organizations and civil society groups that focus on policy implementation and advocate for change to make an impact.

²² Shaheen Sardar Ali, op. cit., p. 156.

²³ Shaheen Sardar Ali, op. cit., p. 188.

CHAPTER 2

2 THE OIC AND CHILDREN'S RIGHTS

In contrast with the traditional underpinnings of Islamic family law, Islamic countries are often lagging with regard to awarding children their rights. In an attempt to level themselves with international humanitarian standards, the OIC just recently published the Covenant on the Rights of Children (2005), the first and only binding human rights document on the rights of the child for Muslim-majority countries. Within this Covenant, Article 17 focuses on child protection and Article 18 focuses on child labor. However, these articles are very brief in nature and weak in terms of strength and enforcement.²⁴

Children have often become so integral to their economic system as laborers that it would be unrealistic—perhaps even immoral in the face of massive poverty and conflict—to call for their absence in job markets. Children make up a huge part of the population in the Islamic world: approximately 600 million children live in Islamic countries, amounting to over 40 percent of Muslims and one-quarter of the world's population.²⁵ The Covenant on the Rights of the Child can be seen as the OIC's attempt to echo the UN Convention on the Rights of the Child (1989). However, this convention and the preceding Geneva Protocol of 1977 are exceedingly more explicit and detailed than the Covenant is.²⁶ Articles 37, 38, and 39 of the Convention specifically refer to the rights of children in armed conflict.²⁷ To date, 193 countries have ratified the Convention, including all Muslim countries

²⁴ Covenant on the Rights of the Child in Islam, available at <<
<http://www.refworld.org/pdfid/44eaf0e4a.pdf>>>.

²⁵ UNICES, 2005, op. cit.

²⁶ Part 1, Article 77 'Protection of Children'

²⁷ Article 38: '1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child. 2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities. 3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavor to give priority to those who are oldest. 4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.'

except Somalia, though some Islamic countries have done so with reservations.²⁸ The Islamic Republic of Iran, for example, ratified it on July 13, 1994, but has made the following reservation "If the text of the Convention is or becomes incompatible with the domestic laws and Islamic standards at any time or in any case, the Government of the Islamic Republic shall not abide by it."²⁹

Additionally, 23 OIC states have ratified The Optional Protocol on the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000), which modified the Convention on the Rights of the Child by changing the age for enlisting children in armed conflict from 15 to 18.³⁰ Ratification of this protocol requires each state to deposit a binding declaration to set the minimum age.³¹ Such declarations vary across jurisdictions in different Muslim-majority countries.³² Despite the fact that children younger than eighteen are still sometimes found in the military forces of countries that have ratified the Convention, the acceptance of this Optional Protocol is encouraging.³³

Although the OIC Covenant reflects a willingness on the part of member states to recognize the importance of protecting children, who are often disproportionately affected by violence and disasters,³⁴ the Covenant has many downfalls. First, it does not specify what age defines a child.³⁵ Second, the number of signatories is unknown, and the status is uncertain. Third, it fails to address the large number of children in Islamic countries who are victim to terror attacks and land-mines.³⁶ Fourth, there are comparatively few statements about children in conflict

²⁸ The UNICEF, *Investing in the Children of the Islamic World*, New York: The United Nations Children's Fund, November 2005, available at http://www.unicef.org/publications/files/Investing_Children_Islamic_World_full_E.pdf. Accessed on June 1, 2014.

²⁹ "Children's Rights: Iran." Library of Congress. 4 April 4, 2011. Accessed on May 28, 2012.

³⁰ The UNICEF, 2005, op. cit.

³¹ Article 3(2) of the Protocol, 'Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced'. (A/RES/54s/263)

³² Afghanistan: 22-28; Azerbaijan: 17; Bahrain: 18; Chad: 18; Kazakhstan: 19; Kuwait: 18; Kyrgyzstan: 19; Libya: 18; Mali: 18; Morocco: 18; Mozambique: 20; Qatar: 18; Senegal: 20; Sierra Leone: 20; Syria: 18; Tajikistan: 18; Kuwait: 18-23; Turkey: 18; Uganda: 18 (UNTC, 2010).

³³ Nasrin Mosaffa, "Does the Covenant on the Rights of the Child in Islam Provide Adequate Protection for Children Affected by Armed Conflicts?" *Muslim World Journal of Human Rights*, Vol. 8, Issue 1, October 2011.

³⁴ Ibid.

³⁵ Article 1 states, 'For the purpose of the present Covenant, a child means every human being who, according to the law applicable to him/her, has not attained maturity' and there is no clear definition of 'maturity.'

³⁶ Nasrin Mosaffa, op. cit.

compared to that in international law.³⁷ Finally, there are issues with the capacity and will to enforce the legislation. Iran, for example, has so far (according to the available sources in the Law Library of Congress) not passed legislation calling for the implementation of the Covenant. States need to set up specific, national mechanisms to enforce the declarations set out in the Covenant, and very few have done so to date.

The member states of the OIC need specific strategies for implementation and enforcement of norms and standards. In the case of child labor, rather than seeking total abolition, official policies should be directed at preventing child labor from being exploitative or dangerous to physical and psychological health. The risks and benefits of child labor need to be analyzed in context. In the case of child soldiers, the member states need to take a firmer stance. There is currently just one explicit, binding provision protecting children in armed conflict for Muslim countries: Article 17.5 of the Covenant on the Rights of the Child, which states 'To protect children by not involving them in armed conflicts or wars.'³⁸ While there are other, vaguer statements throughout the document that could be interpreted as protecting children in armed conflict, this lack of human rights framework in the Islamic World represents not only a divide from the West, but poses a significant human rights issue.

Recently, considerable progress has been made, and as reported by UNICEF, twelve of the OIC countries have completed national action plans for children. Another 21 member states are in the process of developing similar *plans*, although few of these have budgets attached.³⁹ Education has been seen as an increasing priority, partly because school provides physical protection and normalcy into daily lives. Several OIC countries have made significant efforts to reintegrate and rehabilitate former child soldiers (i.e. the six-month period of vocational training, counseling, and training in conflict resolution in Somalia).⁴⁰

³⁷ Article 17(5) states, 'To protect children by not involving them in armed conflicts or wars'. Article 19(3)(c), which states that 'the child shall be provided with legal and humanitarian assistance where needed, including access to a lawyer and interpreter if necessary'. Article 21: 'State Parties to this Covenant shall ensure, as much as possible, that refugee children, or those legally assimilated to this status, enjoy the rights provided for in this Covenant within their national legislation.'

³⁸ United Nations Human Rights, Office of High Commissioner for Human Rights, The Covenant on the Rights of the Child, available at

<<<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>>>. Accessed on June 5, 2014.

³⁹ See "Investing in the Children of the Islamic World," UNICEF, available at <<<http://www.unicef.org/policyanalysis/files/Achievements.pdf>>>. Accessed on August 1, 2014.

⁴⁰ Ibid.

Some OIC countries have also started to take an active role to make sure the voices of their children are heard: the Truth and Reconciliation Commission in Sierra Leone was set up to publically hear children's wartime experiences; the final report, drafted in part by 100 children, also included the (first ever) child friendly version.⁴¹ Some OIC countries have also raised the minimum age for employment in line with ILO Convention 138.⁴² Islamic countries have been increasingly supportive of international humanitarian efforts that highlight children's rights as well. All OIC members have embraced the Millennium Declaration, the Millennium Development Goals, and the goals of "A World Fit for Children", the outcome document of the United Nations General Assembly Special Session for Children in 2002.⁴³

⁴¹ UN, "Inventory of United Nations system activities to prevent and eliminate violence against women," February 2013, available at <http://www.un.org/womenwatch/daw/vaw/inventory/Inventory-February-2013.pdf>.

Accessed on August 1, 2014.

⁴² Lebanon has raised the minimum age for employment from 8 to 13; Egypt to 14; Morocco to 15, and Tunisia to 16, corresponding to the end of compulsory schooling in those countries.

⁴³ The UNICEF, *Investing in the Children of the Islamic World*, New York: The United Nations Children's Fund, November 2005, available at http://www.unicef.org/publications/files/Investing_Children_Islamic_World_full_E.pdf.

Accessed on June 1, 2014.

CHAPTER 3

3 CHILD LABOR

Concerns about child labor date back to the 1860s, when the International Workers' Congress called for an international campaign against child labor. Likewise, setting up a minimum working age for various sectors was an important order of business for the newly established International Labor Organization (ILO) in 1919. Interest and action on the issue of child labor gained much traction in the twentieth century when child labor came to be largely viewed as a violation of children's rights and it soon became a target for total elimination.⁶⁵ Yet targeting child labor programs and preventing such practices in poverty-stricken countries have always represented a conundrum with no easy solutions.

Today, child labor is one of the most troublesome problems facing Muslim-majority countries, where it is widespread and where some of the most flagrant abuses occur. To better understand the prevalence of this practice, experts look into poverty and poor health conditions and their impact on raising fertility rates. Much evidence suggests, they note, that high infant mortality prompts fertility. The logic, they argue, is understandable: "for both emotional and economic reasons, parents are interested in *surviving* children. If many infants die, people will, on average, tend to have more children to compensate."⁶⁶

One important element of the opportunity cost of having children is in fact their economic activity. The earlier children can perform productive labor is when their net contributions to the family budget become positive. In most peasant societies, including those in the Middle East and North Africa, children can and do fulfill numerous tasks, ranging from caring for younger children to harvesting cotton. On balance, experts point out, "the more child labor is performed in agriculture, the lower the opportunity cost of having many children and therefore the higher the fertility rate."⁶⁷

⁶⁵ Jody Heymann, *Children's Chances: How Countries Can Move from Surviving to Thriving*, Cambridge, Mass: Harvard University Press, 2013, p. 59.

⁶⁶ Alan Richards, John Waterbury, Melani Cammett, and Ishac Diwan, eds., *A Political Economy of the Middle East*, Third Edition, Boulder, CO: Westview Press, 2014, pp. 75-76.

⁶⁷ *Ibid.*, p. 76.

Under such circumstances, children carry out an important function as “pension funds”—that is, as the providers of income and care in old age. That is why, an average peasant—or even urban poor family—will rationally desire to have seven births to ensure that two sons survive to provide for them in old age.⁶⁸ In poverty-stricken regions of the developing world, many poor families feel without economic alternatives to “bonded labor” and “bonded debt.” Under these quasi-institutional forms of child labor, children, generally younger than 10 years old, are pledged by their parents to factory owners or their agents in exchange for loans. This often lifelong servitude is passed on to the next generation, and bonded peasants can even be sold into marriage.⁶⁹

Under such conditions, a major moral dilemma arises: how to free children from laboring under inhumane conditions given the abject poverty in some of these countries. Consumer boycotts, trade sanctions, and mandatory dismissals often bring about harsher conditions than working in sweatshop-like situations. To many children in these societies, who willingly work under such abusive conditions, the alternative may be less appealing. Arguably, the prevention of child labor and the socioeconomic rights of children and their families are competing claims in poor countries. Central to this assumption is the claim that a total ban on child labor is neither feasible nor morally warranted in such countries, where unemployment can be a greater tragedy than child labor. Instead, it is argued that the focus should be placed on the most destructive forms of child labor, such as bondage, commercial sexual exploitation, and trafficking of children.⁷⁰

Consider, for example, the case of Pakistan, a country which is one of the top exporters of sports products to European countries. The continuation of the child labor issue has led to the WTO-imposed sanctions on the import of sports products from Pakistan. This has resulted in the loss of sports goods manufacturers in addition to being immensely detrimental to families who have earned their living from manufacturing sports products.⁷¹ Federal and provincial governments, as well as policymakers, must take steps to enforce labor laws to the extent possible and eliminate worst form of child labor.

⁶⁸ Ibid.

⁶⁹ Laura Sheahan, “Fighting Child Labor, Early Marriage in India,” *Catholic Relief Services* (CRS), available at << <http://crs.org/india/child-labor-marriage/>>>. Accessed on August 2, 2014.

⁷⁰ Mahmood Monshipouri, “Human Rights and Child Labor in South Asia,” in an edited volume by David P. Forsythe and Patrice C. McMahon, *Human Rights and Diversity: Area Studies Revisited*, Lincoln, Nebraska: University of Nebraska Press, 2003, pp. 182-204.

⁷¹ Asad Abbas, “Child Labors: Trade Sanctions,” *Dawn*, August 25, 2013, available at <<http://www.dawn.com/news/1038260>>. Accessed on June 6, 2014.

It is in this context that four key questions are raised: (1) Is child labor a violation of human rights or a necessity for combating de facto poverty? (2) Is the abolishment of child labor a realistic prospect in poor countries? (3) Is ending hazardous and exploitative child labor contingent upon eradicating poverty in the first place? And (4) what is the most effective way to prevent this practice given the combination of factors—such as cultural traditions, local power structure, and globalization of trade, capital, and finance—that underlie the causes of child labor?

There is often a strong discrepancy between national and international standards on child labor. While national governmental standards are based on international standards arguing for a separation between work and education, in practice it is often difficult to enforce such a separation in many Muslim societies.⁷² Child labor, one scholar suggests, should be directed toward strengthening the capabilities and skills of children while enhancing their educational level.⁷³

The First Islamic Ministerial Conference on the Child was held in Rabat, Morocco, in 2005; it concluded its historic meeting with the issuance of a strong Declaration, calling for an end to harmful traditional practices, elimination of gender disparity in education, and urgent action to address the intolerably high rates of child and maternal mortality in some Islamic countries.⁷⁴ Subsequently in the Khartoum Declaration of February 3, 2009, the member states of the OIC adopted in their 11th session a resolution on Child Care and Protection that stipulated the necessity to safeguard children's rights.⁷⁵ In what became known as a tenacious problem, the member states of the OIC paid more systematic attention to the issue of child labor than in the past.

In the Baku Declaration (November 11, 2013), the OIC member states called for adhering to the "Roadmap to Achieving the Elimination of the Worst Forms of Child Labor" by 2016, adopted at the Hague Global Child Labor Conference (2010). The Baku Declaration underlined the need to take the necessary steps to protect young domestic workers against abusive working and employment conditions as

⁷² Abdullahi Ahmed An-Na'im, *Muslims and Global Justice*, Philadelphia: University of Pennsylvania Press, 2011, p. 172

⁷³ Ibid., p. 173.

⁷⁴ David Koch, "First Islamic Ministerial Conference on the Child ends with landmark declaration," UNICEF, November 9, 2005, available at <<
http://www.unicef.org/policyanalysis/index_29771.html>>. Accessed on August 2, 2014.

⁷⁵ Khartoum Declaration: Towards a Brighter Future for Our Children, available at <<
<http://www.docstoc.com/docs/97002590/Khartoum-Declaration>>>. Accessed on August 2, 2014.

well as to promote decent work for all workers, while taking strong measures against exploitative child labor and forced begging in urban areas.⁷⁶

Increasingly, the OIC urges its member states that have not ratified and implemented the International Labor Organization's Conventions concerning Minimum Age for Admission to Employment (Convention No. 138), Prohibition of the Worst Forms of Child Labor, 1999 (Convention No. 182), and the Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and on the Sale of Children, Child Prostitution and Child Pornography to do so.⁷⁷ In its first formal gathering, the OIC Independent Permanent Human Rights Commission (IPHRC) on December 13, 2012, made several priority areas the focus of its future agenda. These included, among others: women's and children's issues, political and minority rights, as well as the Israel-Palestine conflict.⁷⁸ In its subsequent meetings, Iyad Amin Madani, the Secretary General of OIC, pointed to four challenges facing the Commission: limitations on freedom of expression, gender equality, applying human rights in accordance with the Member States constitutional and legal systems, and stopping the spread of extreme voices in the Member States.⁷⁹

The focus on child labor has been somewhat slighted, as many other issues have taken the center stage. In its 5th Session in Jeddah, Kingdom of Saudi Arabia (1-5 June 2014), IPHRC had detailed discussions on all items, on its agenda including human rights violations in the Occupied Palestinian Territories; civil-political, socioeconomic, and cultural rights in OIC Member States; as well as specific mandates given to it by the Council of Foreign Ministers (CFM)⁸⁰ such as

⁷⁶ "4th Islamic Conference of Ministers in Charge of Childhood: Pledges to Improve Equal Access to Decent Living Conditions for Urban Children in the Islamic World," *The OIC Journal*, September-December 2013, p. 49.

⁷⁷ "Rabat Declaration on Child's Issues in the Member States of the Organization of the Islamic Conference", available at <<http://www.refworld.org/pdfid/44eb01b84.pdf>>. Accessed on August 1, 2014.

⁷⁸ Carey L. Biren, "First Muslim Human Rights Commission to Launch End December," Inter Press Service (IPS) News Agency, December 13, 2012, available at <<http://www.ipsnews.net/2012/12/first-muslim-human-rights-commission-to-launch-end-december/>>. Accessed on August 3, 2014.

⁷⁹ Fourth Session of the OIC Independent Permanent Human Rights Commission, available at <<http://www.igogcc.org/fourth-session-of-the-oic-independent-permanent-human-rights-commission/>>. Accessed on August 3, 2014.

⁸⁰ It should be noted that the Commission's recommendations are not binding but must be approved by the Council of Foreign Ministers. For further and illuminating discussion on this see, Marie Juul Petersen, *Islamic or Universal Human Rights: The OICs Independent Permanent Human Rights Commission*, Danish Institute of International Studies (DIIS) Report 2012:03, pp. 1-78; see p. 34. Available on <http://subweb.diis.dk/graphics/Publications/Reports2012/RP2012-03-Islamic-human-rights_web.pdf>. Accessed on August 3, 2014.

Islamophobia, negative impact of unilateral economic sanctions on member states; situation of Rohingya Muslim minority, human rights situation in Central African Republic, and the creation of mechanism for monitoring human rights violations against Muslim minorities. The Commission also dealt thoroughly on the issues of right to development and human rights of women and children. Many experts from Islamic Development Bank and Islamic Fiqh Academy also contributed to such discussions. A vigorous support has emerged for holding joint seminars or symposiums on specific topics and projects in these areas with an eye toward defining common positions or views that would help Member States to obtain better understanding of these issues from a holistic perspective.⁸¹

Our view of child labor is that rather than seeking the total abolition of child labor, official policies should be directed at preventing it from being exploitative or dangerous to the physical and psychological health of the child. The OIC needs to devise specific strategies for action and implementation of norms/standards, taking into account the risks and benefits of child labor in terms of context. Additionally, it is important to tackle several questions: who makes final determinations with regard to children's rights and on what basis? And how is "mental health" or "exploitation" of the child defined and by whom?⁸² One option is to emphasize the Worst Forms of Child Labor Convention (WFCLC—adopted in 1999) also known as the ILO Convention #182. Even in this case, the problem is that the definition of worst forms of child labor—that is, a labor that involves exploitative or dangerous aspects to the physical and psychological health of the child—has its own limits. In most cases, it is also a country-based definition of Worst Form Hazards faced by Children at Work.

⁸¹ OIC Independent Permanent Human Rights Commission Concludes its Fifth Regular Session, June 5, 2014, available at << <http://oichumanrights.wordpress.com/>>>. Accessed on August 3, 2014.

⁸² "4th Islamic Conference of Ministers in Charge of Childhood: Pledges to Improve Equal Access to Decent Living Conditions for Urban Children in the Islamic World," *The OIC Journal*, September-December 2013, pp. 177-181.

CHAPTER 4

4 CHILD SOLDIERS

Since the end of the Cold War in the early 1990s and the subsequent increase in civil wars, fighting forces around the world have used children as soldiers. Some child soldiers have been forcibly recruited and compelled to follow orders under threat of death. Others, under the destruction of war and poverty, have joined armed groups out of desperation.⁸³ During interstate wars or civil wars, children are often left with no access to school, driven from their homes, or separated from their families. Many view armed groups as their best chance for survival. Others join either to avenge abuses against their families or in hopes of receiving a good salary or education.⁸⁴ In general, there is a broader consensus among experts in the field that poverty is one of the key reasons for joining armed forces or groups.⁸⁵

Three key legal texts have regulated the issue of child soldiers. First, the two Additional Protocols of 1977 to the 4th Geneva Convention of 1949, adopted in 1977, have helped to generalize the application of international humanitarian law in relation to civilian populations caught up in internal conflict. Second, the CRC has played a key role in this regard. In 2000, the Optional Protocol to the CRC on the Involvement of Children in Armed Conflicts raised the minimum age for the compulsory recruitment and direct participation in hostilities from 15 years to 18 years. Since 2002, the Optional Protocol has entered into force, 123 countries have ratified the Optional Protocol. Since February 2007, 66 governments have subscribed to the Paris Principles and Guidelines on Children Associated with Armed Forces or Armed Groups. In 2005, the UN Security Council (UNSC) passed Resolution 1612 to set up a “monitoring, reporting and compliance mechanism” to help enforce compliance among groups using child soldiers in armed conflict.⁸⁶

⁸³ Jo Becker, *Campaigning for Justice: Human Rights Advocacy in Practice*, Stanford, CA: Stanford University Press, 2013, p. 11.

⁸⁴ Ibid.

⁸⁵ ILO, “Economic Reintegration of Children Formerly Associated With Armed Forces and Armed Groups,” *The Hidden Crisis: Armed Conflict and Education*, International Program on the Elimination of Child Labor (IPEC), p. 6; available at <<
<http://unesdoc.unesco.org/images/0019/001907/190780e.pdf>>>. Accessed on August 2, 2014.

⁸⁶ Alexandre J. Vautravers, “Why Child Soldiers Are Such a Complex Issue,” *Refugee Survey Quarterly*, Vol. 27, No. 4, 2008, pp. 96-107; see p. 97.

Third, the Rome Statute of the International Criminal Court (ICC) adopted in 2002 declared that “conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities” was a war crime. Additionally, the ILO has regarded child soldiering as one of the “predefined worst forms” of child labor since 1999.⁸⁷

It is well-documented that the majority of child soldiers are members of irregular armed forces and that child soldiers are mainly an issue in poor, marginalized, or disputed/failed states. In fact, the lack of state sovereignty is the basis of the child soldier problem. Ironically, international pressure and advocacy may weaken government legitimacy and sovereignty even further. Worse yet, international economic sanctions are likely to deepen the rift and foster counterproductive courses of action.⁸⁸ The solution may lie in a combination of efforts including regulation, fighting organized crime and trafficking, partnership, nation-building assistance, and development.⁸⁹

Furthermore, the complexity of dealing with the issue of child soldiers stems from the difficulty of establishing the responsibility for crimes under international law. The main problem concerns setting minimum age with regard to the child’s criminal capacity. Article 40(3a) of the CRC, for example, provides that state parties to the Convention shall seek to establish a minimum age below which children shall be presumed not to have the capacity to infringe the criminal law. No minimum age of criminal responsibility, however, is stipulated. The Convention only requires states to establish a minimum age of criminal responsibility. It is basically left to each state to determine what age should be.⁹⁰

In the 1990s, many governments began a series of annual negotiations in Geneva to increase the minimum age to eighteens, but those negotiations faltered as it became clear that governments that had long used under-eighteens in their national armed forces, notably the United States and United Kingdom, were unwilling to espouse a new standard that conflicted with their national practice.⁹¹ US laws dating from 1917 allowed seventeen year olds to volunteer for the US armed forces with parental permission.⁹² In the early 1990s, seventeen-year-old

⁸⁷ Ibid., p. 97

⁸⁸ Ibid., p. 105.

⁸⁹ Ibid., p. 107

⁹⁰ Matthew Happold, “The Age of Criminal Responsibility for International Crimes Under International Law,” in Karin Arts and Vesslin Popovski, eds., *International Criminal Accountability and the Rights of Children*, The Hague, the Netherlands: Hague Academic Press, 2006, pp. 69-84; see p. 73.

⁹¹ Jo Becker, op. cit., p. 14.

⁹² Jo Becker, op. cit., p. 14.

US soldiers fought in Somalia, Bosnia, and the 1991 Gulf War. Likewise, the UK had allowed sixteen year olds to join the armed forces and serve in combat roles, a much larger proportion of its soldiers were under eighteen.⁹³

International law, however, offers a number of guidelines. Firstly, the age should not be so low as to result in the punishment of children for offenses committed when they were too young to understand the consequences. Secondly, there may be a trend toward standardizing the minimum age of criminal responsibility somewhere in the mid-teens (thirteen, fourteen, and fifteen). Thirdly, even children above the age of criminal responsibility should be treated differently from adults.⁹⁴

Article 40 of the CRC also emphasizes that the purpose of juvenile justice is rehabilitation. More specifically, Article 40(3b) provides that States shall seek to promote, “whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings.”⁹⁵ It should be noted, however, that one of the reasons why concerns have grown regarding the involvement of children in armed conflict is the growing belief in children’s rights. That is, children are rights-bearers and their rights to freedom of expression and making choices in all matters affecting them must be respected irrespective of what their parents or other adults might think. From a children’s rights perspective, there are good reasons for treating children as moral actors and, thus, accountable for their actions. Accountability, as legal experts point out, does not and should not always entail criminal responsibility. Even if held criminally responsible for their actions, children should not necessarily be treated in the same way as adults.⁹⁶

In the Muslim world, in particular Yemen and Somalia have been at the center of the debate over child soldier issues. An increasing number of children have been enlisted in the militias of Somalia and Yemen, and many have died while getting caught in the middle of battles. The Islamic militias that control most of southern and central Somalia have since 2011 increased their recruitment of child soldiers in this famine-ravaged country. According to Amnesty International, “systematic recruitment of children,” many of them under 15 years old, has noticeably escalated.⁹⁷

⁹³ Jo Becker, op. cit., p. 14.

⁹⁴ Matthew Happold, op. cit., p. 82.

⁹⁵ Matthew Happold, op. cit., p. 82.

⁹⁶ Matthew Happold, op. cit., pp. 83-84.

⁹⁷ Brian Latham, “Somali Islamic Militias Recruit Child Soldiers, Amnesty International Says” *Bloomberg*, July 19, 2011, available at <<http://www.bloomberg.com/news/2011-07-19/somali-islamic-militias-recruiting-child-soldiers-amnesty-says.html>>. Accessed on June 2, 2014.

In 2011, the UN released statistics showing more than 200 children have been killed and some 600 injured in these two countries.⁹⁸ Rima Salah, the Deputy Executive Director of the UN Children's Fund (UNICEF) noted that "several hundred children [were] also used as guards performing security functions for militia and armed groups. We need a political solution with humanitarian aid and development."⁹⁹ Furthermore, UNICEF officials have sought assistance from countries such as the United Arab Emirates (UAE), asking them to contribute to their global appeal and help the agency to procure food and provide immunization. The UAE has responded to the call by announcing in 2011 that it would vaccinate one million children between the ages of six months and five years against measles and polio in the Horn of Africa.¹⁰⁰

Child soldiers are also a well-known phenomenon in other OIC countries. Islamic extremists have used madrassas in northern Mali to indoctrinate young people and to recruit child soldiers. Islamic radicals have attacked Gao, a city in northern Mali, on several occasions in the past, in the face of French and Malian military, as part of a strategy broadly known as MUJAO—that is, the Movement for Oneness and Jihad in West Africa.¹⁰¹ MUJAO has taken many of the students from the Qu'ranic schools because they spoke Arabic and were easier to convert and manipulate. In 2013 alone, it was estimated that between 200 and 300 children disappeared with the jihadists.¹⁰² In the Philippines, the early 2014 offensive by the Philippines' armed forces against the fighters of the Bangsamoro Islamic Freedom Fighters (BIFF) group in the strife-torn southern island of Mindanao resulted in the deaths of 53 rebels, including three children. Three child soldiers were recruited by hardline Muslim rebels.¹⁰³ At the local level, community-based activities, such as providing social and psychological support, education, vocational training, and income-generating projects are increasingly regarded as a vital component of the policy and program against the involvement of children in armed conflicts. Capacity-building and awareness-raising can significantly contribute to promoting measures against the worst form of child labor. Community-based training (CBT), according to the International Program on the

⁹⁸ Preeti Kannan, "UN Calls for UAE Help on Child Soldiers," *The National*, November 17, 2011, available at <<http://www.thenational.ae/news/uae-news/un-calls-for-uae-help-on-child-soldiers>>. Accessed on June 1, 2014.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Associated Press, "Mali's Islamic Radicals Recruit Child Soldiers at Schools," February 23, 2013, available at <<http://www.foxnews.com/world/2013/02/23/mali-islamic-radicals-recruited-child-soldiers-at-madrassa-schools-in-gao/>>. Accessed on June 1, 2014.

¹⁰² Ibid.

¹⁰³ *Vanguard*, "Child Soldiers Among 53 Dead as Philippine Troops Overrun Rebels," January 31, 2014, available at << <http://www.vanguardngr.com/2014/01/child-soldiers-among-53-dead-philippine-troops-overrun-rebels/>>>. Accessed on June 2, 2014.

Elimination of Child Labor (IPEC), integrates skills training into a comprehensive economic and social empowerment framework. These include: “identification of employment and income generating opportunities, skills training, post-training support services, follow-up during start-up and consolidation of employment. This type of training is particularly appropriate where there is not enough demand to open a training center and where material resources are locally available.”¹⁰⁴

¹⁰⁴ ILO, “Economic Reintegration of Children Formerly Associated With Armed Forces and Armed Groups,” *The Hidden Crisis: Armed Conflict and Education*, International Program on the Elimination of Child Labor (IPEC), p. 20; available at <<
<http://unesdoc.unesco.org/images/0019/001907/190780e.pdf>>>. Accessed on August 2, 2014.

CONCLUSION

Family, society, and state responsibilities continue to influence children's rights in Muslim-majority countries and communities as in other parts of the world. The transformation of domestic law and legal frameworks is the most effective and sustainable way of change. Local legitimacy and internal initiatives are in fact essential for a resilient change over the longer term.¹⁰⁵ Some of Islamic traditions are child friendly and others are not. More conducive to the rights of the child than the CRC is Islamic law of inheritance that provides for a child to inherit even before she or he is born.¹⁰⁶

Similarly, it is crucial to emphasize the role of community-based organizations within the Islamic traditions. Civil society groups' focus has increasingly turned toward policy implementation and/or advocacy for change, while at the same time showing openness to diverse interpretations of the Islamic texts. The OIC Independent Permanent Human Rights Commission (IPHRC) should devise specific strategies for action and implementation of norms/standards on the rights of child. In the long term, a combination of policy, advocacy, and legislative reform is needed to nudge along children's rights in the Muslim world. The IPHRC is strongly urged to initiate a plan of action in cooperation with the member states of the OIC for the most vulnerable children, those who are at risk and in need of social welfare and support.

Some experts have also suggested ways to promote institutional linkages between the IPHRC and other human rights instruments and bodies. Among others, these could include the European Court of Human Rights, the UN Human Rights Council, and the UN Office of the High Commissioner for Human Rights. These more established human rights bodies can organize joint working sessions to help build the capacity of the IPHRC.¹⁰⁷ More specifically, they have argued that since the IPHRC's basic law allows for limited cooperation with NGOs, the international

¹⁰⁵ Shaheen Sardar Ali, op. cit., p. 202.

¹⁰⁶ Shaheen Sardar Ali, op. cit., p. 199.

¹⁰⁷ Turan Kayaoğlu, "A Rights Agenda for the Muslim World: The Organization of Islamic Cooperation's Evolving Human Rights Framework," *Foreign Policy in Brookings, Brookings Doha Center Analysis Paper*, No. 6, January 2013; see p. 4.

human rights community can provide expertise and training to relevant NGOs in Muslim societies. Those NGOs can in turn create much needed grassroots pressure on member states, the OIC, and the IPHRC.¹⁰⁸

¹⁰⁸ Ibid., p. 23.



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