

ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



HUMAN RIGHTS IN ISLAM

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HUMAN RIGHTS IN ISLAM

I. INTRODUCTION

A. Background

1. The item “Human Rights in Islam” was included in the agenda of the AALCO at the initiative of the Kingdom of Saudi Arabia at its Forty-First Session (Abuja, Nigeria, 2002). Since then the item is being deliberated upon during AALCO’s successive sessions. The resolutions adopted during the Annual Sessions of AALCO urged Member States “to forward to the Secretariat their views and observations on the topic, so as to facilitate the preparation of an in-depth study on this item”.

2. The Secretariat Report for the Forty-Third Session focused on the analysis of Human Rights in Islam from the civil law perspective. It enunciated the four important sources of Human Rights in Islam, viz. *the Holy Qur’an, the Sunnah* (including both Sunni and Shia perspectives), *consensus and juristic reasoning*; the distinctive characteristic of Human Rights in Islam; and outlined various civil and political as well as economic, social and cultural rights as guaranteed under Islam. The report of the Forty-Fourth Session analysed the criminal law jurisprudence of Islam through the prism of human rights. Human Rights from criminal law perspective is a broad area of concern and its subject matter ranges from the areas of national penal legislations, *inter alia* torture, extra-judicial executions, fair trial etc. to the international humanitarian law. The report of the Forty-Fifth Session analyzed the criminal procedural laws from human rights perspective. The Report analysed the international and national criminal procedural laws from a human rights perspective and also analysed the criminal procedural laws and principles of Islam through the prism of human rights. The report of the Forty-Sixth Session, an attempt had been made to highlight the concepts of peace and human rights in Islam. Also, a Report of the Meeting of International Experts on Human Rights in Islam (MIEHRI), organized by the Government of Malaysia in collaboration with the Kingdom of Saudi Arabia and the Asian African Legal Consultative Organization (AALCO) Secretariat, which was held in Kuala Lumpur, Malaysia from 15 to 19 May 2006. The report of the Forty-Seventh Session highlighted Islam and its contribution to humanitarian law. It gave an overview of interrelationship between human rights and humanitarian law, international humanitarian law, and Islam and contribution to humanitarian law.

3. In continuum with the AALCO’s attempt to highlight the human rights dimensions of Islam, Secretariat in its present report highlights the contribution of Islamic economics, finance and banking as a means to protect and promote human rights.

II. HUMAN RIGHTS DIMENSIONS OF ISLAMIC ECONOMICS

4. Islam as a way of life, consists of three interlinked elements which are separately addressed for the purpose of simplifying the understanding of them but interrelated when they are implemented. The three elements are belief system, behaviour system and practical rules which are applicable in human relations with the God and His creations. As far as the Islamic belief system is concerned, there are a

number of key elements of the Islamic worldview behind the Islamic economics practices.

5. The first source for the knowledge of Islamic economics is the *Holy Quran*. Islamic economics should focus on those verses that contain descriptive statements on human nature. Similarly descriptive statements of the *Holy Quran* on economic phenomena and verses concerning groups or collectivities fall within the ambit of Islamic economics. The *Holy Quran*¹ has many descriptive statements on human nature. These include, for instance, verse 33: 72 which states that man tends to be unjust, verses 42:27 which links human transgression to affluence and richness, verses 4: 32, 20: 131 that explains the covetous nature of man which desires what others have and thereby his vulnerability to be influenced by external social and economic factors. Humans by nature love wealth. Verses 3: 14-15 describes man's love of wealth and verse 100: 8 states that "verily, to the love of wealth is he most ardently devoted". Islam therefore, does not condemn seeking wealth but instead introduced certain guidelines within which wealth can be earned and spent.

6. The *Holy Quran* also has descriptive statements on certain economic phenomena. For instance, verse 43: 32 states: "Is it they who portion out the Mercy of thy Lord? It is We who portion out between them their livelihood in the life of this world: and we raise some of them above others in ranks, so that some may command work from others. But the Mercy of thy Lord is better than the (wealth) which they amass". This verse describes the differences in wealth, talents, physical and mental capacities and other potentials among people. It also explains the reason for the existence of these differences as they enable humans to make use of each other and in the process meet each other's economic needs. And at the end of the verse emphasises that the best way to take advantage of these differences is to use it for seeking God's mercy.

7. Islam is a monotheistic religion that has a holistic view of the world. According to Islam, the true ownership of all resources resides with God. In sharing this ownership humanity is God's supreme creation and its role is to serve as God's vicegerent (*Khalifah*). While superior human intelligence means power and control over all other things on earth, this is not absolute, no body can violate the basic premise of the trusteeship while using it to their advantage.

8. Islam elevates earning a living through hard work to an act of worship. A Muslim can adopt any occupation that does not transgress the *Shariah*. This means: (i) affairs must be conducted honestly (fraud and cheating, and practices such as adulteration, hoarding, speculation, false advertising, bribery and charging or paying interest are prohibited), (ii) certain professions, e.g. gambling, prostitution, the manufacture and sale of drugs and alcoholic beverages, pornography, manufacture and sale of statues, are prohibited.

¹ Translations of the Holy Qur'an in this Report are quoted from *The Holy Qura'n : English Translation of the Meanings and Commentary* (The Presidency of Islamic Researchers, IFTA, Call and Guidance) (King Fahd Holy Qur'an Printing Complex, Al-Madinah Al-Munawarah).

A. Value System of Islamic Economics

9. Islamic economics are ultimately governed by the Islamic belief system which is an absolute belief that Allah is the creator of everything on earth and in the heavens. Human beings are only trustees who should utilize these resources in an efficient way to fulfill Allah's commandment for establishing prosperity on earth for the good of all humankind including in their financial matters. In fact, a Muslim entrepreneur obviously is only considered as a 'vicegerent' on earth where man's right to ownership is obtained by proxy from Allah, and as Allah made man 'his vicegerent', man must function according to His teachings and in the end be accountable to Allah for all deeds, be they good or bad. Therefore, as far as Islamic belief system is concerned, Islamic economics contains divine values which distinguish it from a secular economy system. Amongst these values are as follows:

1. Social and Economic Justice

10. Justice is the highest value in an Islamic economy. The importance of justice as a value is clearly enshrined in the *Shariah*, as mentioned by Allah Almighty:

Allah commands justice, the doing of good...(Holy Qur'an,16:90)

11. Thus, the implementation of *Shariah* thought in the economy will definitely bring prosperity to society. The consequences of the valorization of justice value can be seen typically in the organization of allocation and distribution in an Islamic economy. For instance, Islam determines the portions of poor people in *zakat* (compulsory alms), properties gained from war, many kinds of support that must be paid to the poorest and neediest, so on and so forth.

12. An important element of the Islamic economy is the principle of social justice. Islam exhorts moderation and distributive justice, (*Holy Qur'an*; 9:60; 59:7). The principle of social justice is embodied by Islam in the system of distribution of wealth. The Islamic form of social justice comprises two general principles, each having its own lines and details. The first one is that of general reciprocal responsibility and the other one is that of social balance. It is through reciprocal responsibility and the balance, with their Islamic sense, that just social values are materialised and it is therewith that Islamic ideals of social justice come into existence. The measures taken by Islam towards bringing about a better human society clearly showed how great importance it attached to this main element of its economy. Attachment of this importance was reflected clearly in the first address given by the Prophet (Pbuh) at the time of the first political activity conducted in his new State:

O people, send forth (some good) for yourselves. By Allah, one of you will certainly be stunned leaving behind his sheep without a herdsman, and then his Lord would say to him, "Did not my Messenger come to you and convey (My Message)? I granted you bountiful wealth and favoured you. So what did you then send forth for yourselves?!" Thereupon, he would look at the right and left and would find nothing but the hell. Therefore anyone could possibly save himself from the fire (of Hell) even though by means of a portion of a date, he must do it. If he does not have (even) that, he (should

secure safety from Hell) by uttering a pleasant word, because a good deed is rewarded from tenfold to seven hundred. May peace and God's blessing and mercy be on you

13. *Zakah*, or obligatory alms giving, is one of the Five Pillars of Islam and is an essential part of Islam. *Zakah* is a tax on personal wealth that is paid on, or more properly taken from, the three items of human economic activity, namely. Crops, livestock and money. “ And be steadfast in prayer: Give Zakat...” (*Holy Qur'an*, 2.43) . The acquisition and accumulation of wealth is permitted if it is pursued through lawful means, if the individual meets all of the attendant obligations (paying *Zakah* and such voluntary taxes as *sadaqah* and *kharaj*), and if it does not distract one from the remembrance of God. So *Zakah* and *sadaqah* (voluntary charity) are part of an effective social apparatus to ensure distributive equity and social justice. The act of giving is so important that generosity and charity have been declared a trade without a loss. That Islam views social justice as vital is evident from the fact that it repeatedly urges Muslims not to seek salvation through self-alienation or monastic life, as this could entail one's withdrawal from the active promotion of society's well being.

2. Self Reliance

14. Independence (Self-Reliance) is a value that must be upheld by Islamic economy. The teaching of Islam itself encourages human beings to be self-reliant and avoid being servile, fearful, or open to coercion. The ultimate goal behind all of those negative characteristics is to free mankind from falling beneath of *shirk*(polytheism). The passion for independence will guide mankind to stand on their own feet and not to depend on others.

3. Shura or collective view

15. *Shura* or collective view is an integral part of any Islamic financial system as well as Islamic administrative system. The command of practicing *shura* is clearly stated in the Holy Qur'an as follows:

Those who respond to their Lord, and establish regular prayer; who conduct their affairs by mutual consultation...(42:38)

16. The tradition of the Prophet (Pbuh) dictated that he applied the '*shura*' in war, diplomatic treaties, *al-azan* (calling for prayers) and so on and so forth. *Shura* is also needed to handle complicated modern economic and financial systems.

4. Patience (sabr)

17. Patience (*sabr*) is one of the most important features of an Islamic economy. This feature is continuously mentioned in the Holy Qur'an. Amongst the verses which were focusing this feature are:

O ye who believe! Persevere in patience and constancy; vie in such perseverance; strengthen each other; and fear God; that ye may prosper.(3:200)

...Those who patiently persevere will truly receive a reward without measure! (39:10)

18. Patience does not mean waiting for results without making any effort to achieve them. Rather, patience (*sabr*) signifies full commitment to planning and managing the economy in a proper manner until the emergence of results. With a full belief in the Islamic financial system and patience, Muslims will succeed in developing their economic system, subsequently gaining full autonomy to manage their country's economy.

19. It is thus clear that the above mentioned elements are among the integral elements in an Islamic economy. The success of the *ummah* (nation) in developing and managing its economy is dependent on their efforts to implement those essential elements which derive directly from Islamic teaching.

B. Islamic Economy as Part of the General System of Islam

20. The study of the Islamic economy is not possible as being something separate and a doctrinal entity independent of the rest of the religious entities including the social, political and other ones and of the nature of the relations existing between the entities.

21. It is therefore wrong not to attach due importance to the general Islamic system and take into account the nature of the relationship between the economy and other parts of the religion and their mutual effect.

22. The ground for the Islamic society and its social doctrine are composed of the following elements:

Firstly, belief which is the central basis in the Islamic thinking, which defines a Muslim main outlook towards the world in a general way.

Secondly, the concepts which reflect Islam's view point in the description of things in the light of the general outlook crystallised by the faith.

Thirdly, sentiments and feelings which Islam undertakes to disseminate. Islamic notion about a certain event creates event in the mind of a Muslim a special feeling about that event and defines his sentimental attitude it. Islamic concepts with their role are placed in the light of the basic Islamic belief.

23. It is only when the Islamic society fully attains its ground that we can expect of the Islamic economy to fulfil its unique message in the economic life and to ensure for the society means of happiness and welfare. But if the Islamic message is enforced in a certain walk of life, separated from other ones, it is wrong to expect of the greater Islamic message to materialise. In such a case, Islamic directions could not be blamed for being totally or partially incompetent of guiding the society.

C. Concept of Ownership in Islam

24. The ethical interpretation justifies the conception of *Khilafah* which every Muslim usually meets with from Islam. He is mentally and spiritually moulded by them and his sense and activity are determined in conformity with them. The basis of

this conception is the concept of *Khilafa*. The property is the property of Allah. He is its real owner and men are His Vicegerents on the earth and His Trustees over it and whatever other wealth and properties that exist on it. Holy Qur'an says:

He it is that has made you inheritors in the earth: So he who disbelieves his disbelief be on his own self their disbelief: But adds to the odium for the unbelievers in the sight of their Lord: Their disbelief but adds to (their own) loss.(35:39)

25. It is God who has conferred upon man this vicegerency and if He wished He could take it away from him:

...He could destroy you, and in your place appoint whom he will as your successors...(6:133)

26. The nature of the successorship imposed upon the man in respect of the wealth he has been made successor to meet his instruction from the one who has granted him that successorship. Holy Qur'an says:

Believe in Allah and His Messenger, and spend (in charity) out of the (substance) whereof, He has made you Heirs. For, those of you who believe and spend (in charity), -for them is a great reward. (57:7)

27. So likewise as a result of this (vicegerency) the man will be accountable for it before the one who appointed him as the vicegerent to it, he being subject to the watching of Him (the conferrer) over his uses and disposals of it and his works, Holy Qur'an says:

Then We made you heirs in the land after them, to see how ye would behave! (10:14)

28. The forms of ownership as to ownership and special rights are but modes by the following of which facilitates the society in carrying out of its burden in respect of rendering the world prosperous and flourishing. Holy Qur'an says:

It is He who hath made you inheritors of the earth. He hath raised you in ranks, some above the others: that He may try you in the gifts He has given you... (6:165)

29. The conferring upon some besides the others the ownership and special rights and making different their ranks as to *Khilafah* is a kind of test as to the gifts of the society and the extent of its ability to carry the burden and having the driving force from the discharge of the important duties of vicegerency and for the race in the field. Thus private property becomes in this light a mode of the society's discharging its business of the vicegerency and assumes the stamp mark of the social function as a manifestation of a general vicegerency and not the stamp mark of absolute right and control of the principal.

30. Since the *Khilafah*- in truth belongs to the society and the private property is a mode of the society's achieving the aim of this *Khilafah* and its mission so, the

society's relation is not cut off nor does its responsibility cease in respect of the property on its becoming the property of an individual, on the contrary it will be obligatory for the society to protect the property of the mentally weak owner in case he is not mature.

31. Islam disallowed the Muslim to look at private property as measure for respect and estimation in the Muslim society nor to attach to it any value in the mutual social intercourse. The Holy Qur'an has cast awful recrimination upon the individuals who measure their respect and their care of others with the measuring the amount of wealth and riches and says:

(The Prophet) frowned and turned away, because there came to him the blind man (interrupting). But what could tell thee but that perchance he might grow in purity? Or that he might receive admonition, and the reminder might profit him? As to one who regards himself as self-sufficient, to him dost thou attend; though it is no blame to thee if he grow not in purity. But as to him who came to thee striving earnestly, and with fear (in his heart), of him wast thou unmindful. (80:1-10)

D. Economic Obligations of an Islamic State

32. There are three major economic obligations of an Islamic State

1. Provision of Social Security : Protecting the right to food, clothing, shelter, medicine and education

33. The underlying principle of Islamic social security is that, if a person is found unable to fulfil his basic requirements, an Islamic State would then hold itself responsible to see to it that nobody is denied of basic means of subsistence. It should be ensured that not a single citizen of an Islamic State remains hungry, naked, unsheltered and uncared during ailment.

“.....Abu Maraim Az'adi said: “I went to Muawiyah. He asked: Oh! Abu Mariam, how come you are here?. I replied: “ I have come here to bring to your notice a tradition of Prophet (Pbuh) which I have heard. I have heard the Prophet (Pbuh) saying : if a person, to whom Allah has given authority over some affairs of Muslims, remains indifferent to their worries and frustration (on account of poverty), then Allah in turn would not attend to his needs”. The narrator reports that (after hearing this tradition) Muawiyah immediately appointed a person (to attend to the needs of People).²

34. The Prophet (Pbuh)said:

If a person, whom Allah has made a ruler, is not a well wisher of people, he would not then come even near to the fragrance of heaven.³

² Abu Dawud: Kitab al-Kharaj wa fai'.

³ Bukhari: Kitab al-Akham

A ruler will not enter into heaven with the Prophet who despite holding a responsible position was neither the well wisher of people nor worked for their welfare.⁴

35. The *Shariah* has made an Islamic State a guardian of its subjects. One of the obligations of guardianship is that basic minimum needs of people should be met. After a series of conquests when there were adequate funds at the disposal of *Baitul Maal*, the Prophet (Pbuh) declared that the treasury of the Islamic State would clear loans of those indebted who died before clearing their loans. The Prophet (Pbuh)said:

Muslims hold me more dear than their own souls. Therefore, if an indebted person dies (without clearing loan) I would assume the responsibility of clearing (his) loan.⁵

36. It is clear from another tradition that along with the repayment of loans the Prophet (Pbuh) assumed other responsibilities too, for example, ensuring security to the helpless children of deceased persons.

37. Caliph Umar bin Abdul Aziz had a very comprehensive notion of social security. It happened during the period of Umar bin Abdul Aziz that a severe famine struck Arabia:

A few persons from Arabia came to him in a delegation. They selected from amongst them a person to talk to Umar bin Abdul Aziz. He said: O the Commander of the Faithful! We have come to you because of some urgent need. Our skins have dried because (to eat) even bones are not available. Our problem can be solved only through the (money of) *Baitul Maal*. There are three possible (uses). Either this is for Allah or for the servants of Allah or else it is for you. If it is meant for Allah then Allah does not need it. If it is meant for the servants of Allah, hand it over to them. Give it in charity in case it is yours. Allah amply rewards those practice charity". On listening him, tears started falling from the eyes of Umar bin Abdul Aziz. He said : "The position of properties of *Baitul Maal* is exactly the same as explained by you". He ordered that their needs should be met from *Baitul Maal*.

38. The provision of social security was not confined to the muslims alone. The non-Muslims too enjoyed same facilities as enjoyed Muslims. Umar instructed the Officer-in-Charge of *Baitul Maal* to find out poor and needy *dhimmi* and fulfil their basic requirements. Also, there are many basic needs which include provision of education and to provide monetary assistance to young unmarried persons for their marriage.

2. Facilitating Economic Development –Furthering Right to Development and human dignity

39. If social security means the fulfilment of basic requirements of people and ensuring survival of human beings, the facilitation of economic development signifies

⁴ Musand Abi Awaana, Vol. 1, p. 32

⁵ Abu Ubaid, *Kitab al -Amwal*, p. 202

establishment and survival of the society itself. Economic development is essential for eradicating hunger, poverty and disease. An Islamic State should have adequate funds so that it can create a conducive atmosphere for its programmes propagating the true faith. Islamic thinkers have held that it is a duty of the head of an Islamic State that he should take appropriate steps to promote economic prosperity of his country. While commenting on the duties and responsibilities of a ruler, Mawardi writes:

There are seven responsibilities of a ruler of the Ummah.....the third responsibility is that he should develop, promote and protect interests of regions under his rule; he should improve roadways and other means of transportation.⁶

40. Mawardi quotes a tradition from which it can be deduced that the Prophet (Pbuh) valued most the promotion of prosperity of nations:

Abu Huraira quotes that when the people of non-Arab lands were cursed in front of the Prophet, he stopped them (from cursing) and said: "Do not curse them, servants of Allah settled there (peacefully and comfortably) when they developed and promoted lands."⁷

41. It was an important feature of the economic policy adopted by Umar that it aimed at improving the supplies of means of livelihood. This guiding principle was made known in the very first sermon delivered by Umar after assuming the office of Caliphate. It was declared that appointments to different positions would be given only to those persons who care for the economic prosperity of people:

I would not hand over this trust (i.e., official posting) to those who are incapable. It would be entrusted to those who work for their (people's) prosperity. Only such persons deserve authority (to rule) over Muslims.

3. Reducing income and wealth inequalities –Achieving Economic Justice and Equality

42. On the basis of evidences available from Holy Qur'an, Sunnah and the conduct of the righteous Caliphs it can be argued that one of the guiding principles of economic policy of early Islamic State was to reduce inequalities in the distribution of income and wealth and thereby to minimise concentration of economic power in a few hands. It appears in the Holy Qur'an:

And in their wealth there is a due share for the beggar and the deprived (51:19)

43. The question of distributing wealth left behind by the people of Banu Nazir arose at Madina when the Jewish tribe was deported on account of breach of trust and its hostile attitude towards Islam. It was commanded that the wealth does not remain concentrated only amongst rich. The Holy Qur'an says:

⁶ Al-Mawardi, *Adabuddin wa Duniya*, Darul Kutub al-Arabia, Egypt, p.82

⁷ Ibid.

What God had bestowed on His Apostle (and taken away) from the people of the township, belongs to God, to His Apostle, and to kindred and orphans, the needy and wayfarer; in order that it may not (merely) make a circuit between wealthy amongst you. So take what the Apostle assigns to you, and deny yourselves that which he withholds from you. And fear God; for God is strict in punishment (59:7)

44. It is, thus, amply clear from above verse that preventing concentration of wealth in the hands of rich was one of the main objectives of economic policy of the Islamic State.

45. During the lifetime of the Prophet (Pbuh) the Islamic State adopted three different methods to minimise unequal income and wealth distribution. First, on an yearly basis a part of wealth of rich was transferred to poor and needy by the way of *zakat* and *ushr*. Secondly, *fai*' revenue was distributed amongst poor and needy. Finally, through persuasion and teaching, rich people were encouraged to extend financial help to needy and deserving.

46. During the period of Abu Bakr *fai*' revenue was distributed in equal proportion amongst all men and women, slaves and masters and majors and minors. A few persons complained to Abu Bakr that more funds should be given to those persons who have accepted Islam earlier than others and who have served the cause of Islam eminently. Abu Bakr replied:

I know fully well of what you have mentioned before me about pre-eminence, excellence and superiority. However, these are the matters whose reward rests with the Almighty. This (equal distribution) is a pecuniary issue. Here equal treatment is better than unequal treatment.

47. Islam is not against the personal accumulation of wealth. At the same time it does not approve of concentration of wealth in a few hands only. On the basis of Qur'anic verses, traditions of the Prophet (Pbuh) and narrations from the period of righteous Caliphs, it can be established without doubt that one of the fundamental objectives of economic policy of an Islamic State would be to minimise disparities in the distribution of income and wealth. An Islamic State should strive to gradually root out several deep rooted economic evils found in Islamic society.

E. Corruption is repugnant to the Islamic way of life

48. Muslims believe that human beings are created by God. His/her life is a spectrum that starts from this world on earth to final destination after death. Life on earth is a short and limited mission on the basis of which God will judge the way human beings will continue his lasting life, which will come after being resurrected. And for human beings to be successful in his mission, Muslims believe that God has sent Messengers to guide him to the true path and these Messengers were sealed with the Prophet Mohammed (pbuh) whose message is embodied in the Holy Qur'an and The Sunnah of the prophet (pbuh) both of which are preserved from any form of omissions or commissions until the day hereafter "We have, without doubt, Sent down the Message; And We will assuredly Guard it (from distortion)" (Holy Qur'an,

15:9). This message guides Moslems in all their endeavors in this life be it political, economic, social, cultural, and environmental inducing individuals to do good and refrain from bad.

49. One of the principal objectives of the *Shari'ah* is the prevention of *fasad*. The word *fasad* which has been mentioned almost fifty times in the Quran has a wide range of meanings. It signifies "a state of disorder, or disturbance, or of destruction, annihilation, waste, or ruin". It also connotes mischief, corruption, exploitation, wrong, and all forms of injustice, mismanagement, anarchy, and chaos. A *Shari'ah* oriented policy is a policy that is designed to achieve the objectives of the *Shari'ah*. Since prevention of harm or disorder (*fasad*) is one of the principal objectives of the *Shari'ah*, a *Shari'ah* oriented policy should be designed in a way that would achieve this objective.

50. Islam condemns in unequivocal terms all forms of corruption and considers it both harmful and immoral and denounces it as a cause of misery and unhappiness both in this life and the life hereafter. In one place the Holy Qur'an compares corruption with hypocrisy and destruction: "When he turns his back, His aim everywhere is to spread mischief through the earth and destroy Crops and cattle. But God loveth not mischief. (2:205). And in another place corrupt behavior is described as an act of extravagance that true believers should not emulate: "But fear God and obey me; And follow not the bidding of those who are extravagant- Who make mischief in the land, And mend not their ways"(Holy Qur'an, 26:151-152). Yet in a third context, it is looked at as breaking God's covenant after it is ratified thus leading to loss: "Those who break God's Covenant After it is ratified, And who sunder what God Has ordered to be joined, And do mischief on earth: These cause loss (only) to themselves." (Holy Qur'an, 2:27). Because of the harmful and unjust nature of corruption mentioned previously, it comes as no surprise that Islam denounces, in the strongest terms, all forms and degrees of corruption and urges its followers not to fall preys to it least they subject themselves to disgrace and punishment both in this life and the life hereafter. This denunciation is conveyed in a number of ways such as associating corruption with evil doing: "...And do no evil nor mischief on the (face of the) earth"(Holy Qur'an, 2:60), and by informing us that God hates corrupt people: "But God loveth not mischief"(2:205). It is also done by warning us of the punishment awaiting corrupt people in life after death: " But those who break The covenant of God, after having plighted their word thereto, and cut asunder those things which God has commanded to be joined, and work mischief; in the land;--on them is the Curse; for them is the terrible Home "(Holy Qur'an, 13:25). Also, it was narrated that the prophet (peace be upon him) has sent a person by the name of Ibn Allatbiah to collect Zakah (tax) and he came back with the tax and some gifts and he said to the prophet peace be upon him: " This is for you (the Zakah) and these gifts where given to me and thus they are mine" The prophet (peace be upon him) replied " Why does an employee that we send to collect zakah come back to say this is Zakah and these are gifts given to me; would any body have given him these gifts had he stayed in his mother's home. By God, any one who takes these gifts when he is on a public mission will carry its burden on the day of judgment" (narrated by Bukhari and Muslim). And in another prophetic saying, we are reminded that on the day of judgment the determination of whether an individual goes to heaven or hell will depend on his answers to four major questions one of which is " how he has accumulated his wealth (i.e. whether or not he has earned it through allowable means)

during his life time and how he has spent it “. Finally, it was related by Umar ibn Al-Khattab, may Allah be pleased with him, that “ the prophet peace be upon him has cursed that who pays bribes, the receiver of bribes, and the person who facilitates a bribe (narrated by Ahmed, Al-Bazaz, and Al-Tabarani).

51. To sum up, therefore, we can say that Islam is not only repugnant to corruption but it also punishes those who are involved in it because it considers corruption the source of many injustices and illness.

III. HUMAN RIGHTS DIMENSIONS OF ISLAMIC FINANCE AND BANKING

52. The ultimate aim of Islamic finance and banking is to fulfil socio ethical responsibility to bring prosperity among mankind as it has very strong *Shariah* foundation and very strong moral and ethical dimension which are rooted in the system itself. Islamic financing transactions, in other words, are financial transactions which observe the prohibitions of the *Sharia*, among them, in a prominent place, the prohibition of *riba* or illicit gain.

53. The prohibition of interest is the ethical and economic foundation of the Islamic finance industry. According to Islamic scholars the rationale for this prohibition is that there shall be no profit without participation in business risk. In addition, transactions are required to be “asset based”, thus restricting the circulation of debt.

54. Other elements of Islamic finance include the emphasis on equitable contracts, the linking of finance to productivity, the desirability of profit sharing, and the prohibition of gambling and certain types of uncertainty. These parameters define the nature and scope of Islamic banking, as interpreted by the *Shariah* scholars that work with Islamic financial institutions. Islamic law contains an explicit preference for equity financing over debt financing. The classical forms of equity require partnership and profit sharing, which venture capital, investment management and project financing can be compared. Investments in stocks and equity funds are permitted but to be acceptable from an Islamic perspective, they must conform to certain guidelines. Undesirable companies and industries are screened out on the basis of both qualitative criteria (the nature of the business) and quantitative criteria (the level of involvement with interest). Islamic investment also discourages speculation and forbids short selling, conventional debt instruments and conventional derivatives. These views are based on the prohibition of interest, gambling and transaction involving uncertainty in Islamic law. Islamic banks have religious supervisory boards often known as *Shariah* committees or boards. These consist of experts in Islamic law and provide a certificate of religious compliance like that of financial auditors. Non-Islamic banks offering Islamic banking services also have *Shariah* supervisory boards.

A. The Prohibition of Ribā

55. Islam has forbidden *riba* in a manner that leaves no room for doubt concerning its prohibition. There are several Qur’anic injunctions, Prophetic traditions (Hadith), and sayings of the companions condemning and strongly prohibiting *riba*. The seriousness of the prohibition against usury is indicated by many verses. (*Holy Qur’an* 2:275-9)

56. At the same time, Islam blocks the way for anyone who tries to increase his capital through lending on usury or interest (Riba), whether it is at a low or a high rate.

Those who devour usury will not stand (i.e. on the Day of Judgement) except like the standing of a person beaten by Satan leading to madness. That is because they say: 'Trade is like usury,' but Allah has permitted trade and forbidden usury. Those who after receiving direction from the Lord, cease, shall be pardoned for the past; their case is for Allah (to judge); but those who repeat (the offence) are the dwellers of the Fire. They will abide therein forever. [Holy Qur'an, 2: 275]

O you who believe, devour not usury, doubled and multiplied; but fear Allah; that you may (really) prosper. [Holy Qur'an, 3: 130]

That they took usury although they were forbidden; and that they devoured men's wealth wrongfully. We have prepared for those among them who reject Faith a grievous punishment. [Holy Qur'an, 4: 161]

That which you give in usury for increase through property of (other) people, will have no increase with Allah. But that which you give for charity, seeking the countenance of Allah (will increase): it is these who will get a recompense multiplied.
[Holy Qur'an, 30:39]

57. Among the last revelations are the following verses of Surat al-Baqarah:

O you who believe, fear Allah and give up what remains of your demand from usury, if ye are indeed believers. And if ye do it not, take notice of war from Allah and His Messenger, while if you repent you shall have your capital sums. Deal not unjustly, and ye shall not be dealt with unjustly ." (Al-Baqarah: 278-279)

58. The Prophet (Pbuh) declared war on usury and those who deal in it; he pointed out its dangers to society, saying, "When usury and fornication appear in a community, the people of that community render themselves deserving of the punishment of Allah." (Reported by Al-Hakim). Abu Huraira narrated that the Prophet (Pbuh) said: Avoid the seven great destructive sins. They (the people) asked: O Allah's Apostle! What are they? He said: To join partners in worship with Allah; to practice sorcery; to kill the life which Allah has forbidden except for a just cause (according to Islamic law); to consume riba, to consume the property of an orphan; to give one's back to the enemy and fleeing from the battlefield at the time of fighting, and to accuse chaste women who never even think of anything which violates chastity and are good believers. "(Bukhari)

59. Everyone who has something to do with riba, whether he is one of the main parties involved or is a middleman or facilitator, has been cursed. The companion Jabir reported: "The Messenger of Allah cursed the one who accepted riba, the one

who paid it, the one who recorded it, and the two witnesses to it.” He said: “They are all alike.” (Sahih Muslim). ‘Aun ibn Hanifa reported from his father that the Prophet (Pbuh) had condemned both the receiver of interest and its payer. (Bukhari). Based on this, it is not permitted to do work that involves writing riba-based contracts and conditions, paying or receiving riba, depositing it or guarding it. Generally speaking, it is Haraam (prohibited) to be directly or indirectly involved with riba in any way, shape, or form. It is also reported that the Prophet (Pbuh) said: “Avoid the seven sins that doom a person to Hell.” They said, “O Messenger of Allah, what are they?” He said: “Associating others in worship with Allah (*shirk*); witchcraft; killing a soul whom Allah has forbidden killing, unless that is done lawfully; consuming riba; consuming the property of orphans; running away from the battlefield; slandering innocent chaste believing women.” (Sahih Bukhari and Sahih Muslim)

60. The prohibition of riba does not just apply to deals between the rich and poor. It is a general prohibition that applies to every person and every situation. The least harm that riba does is to destroy the barakah (blessing) of the money, even if a person’s wealth is great. The Prophet (Pbuh) said: “Even if riba is much, it will end up being a small amount.” (Al-Hakim)

61. After pondering over the texts concerning riba in both the Holy Qur’an and Sunnah, Muslim scholars have given several reasons and suggestions as to why Allah may have enforced such laws on the Muslims. The following are some reasons proposed by Muslim Scholars:

- Riba is a sure gain without any possibility of loss, hence all the risk is taken by the borrower, rather than sharing the risk and the profits.
- Riba retards economic growth and development.
- Riba is one of the major contributors of inflation.
- Riba negates the culture of brotherhood and sympathy.
- From a moral and spiritual point, riba is clearly based on greed, selfishness, narrow-mindedness and hard-heartedness. It nurtures the same evils in the money lender.

62. Imam al-Razi says in his *tafsir* of the Holy Qur’an: Firstly, the taking of interest implies appropriating another person's property without giving him anything in exchange, because one who lends one *dirham* for two *dirhams* gets the extra *dirham* for nothing. Now, a man's property is for (the purpose of) fulfilling his needs and it has great sanctity, according to the hadith, “A man's property is as sacred as his blood.” (Reported by Abu Na'eem) This means that taking it from him without giving him something in exchange is *haram*. Secondly, dependence on interest prevents people from working to earn money, since the person with *dirhams* can earn an extra *dirham* through interest, either in advance or at a later date, without working for it. The value of work will consequently be reduced in his estimation, and he will not bother to take the trouble of running a business or risking his money in trade or industry. This will lead to depriving people of benefits, and the business of the world cannot go on without industries, trade and commerce, building and construction, all of which need capital at risk. This, from an economic point of view, is unquestionably a weighty argument. Thirdly, permitting the taking of interest discourages people from doing good to one another, as is required by Islam. If interest is prohibited in a society, people will lend to each other with good will, expecting back no more than what they have loaned, while if interest is made permissible the needy person will be

required to pay back more on loans (than he has borrowed), weakening his feelings of good will and friendliness toward the lender. (This is the moral aspect of the prohibition of interest.). Fourthly, the lender is very likely to be wealthy and the borrower poor. If interest is allowed, the rich will exploit the poor, and this is against the spirit of mercy and charity. (This is the social aspect of the prohibition of interest.) (*Tafsir* by al-Fakhr al-Deen al-Razi, vol. 7, p. 4.)

63. The strict prohibition of interest in Islam is a result of its deep concern for the moral, social, and economic welfare of mankind. Muslim scholars have sound arguments explaining the wisdom of this prohibition, and recent studies have confirmed their opinions, with some additions and extensions of their arguments.

B. Islamic Banking

64. Islamic banking is based on the adoption of *Shariah* (Islamic law) as the guiding principle governing transactions, deposits, investments and returns. The most distinctive element of Islamic banking is the prohibition of *riba*, usually translated as interest, whether nominal or excessive, simple or compound, fixed or floating. In so far as the poor are more likely to be forced into borrowing than the rich, so one Muslim's objection to interest is that of equity.

65. Islamic banking involved all parties participating on just terms. The profit and loss sharing principle implied less likelihood of contracts being broken and promoted solidarity and brotherhood. For proponents of Islamic finance it is beyond doubt that *riba* is not restricted to usury only but covers all forms of interest in loan contracts. As the alternative in harmony with ethics and morals of Islam, Islamic economists designed a financial system based on the idea of partnership and sharing of risks and rewards. The substitution of loans and debt by sharing agreements became the distinguishing factor and the basic premise on which all claims of distinctiveness and superiority were based.

66. It is also observed that many of the characteristics of Islamic banking can benefit both the investors and the players such as risk and benefit sharing as it provides more equal opportunities to both parties.

67. Islamic banking not simply about interest free financing, but rather has to be understood "in the context of Islam's teaching on the work ethic, wealth distribution, social and economic justice, and the role of the state for final justice goal". Virtues of Islamic finance as it "encourages risk-sharing, promotes entrepreneurship, discourages speculative behaviour and emphasizes the sanctity of contracts". Islamic bankers do not expect to advance money and receive a predetermined sum on a fixed date in the future. Under the *Shariah*, the bedrock of the Islamic faith, they are instead responsible for ensuring that money is invested in viable projects, with reliable borrowers. If the project succeeds the banker shares in the profit. If it fails banker suffers the losses.

68. The *Shariah*, which dictates the activities of the Islamic banks as well as forming the basis of the daily lives of all Muslims, requires that reward come from risk sharing. Profit must be justified through the creation of value that the banker brings to complement the value of the borrower's efforts and skills.

C. Islamic Banking in Practice

69. Islamic banking uses Islamic rules on transactions, or *Fiqh al-Muamalat*, as the basis for its activities. Deposits are made in the form of current accounts which are like those in non-Islamic banks, savings accounts and investment accounts. Investment account holders share in the profits and the losses of the bank. The instruments that are generally practiced include the following:

1. Mudarabah

70. *Mudarabah* is the sharing of profits and losses between borrows and lenders. An entrepreneur may borrow funds from a bank and the profits of the investment will be shared with the bank according to a predetermined ratio. Profit sharing continues until the loan is repaid. If the investment makes a loss, then the bank loses the capital and the entrepreneur loses his provision of labor, expertise and management. *Murabahah* is the most common form of Islamic financing and is based on the principle of mark up or cost plus. It consists of a buysell back arrangement that corresponds to a mortgage.

2. Musharakah

71. *Musharakah* is a practice under which Islamic banks lend funds to companies by issuing floating rate loans pegged to the company's rate of return. When the purpose of the loan is to acquire real estate, then an imputed rent will be agreed on and this will be shared between the borrower and the lender. It is used for investment project finance and for letters of credit as well as real estate.

3. Musawamah

72. *Musawamah* is a sale in which the price of a commodity is bargained without reference to the price paid or cost incurred by the seller. The seller is not obliged to reveal his costs as must happen in the case of *Murabahah*.

4. Qard Hassan

73. *Qard Hassan* is a loan made on the basis of goodwill for needy or welfare cases. The debtor is only required to repay the amount borrowed although an extra discretionary amount may be paid in appreciation. As this kind of loan does not compensate the lender for the time value of money, some consider it to be the purest from an Islamic viewpoint.

5. Sukuk

74. *Sukuk* are asset-backed trust certificates indicating ownership of an asset or rights over its use (usufruct). They are the Islamic equivalent of a bond. These certificates are based on *Istisna*, (where the bank buys the good from the supplier for its client), *Ijara*, (rent or leasing, which has become increasingly popular in Islamic business) *Mudaraba*, *Musharaka*, *Murabaha* and *Salam* with the characteristics of conventional bonds: marketable, rateable and enhanceable. *Sukuk* represents partial

ownership in a debt (*Sukuk Murabaha*), an asset (*Sukuk Al Ijara*), in a project (*Sukuk Al Istisna*), a business (*Sukuk Al Musharaka*), or an investment (*Sukuk Al Istithmar*). The most commonly *Sukuk* structures are similar to of conventional bonds, as they are listed on exchanges and made tradable through the conventional settlement systems for securities transactions. A key technique to achieve capital protection without amounting to a loan is a binding promise to repurchase certain assets: in the case of *Sukuk Al Ijara* by the issuer. In the meantime a rent is paid.

6. Takaful

75. *Takaful* is a form of insurance and is an Arabic word meaning “guaranteeing each other” or joint guarantee. It is based on the concept that what is uncertain for an individual may not be so for a large number of similar individuals. Muslim jurists acknowledge that the basis of shared responsibility in the system of "*aqila*" as practised between Muslims of Mecca and Medina laid the foundation of mutual insurance. Islamic insurance was established in the early second century of the Islamic era when Muslim Arabs expanding trade into Asia mutually agreed to contribute to a fund to cover anyone in the group that incurred mishaps or robberies along the numerous sea voyages (marine insurance). It is based on the concept of '*tabarru*' or "donation; gift; contribution." Each participant that needs protection must be present with the intention to donate to other participants faced with difficulties. Thus, Islamic insurance exists where each participant contributes into a fund that is used to support one another. The objective of *takaful* is to pay a defined loss from a particular fund. Policyholders cooperate among themselves for their common good. Each policyholder pays his subscription to help those needing assistance. Losses are divided and liabilities spread according to the community pooling system. In this way, uncertainty is eliminated in respect of subscription and compensation and no one derives advantage at the expense of others.

7. Wadiah

76. *Wadiah* is safekeeping: in Islamic finance, a bank can act as a keeper and trustee of funds. The depositor may be rewarded, at the bank's discretion with a gift by the bank in appreciation for the use of the deposits. The gift often compensates depositors for the timevalue of their money.

77. To facilitate risk and reward sharing a different type of contract is needed based on partnership rather than an asymmetrical relationship. Siddiqi has been the major modern exponent of this type of approach for Islamic banking, originally through his advocacy of non-interest based banking based on *mudarabah* and later through *musharakah*. Under a *mudarabah* contract the financier or rabb al maal supplies the capital and a businessman, designated as a *mudarib*, contributes their managerial or entrepreneurial skills. Both parties share in any profits on a proportionate basis, but although the shares are specified in the contract and cannot be changed, the profit, unlike interest, cannot be pre-determined as this will depend on how the business performs. Only the *rabb almaal* is responsible for any losses, as it would be unjust to penalize the manager further as they will already have given their time and effort without reward.

78. This contrasts with a *musharakah* contract, where all parties must contribute a share of the capital, and they share in any profits or losses in proportion to their investment contributions. *Musharakah* contracts hence represent a type of joint venture, one practical application being for syndicated financing to reduce the risk to each partner.

IV. SECRETARIAT COMMENTS AND OBSERVATIONS

79. Islamic law is comprehensive in addressing all facets of human life. Islam has laid down clear instructions as how to conduct the economic interactions within the human society. The branch of Islamic economics is interrelated with other aspects of *Shariah* and should not be viewed in isolation. Islamic economics clearly advocates economic and social justice, self-reliance, and the importance of consultation and collective decision making. The State is duty bound to provide social security measures, which include, food, housing, shelter, education and medicine. State has to further economic development so as to improve the living condition of its citizens. One of the fundamental objectives of economic policy of an Islamic State would be to minimise disparities in the distribution of income and wealth. Concentration of economic power in a few hands is not admissible in Islam. An Islamic State should strive to gradually root out several deep rooted economic evils found in Islamic society. Rights have corresponding duties in Islam. The report highlights the fact that Islamic economics clearly has a human rights dimension apart from the economic side.

80. The ultimate aim of Islamic finance and banking is to fulfil socio ethical responsibility to bring prosperity among humankind as it has very strong *Shariah* foundation and very strong moral ethical dimension which are rooted in the system itself. The prohibition of interest is the ethical and economic foundation of the Islamic finance industry. The strict prohibition of interest in Islam is a result of its deep concern for the moral, social, and economic welfare of humankind. According to Islamic scholars the rationale for this prohibition is that there shall be no profit without participation in business risk. Other elements of Islamic finance include the emphasis on equitable contracts, the linking of finance to productivity, the desirability of profit sharing, and the prohibition of gambling and certain types of uncertainty.

81. Islamic banking involved all parties participating on just terms. The profit and loss sharing principle implied less likelihood of contracts being broken and promoted solidarity and brotherhood. For proponents of Islamic finance it is beyond doubt that *riba* is not restricted to usury only but covers all forms of interest in loan contracts. As the alternative in harmony with ethics and morals of Islam, Islamic economists designed a financial system based on the idea of partnership and sharing of risks and rewards. The substitution of loans and debt by sharing agreements became the distinguishing factor and the basic premise on which all claims of distinctiveness and superiority were based. It is also observed that many of the characteristics of Islamic banking can benefit both the investors and the players such as risk and benefit sharing as it provides more equal opportunities to both parties.

82. To conclude, the AALCO Secretariat wishes that this report, gives an idea on how Islam seeks to protect and promote human rights, in every facets of its application, including, Islamic economics, finance and banking. This would help to

clear some of the misunderstanding engulfing the Islamic law and would highlight the true spirit and essence of Islam.