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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

Joint written statement* submitted by the International Humanist and Ethical Union (IHEU), a non-governmental organization in special consultative status, the Association for World Education (AWE) and the Association of World Citizens (AWC), non-governmental organizations on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 August 2008]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s). Its contents are the sole responsibility of the author(s).

Sixty Years after the UDHR: Threats to the Universality of Human Rights

1. Our joint written statement to the 7th Session of the Human Rights Council: The Cairo Declaration and the Universality of Human Rights (A/HRC/7/NGO/96)¹, provides substantive documentation and analysis of the wide divergence between the 1948 Universal Declaration of Human Rights (UDHR) and the International Covenants on the one hand, and the 1990 Cairo Declaration on Human Rights in Islam (CDHRI) on the other.
2. We wish to stress the crucial need in our multi-cultural world of agreed universal standards that serve as impartial guidelines to the conduct of affairs, independent of any specific culture, nationality or religion. The UDHR, the ICCPR and the ICESCR (The International Bill of Human Rights) form such a set of guidelines drafted after several years of intense multi-national and multi-cultural negotiation. During the 60th anniversary celebrations of the UDHR it is of the utmost importance for the international community to reaffirm its commitment to this unconditional universal standard, to increase knowledge about it, and to openly discuss threats to its universality.
3. In this context, it is deeply regrettable that on two recent occasions (13 March and 16 June 2008) our NGO representatives² have been prevented at the Council from completing oral statements as prepared following points of order by member states of the Organization of the Islamic Conference (OIC) who objected to references to violence against women and to the incompatibility of the CDHRI – and the sharia on which it is based – and the UDHR.
4. At a time when Governments are preparing a review of the anti-racial-discrimination provisions of Durban 2001, it is an urgent necessity to clarify the standards against which racial, religious and ethnic discrimination – and freedom of opinion and expression – should be judged. The provisions enshrined in the UDHR are clear and must take precedence over any regional or sectarian standards in the preparations for the 2009 Geneva Conference.
5. Whilst it may be helpful when teaching about the UDHR to show where human rights standards – in one form or another - are also found in particular cultures, religions, and national and regional human rights conventions, it is the universal acceptance of the UDHR that must remain the ultimate goal of the United Nations, all Member States and civil society.
6. Thus, declarations arising out of a particular culture, religion or national state – particularly when called a "Declaration" or justified by cultural relativism – can lead to confusion. They can be, and often are compared with and wrongly considered to have the same standing as the UDHR. Such considerations can easily weaken the universality of the UDHR and the International Covenants.
7. These very points were raised by the International Commission of Jurists (ICJ) at the time that the CDHRI was being presented for adoption at the OIC Conference in Dakar in December 1991. The subsequent frequent use of – and reference to – the CDHRI by representatives of the OIC and of OIC Member States has highlighted the key importance of this early warning.

8. The background to the CDHRI and concerns expressed at the time by the International Commission of Jurists have been summarized in several articles by David G. Littman since 1999.³ Adoption of the CDHRI by the OIC was averted for a time when the dangers of the CDHRI were enumerated in a press release by the ICJ and again spelled out in a joint statement to the Commission on Human Rights by Adama Dieng, Secretary-General of the ICJ and an eminent Senegalese jurist, who alerted the international community to its grave negative implications. [February 1992– E/CN.4/1992/SR.20, § 17–20].

9. In view of his prominence as a respected international Muslim jurist and legal authority, Adama Dieng's ICJ press release of 17 years ago should be required reading for a better understanding of the current clash of conflicting human rights "declarations".

10. PRESS RELEASE

INTERNATIONAL COMMISSION OF JURISTS

Geneva, 5 December 1991

JURISTS CONCERNED BY THE DECLARATION ON HUMAN RIGHTS IN ISLAM

At the opening of the Meeting of Heads of State and Government of the member states of the Organization of the Islamic Conference (OIC) in Dakar, Senegal, the International Commission of Jurists (ICJ) reaffirms its interest in this Summit which is held in the framework of regional and international cooperation between Governments.

The ICJ wishes, however, to call the attention of the Muslim communities and world public opinion to the negative implications which might follow the Summit's adoption of the Islamic Draft Declaration on Human Rights in Islam, as elaborated on 5 August 1990 in Cairo, during the Nineteenth Islamic Conference of Foreign Ministers.

The International Commission of Jurists, whose Secretary-General, Adama Dieng, is a pre-eminent Senegalese jurist, evaluates this document in light of international human rights instruments, particularly the Universal Declaration of 1948 and the Covenants on Civil and Political Rights, and on Economic, Social, and Cultural Rights.

These declarations, pacts, and covenants were elaborated through the often long and laborious process of reflection and discussion. This process took into account the diversity and the multiplicity of schools of thought that, across many centuries and continents, converged in the emergence of an inter-cultural consensus, a universal culture of human rights. In this consensus, no branch of civilisation, Western or other, dominated.

The Draft Declaration on Human Rights in Islam presents problems for the ICJ and for other defenders of human rights.

In making a systematic and dogmatic reference to the "Islamic Sharia (Law)", the Draft Declaration is troubling because:

1. It gravely threatens the inter-cultural consensus on which the international human rights instruments are based;
2. It introduces, in the name of the defence of human rights, an intolerable discrimination against both non-Muslims and women;

3. It reveals a deliberately restrictive character in regard to certain fundamental rights and freedoms, to the point that certain essential provisions are below the legal standards in effect in a number of Muslim countries;

4. It confirms, under cover of the "Islamic Sharia (Law)," the legitimacy of practices, such as corporal punishment, which attack the integrity and dignity of the human being.

All of this is done in the name of the Muslim religion, even though the "Islamic Sharia (Law)" has often only a distant relation with the spirit and the letter of the sacred texts of Islam.

As a product of history, the "Islamic Sharia (Law)" is, in the eyes of a number of Islamic jurists, a law that must be adapted to the exigencies of the era, to contemporary juridical concepts, and to international legal instruments.

Convinced that the message of Islam – like the messages of all major religions – is a message of tolerance, brotherhood, justice, and hope, the International Commission of Jurists believes that it would be a mistake for the Summit of Dakar to adopt the Draft Declaration in its present version. This action would give legitimacy to intolerant behaviour that contradicts the customary and well-established norms of international human rights law.

The adoption of the Draft Declaration could also have the consequence of giving a distorted image of Islam to the world at large. An image that can only nourish the reprehensible growth of prejudice and xenophobia in non-Muslim countries.

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11. Nothing in the intervening years has done anything to diminish our concerns. On the contrary, the 1990 OIC Resolution N° 49/19-P and the CDHRI were included, apparently without any debate, as the last documents (E. Organization of the Islamic Conference, 49 and 50) in 'A Compilation of International Instruments.' *Volume II, Regional Instruments* (United Nations: New York / Geneva, 1997 – OHCHR). In reply to the AWE's formal request concerning the inexplicable inclusion of the CDHRI in *Regional Instruments*, the legal advisor to the then HCHR Mary Robinson confirmed in a letter dated 14 September 2000 that: "The Member States which have acceded to and ratified United Nations Human Rights Conventions remain bound, under all circumstances, by the provisions of those texts, as well as the *erga omnes* obligations under customary international law."

12. Ten years later, speaking on behalf of the OIC at the Human Rights Council on Human Rights Day (10 December 2007), the Ambassador of Pakistan reported that the OIC was considering the creation of a new Charter of Human Rights in Islam based upon the Cairo Declaration. Astonishingly, despite the clear incompatibility between the CDHRI and the UDHR, he claimed that the Cairo Declaration: "is not an alternative, competing worldview on human rights. It complements the Universal Declaration as it addresses religious and cultural specificity of the Muslim countries."

13. Debates on the nature of the Sharia in Islamic countries and elsewhere can be of intellectual interest but they are not relevant to the UDHR, nor should they be to the Human Rights Council, to any of the UN Human Rights institutions, or to

intergovernmental consideration or decisions based upon the UDHR and the International Covenants.

14. Surely one of the lessons of the Cold War is that only a firm and uncompromising stand regarding fundamental issues can lead to the effective implementation of the ideals and objectives enshrined in the International Bill of Human Rights and other UN instruments.

1. http://ap.ohchr.org/documents/alldocs.aspx?doc_id=13720

2. See: <http://www.iheu.org/node/3115> and <http://www.iheu.org/node/3193>

3. David G. Littman, "Universal Human Rights and 'Human Rights in Islam'", *Midstream* 45, no. 2 (Feb.-March 1999, pp. 2-7); "Islamism Grows Stronger at the United Nations", *Middle East Quarterly* 6, no. 3 (September 1999, 59-64); "Human Rights and Human Wrongs: Sharia Can't Be Exception to International Human Right Norms," *National Review Online*, 19 January 2003, which was adapted and updated in an AWE written statement: International Bill of Human Rights: Universality / International Standards /National Practices:

E/CN.4/Sub.2/2003/NGO/15 (key quotation from a statement by HCHR Mary Robinson on 15 March 2002).
[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.Sub.2.2003.NGO.15.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.2.2003.NGO.15.En?Opendocument)

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